

**Document:** Proposed Rule

**Source:** April 1, 2001, Indiana Register, Volume 24, Number 7

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**TITLE 326 AIR POLLUTION CONTROL BOARD**

**Proposed Rule**

LSA Document #00-137

**DIGEST**

Adds 326 IAC 10-3 for the control of nitrogen oxide emissions from specific source categories. Adds 326 IAC 10-4 for the establishment of a nitrogen oxides budget trading program. Effective 30 days after filing with the secretary of state.

**HISTORY**

First Notice of Comment Period: July 1, 2000, Indiana Register (23 IR 2606).

Second Notice of Comment Period and Notice of First Hearing: December 1, 2000, Indiana Register (24 IR 766).

Date of First Hearing: February 7, 2001.

**PUBLIC COMMENTS UNDER IC 13-14-9-4.5**

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

**REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on December 1, 2000, at 24 IR 766. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6.

A number of significant issues were raised during the public hearing. IDEM is continuing to discuss these issues with members of the public and the U.S. EPA and specifically solicits comments on these issues. Depending on the outcome of these discussions, further changes may be presented to board prior to final adoption. The following is a list of some of these major issues:

- Non-EGU allowance allocation methodology.
- The availability of alternative monitoring methodologies for units combusting only gaseous fuels.
- The allocation schedule as it pertains to new sources.
- The possible exemption of "clean" units.
- New source review permitting requirements, if any, for NO<sub>x</sub> control projects.
- Clarity on penalty provisions.
- Transition of sources under Section 126 rule.
- Alternative compliance approaches.
- Achieving NO<sub>x</sub> reductions from other source categories.
- Appropriate restrictions for twenty-five (25) ton per ozone season exemption.

Mailed comments should be addressed to:

#00-137 NO<sub>x</sub> SIP Call  
Kathryn A. Watson, Chief  
Air Programs Branch  
Office of Air Quality  
Indiana Department of Environmental Management  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m.

and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, hand delivered, or faxed by April 23, 2001.

### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from December 1, 2000, through January 2, 2001, on IDEM's draft rule language. Over three hundred (300) comment letters were received from industry, organizations, and private citizens. In some cases, IDEM was not able to determine a person's name from the signature provided and has accounted for those letters by including a reference to Concerned Citizens of Indiana. IDEM received comments from the following parties:

D. Alexander (DA)  
Aluminum Company of America (ALCOA)  
American Electric Power (AEP)  
Paul S. Andersen (PSA)  
Marge Ashley (MA)  
Iveta Asons (IA)  
Bradley D. Barhyatt (BDB)  
Denise L. Benson (DLB)  
Jaymie Berg (JB)  
David B. Bert (DBB)  
Paul Besel (PB)  
Bethlehem Steel Corporation (BSC)  
Ruth A. Black (RAB)  
Ann Block (ABK)  
Stephanie Bode (SB)  
C. B. Bowden (CBB)  
Helen Boyer (HBR)  
Anne Bradery (ABY)  
Michael D. Brand (MDB)  
Wanda S. Brattain (WSB)  
Robert Brennan, Jr. (RBJ)  
Laura Burnley (LB)  
Cynthia Callehan (CCN)  
Shirley J. Carr (SJC)  
JoAnn Chapman (JAC)  
Ellen A. Chrapla (EAC)  
Cinergy Corporation (CIN)  
Citizens Action Coalition of Indiana (CACI)  
Citizens Thermal Energy (CTE)  
Clean Air Action Corporation (CAAC)  
Concerned Citizens of Indiana (CCI)  
Marian Cooley (MCY)  
Sheryl A. Coupload (SAC)  
Heather Cox (HC)  
Glenda J. Crabtree (GJC)  
Ruth D. Cummin (RDC)  
Jennifer Darly (JND)  
Kathy Davidson (KD)  
Jeffrey Dettelbach (JD)  
Steve Dill (SDL)  
Terry R. Dohn (TRD)  
Robert Druit (RD)  
Cara Einterz (CEZ)  
Carol E. Eley (CEE)  
EnviroPower of Indiana (EPI)

John Everitt (JE)  
Jane Fields (JFS)  
Chet Foster (CF)  
R.J. Gerringer (RJG)  
Brian Gill (BGL)  
Perry Gillaspay (PG)  
Mark Grable (MG)  
Kim Grayson (KG)  
George Grosskopf (GG)  
Lori Hall (LH)  
Shelly Halstead (SH)  
Linda Hamilton (LMN)  
Lisa Hamm (LHM)  
Troy Harmon (THN)  
Juanita M. Harris (JMH)  
William Harvey (WH)  
Scott Hatfield (SHD)  
Bill Hayden (BH)  
Annette Henderson (AHN)  
Laura A. Henderson (LAH)  
Lisa Henderson (LHN)  
Amy Holly (AH)  
Hoosier Energy REC, Incorporated (HE)  
Hoosier Environmental Council (HEC)  
Michal E. Hunt (MEH)  
Tara L. Hunt (TLH)  
David Hyde (DH)  
Joseph and Donna Huber (JDH)  
Indiana Coal Council, Incorporated (ICC)  
Indiana Division-Izaak Walton League of America (IWLA)  
Indiana Manufacturers Association (IMA)  
Indiana Municipal Power Agency (IMPA)  
Indiana Petroleum Council (IPC)  
Indiana-Kentucky Electric Corporation (IKEC)  
Indianapolis Power and Light (IPL)  
Ispat Inland Incorporated (III)  
Valine Jackman (VLJ)  
John W. Jackson (JWJ)  
Lisa Jackson (LJ)  
Shirley A. James (SAJ)  
Vicki John (VJ)  
Brian and Dee Johnson (BDJ)  
Marc Johnson (MJN)  
Carl and Lois Jones (CLJ)  
Gary Kah (GK)  
Brenda Keith (BK)  
Jenine Kemp (JK)  
Laura Kindle (LKE)  
Martha W. Kleinschmidt (MWK)  
R.M. Krause (RMK)  
Judy Kreger (JKR)  
Don Landers (DL)  
Rebecca Lane (RL)  
Allen R. Lauer, Senior (ARL)  
Mike Leckrone (ML)

Tom Leonard (TLD)  
Sheila Liddell (SLL)  
Jodi Liebeno (JL)  
Nancy Little (NL)  
B. J. Loudreth (BJL)  
LTV Steel Company, Incorporated (LTV)  
Deanna Maddox (DM)  
Rosemary Mahoney (RSM)  
David G. Manero, Ph.D. (DGM)  
Candace Matsumoto (CM)  
Anne Matthews (AMS)  
Gail McCoach (GMC)  
Barbara McGraw (BM)  
John C. Meade (JCM)  
Jean Meese (JME)  
Midwest Independent Power Suppliers Coordination Group (MWIPS)  
Natalie Miles (NM)  
Gregory R. Miller (GRM)  
Suzie Mirise (SZM)  
James D. Mitchell (JDM)  
E. Montgomery (EM)  
Scott Montgomery (SM)  
Josephus L. Morris (JLM)  
Linda Morrison (LM)  
Paul W. Morrison (PWM)  
Brian D. Myers (BDM)  
Natural Resources Defense Council (NRDC)  
NiSource (NS)  
Dana Nixon (DN)  
Gordon Osterhoff (GOF)  
Kim Pallikan (KP)  
Mary K. Paynter (MKP)  
James Platz (JPZ)  
Kelli Polloch (KPH)  
Alan Ponto (AP)  
James H. Pratt (JHP)  
Primary Energy, Incorporated (PEI)  
Purdue University (PU)  
Stephanie Rafferty (SRY)  
Cynthia S. Reid (CSR)  
Sarah Reyna (SRY)  
Richmond Power and Light Company (RPL)  
Tonya L. Robbins (TLR)  
Brad Roberts (BR)  
Phillip and Jean Ross (PJR)  
Shannon Ross (SR)  
Donna Runkle (DR)  
Dorothy Russell (DRL)  
Lucynda Russell (LCR)  
Carole Rust (CR)  
Jeff Ryan (JR)  
Chuck Sadler (CKS)  
Jean S. Sallawasser (JSS)  
Save the Dunes Council (SDC)  
Save the Valley (STV)

Lori L. Schlabach (LLS)  
David F. Schulze (DFS)  
Kim Sexson (KSN)  
Laura Shan (LSH)  
Sierra Club-Hoosier Chapter (SCHC)  
Bette S. Smith (BSS)  
Donnita Smith (DS)  
James P. Smith (JPS)  
John O. Smith (JOS)  
Melvin L. Smith (MLS)  
Fred Smoot (FS)  
LaCinda Sohalski (LCS)  
Lissa Starner (LS)  
Mary Starney (MSY)  
State Line Energy (SLE)  
Tim Stelle (TS)  
Marti Steussy (MS)  
Cindy Stone (CS)  
Erik Styles (ESS)  
Regan Summers (RSS)  
David J. Surina (DJS)  
Robert Taylor (RT)  
Suellen Terry (ST)  
Jeff and Sue Testin (JST)  
Konda Thomas (KT)  
Sumner Thompson (STN)  
U.S. Steel Group (USS)  
John Ulmer (JU)  
Valley Watch, Incorporated (VWI)  
Patrick M. Vandegriff (PMV)  
Vectren Corporation (VC)  
Roger Voelker (RV)  
Joan Von Gunter (JVG)  
Sheila Walker (SW)  
Anthony D. Ware (ADW)  
A. L. Watson (ALW)  
Anna Weiser (AW)  
E. M. Whirter (EMW)  
Larry F. Whitham (LFW)  
Wendy Wilkerson (WW)  
Patricia M. Williams (PMW)  
Indiana Electric Utility Air Work Group (IEUAWG)  
Pike County Economic Growth Council (PCEGC)  
Vanderburgh County Department of Health (VCDH)  
Albert Van Der Merwe (AVDM)  
Keith Yeager (KY)

Following is a summary of the comments received and IDEM's responses thereto:

#### **Trading Program - General**

*Comment:* IDEM should adopt a NO<sub>x</sub> trading program consistent with U.S. EPA's model trading program in the NO<sub>x</sub> SIP call. The following limitations should be included in the program:

- Automatic inclusion in the program for electric utility boilers and large industrial boilers.
- No broadening of the program to include smaller and less well monitored stationary sources and mobile sources.
- No opt-in provisions for smaller and less well monitored sources.
- No expansion of the program to allow for inter-pollutant trading between NO<sub>x</sub>, volatile organic compounds (VOCs), or any other pollutant. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

*Response:* The draft rules include a trading program that affects utility and large industrial boilers and does not allow for inter-pollutant trading. The program does allow for other units to opt-in to the program as long as the same monitoring requirements are followed.

*Comment:* IDEM should require a very large proportion of the NO<sub>x</sub> emission reductions from the electric power sector. U.S. EPA's analysis demonstrates that the emission reductions can be achieved more reliably and at lower cost from this sector than in other sectors. In addition, the emission limit should be expressed as a firm emission tonnage cap to prevent erosion of air quality benefits due to growth in electric power generation. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

*Response:* The draft rule includes U.S. EPA's model NO<sub>x</sub> trading program that establishes a cap or budget for electric generating and large industrial units and significant emission reductions will be needed from utility sources to meet the NO<sub>x</sub> budget.

*Comment:* Purdue supports the implementation schedule in the rule that sets the first year as a four (4) month program, while setting allocations on the basis of a five (5) month program. This allows for more flexibility in the first year. (PU)

*Response:* IDEM appreciates the support.

*Comment:* IDEM should work to develop a NO<sub>x</sub> rulemaking that adheres to the federal requirements as they relate to any NO<sub>x</sub> budget. (ALCOA)

*Response:* The draft rule language proposed by IDEM is consistent with U.S. EPA's budget.

*Comment:* IDEM should combine the EGU and non-EGU budgets and allocate the allowances from the combined NO<sub>x</sub> budget, and not according to whether a unit is within the EGU or non-EGU subsets. (MWIPS) (EPI)

*Response:* IDEM does not believe the budgets should be combined for allocations to existing sources, but has proposed combining the new source set-asides. Maintaining separate budgets is the fairest way to distribute the allowances to ensure both EGUs and non-EGUs achieve reductions in the most cost-effective way. Any excess allowances in the budget may be used for new source set-asides, other policy objectives such as to encourage energy efficiency or renewable energy projects or may be made available in the market.

*Comment:* IDEM should maintain a program that allows interstate trading. (III)

*Response:* The trading program included in the draft rule is a regional trading program administered by U.S. EPA.

*Comment:* IDEM should allow NO<sub>x</sub> allocations under this rule to be used for NO<sub>x</sub> offsets under 326 IAC 2-3. (III)

*Response:* In the NO<sub>x</sub> SIP call, U.S. EPA indicated that it believed the trading program could be used to obtain NO<sub>x</sub> offsets (63 FR 57475), but identified issues with the integration of the programs. One issue is the requirement to obtain offsets from certain geographic areas. U.S. EPA stated that it will evaluate the issues and provide guidance on the integration of the programs.

*Comment:* IDEM should include language in the rule that would allow non-budget sources that make verifiable and quantifiable reductions to receive allowances equivalent to those reductions. Other states have taken this approach to increase flexibility and cost savings. This is not an opt-in, in that, the sources would not choose to be regulated, but rather a voluntary program. This program would allow for greater reductions from non-budget sources that could be used to provide more flexibility for budget sources. (CAAC)

*Comment:* IDEM should bring other source categories such as mobile and area sources into the NO<sub>x</sub> budget trading program. By doing so, the trading program would provide additional flexibility for affected sources to obtain early reduction credit relief while installing NO<sub>x</sub> emission controls to comply with the NO<sub>x</sub> SIP call requirements. (IPL) (VCDH)

*Response:* U.S. EPA requested comment concerning mobile and area sources and allowing them in the trading program. Due to the comments received and the issues raised, U.S. EPA decided not to include these categories in the trading program. IDEM agrees with the principle that broadening the trading program to allow other sectors to participate on a voluntary basis could provide an incentive for cost-effective NO<sub>x</sub> reductions that would lower the overall costs of this program. IDEM has taken the first step in this direction by including a provision for sources to opt in as trading units, but recognizes that only certain types of sources will meet U.S. EPA's criteria. Some states already have trading programs in place and propose to use existing regulatory mechanisms as a way for sources that cannot opt in under U.S. EPA's rules to participate in the trading program. IDEM will continue to work with interested parties to identify additional reductions that may be used in the trading program.

*Comment:* The draft rule lacks a valid scientific basis as required by IC 13-7-1-3 and there is concern that scientific knowledge regarding ozone transport does not support this rule. Previous correspondence from IDEM seems to indicate the department has shared this concern. It is unclear whether IDEM is adopting a new position about the level of controls or simply responding to U.S. EPA regulatory mandates. If IDEM is not taking a new position about the levels of control that can be demonstrated by any available science, then this should be made known. If IDEM has undertaken a new evaluation of the scientific merits of the rule and has independently concluded that the proposed control level is necessary, there are a number of concerns with the modeling and the scientific and statistical validity of U.S. EPA's estimates. IDEM should make clear whether it is taking a new position or simply following U.S. EPA mandates. (IPL)

*Response:* IDEM continues to believe that significant reductions of NO<sub>x</sub> emissions are needed, as supported by the regional modeling performed by the Lake Michigan Air Directors Consortium (LADCO). Since the D.C. Circuit Court of Appeals has upheld the SIP call, IDEM also has a regulatory requirement to respond to the SIP call.

*Comment:* IDEM should include language that addresses how necessary local NO<sub>x</sub> reductions can be achieved should it be found

after implementation that a source complying with the rule by buying credits is causing a local ozone problem. (VCDH)

*Response:* U.S. EPA and IDEM believe that the stringency of this rule and the other emission requirements that sources must comply with will not lead to a single source causing a local ozone problem. It is extremely unlikely that even with the trading program any source in Indiana could increase its NO<sub>x</sub> emissions from current levels. IDEM has conducted air quality modeling analyzing several possible control scenarios, assuming that sources will control where it is most cost-effective to do so and that sources will acquire allowances where that is most cost-effective. The modeling does not show that there will be adverse air quality impacts in any particular geographic area in Indiana.

### **Applicability**

*Comment:* The exemption for units that accept a federally enforceable limit to restrict emissions below twenty-five (25) tons per ozone control period is supported. However, the current language in the draft rules is too restrictive and does not recognize equally effective mechanisms for limiting seasonal NO<sub>x</sub> emissions. Sources that want to make use of the exemption should be allowed to use any means normally used in new source permitting to obtain synthetic minor permits, including restrictions on fuel consumption. The exemption could also include a restriction on actual tons of emissions where a source commits to using a continuous emissions monitoring system (CEMS), if the installation of the system would be cost effective. A failure to include at least a fuel consumption limitation option would be patently unfair to these sources. (AEP) (IEUAWG) (HE) (IMPA) (NS) (VC)

*Comment:* IDEM should expand the twenty-five (25) ton exemption to units that combust coal. The emissions from these units can be monitored using current fuel sampling and analysis with records of fuel use. In addition CEMS may also be used, but since the data would not be used under the trading program, there is no reason to impose the stringent requirements under 40 CFR 75. (CTE)

*Response:* IDEM agrees the U.S. EPA model language is restrictive and more equally reliable ways to estimate potential to emit exist. IDEM has included language in the draft rule under 326 IAC 10-4-1(b)(3) that would permit other methodologies to be used. However, in discussions to date, U.S. EPA has not indicated a willingness to allow approval for any language other than its own. IDEM will continue to work with U.S. EPA on this issue.

*Comment:* We do not support an exemption for very clean units. Such an exemption would hinder the development of the allowance trading market. (IEUAWG) (HE) (VCDH) (VC)

*Comment:* IDEM should include an exemption for units with emission rates significantly below the targeted levels. Exempted units would have to accept an enforceable emission limit below the standard, for example seventy-five percent (75%) of the target level, and demonstrate compliance through stack testing. We would also propose that any allowances above the emission limit, twenty-five percent (25%), would be retired or used for other purposes. (BSC) (USS)

*Response:* IDEM understands the objection to this exemption, but could support an exemption if allowances are retired or provided for other beneficial uses. U.S. EPA has indicated, however, that it would not approve an exemption of this sort.

*Comment:* IDEM should clarify that units for which the source has accepted a federally enforceable permit limitation restricting heat input capacity are not subject to the rule. (PU)

*Response:* IDEM believes that permit limitations restricting capacity should be acknowledged and will provide clarification where needed.

*Comment:* Significant investments have been made to defer blast furnace gas (BFG) away from wasteful flaring operations. There appears to be some inconsistency by states with respect to the classification of BFG as a fossil fuel. IDEM should review this classification and develop a position consistent with U.S. EPA, other states, and its own permitting determinations. (LTV) (USS)

*Response:* IDEM has discussed this issue with U.S. EPA, which indicates that it has consistently included units fueled by blast furnace gas as controlled units in the SIP call. IDEM will continue to explore ways to address units that are inherently low emitting in the rule, but for now has included them in the large non-EGU trading budget.

*Comment:* IDEM has incorrectly classified the Perry K units as large non-EGUs even though U.S. EPA classified these units as small EGUs under the SIP call. A source that U.S. EPA decided was not to be included under the federal rule, and specifically one where controls would not be cost-effective, should not be singled out for regulation under this rule. (CTE)

*Response:* How the Perry K units should be classified has been a subject of ongoing discussion throughout U.S. EPA's development of the NO<sub>x</sub> SIP call. The former owner of Perry K, Indianapolis Power and Light, argued at various times, that the Perry K units were large non-EGUs and small EGUs. While IDEM initially felt that the Perry K units met U.S. EPA's classification as a small EGU, once U.S. EPA finalized the rule, the categories of affected sources in the inventory were clearly defined in the inventory, and U.S. EPA's inventory classification for the Perry K units does not match rule language concerning applicability. It is IDEM's interpretation that the Perry K units would be subject to the original model trading rule, 40 CFR 96. In that rule, a unit that had a heat input capacity greater than two hundred fifty million (250,000,000) Btus per hour would be subject irrespective of whether it generated electricity (63 FR 57461). When IDEM began this rulemaking, it considered the classification of Perry K and the definition of large affected unit. IDEM believes the Perry K units are large affected units because the Perry K units have a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour, were in operation prior to 1997, and did not serve a generator during 1995 or 1996 producing electricity for sale to the electric grid.

*Comment:* Sources should be allowed to retire a unit and receive allocations to shift loads to cleaner units. This could be the most cost-effective means of achieving compliance. IDEM should verify that the draft rules allow this and that retired units will receive a one-time allocation. These allocations should have a five (5) year lifetime to establish the load shifting baseline. (III)

*Response:* The draft rules include a retired unit exemption that would provide an allocation of allowances until the next allocation period. Since the unit would not have any heat input data after it is retired, the unit would get zero (0) allowances when IDEM reallocates for the next allocation period. The lifetime of the allowances is not limited.

*Comment:* We believe that there is a typographical error in the draft language at 326 IAC 10-4-1(a). As currently worded, the proposed rule language could inadvertently capture sources with more than one (1) unit, even if the unit is not a NO<sub>x</sub> budget unit. We believe it is not IDEM's or EPA's intent to regulate non-NO<sub>x</sub> budget units. Therefore, we recommend that IDEM modify the proposed rule language to more accurately reflect the type of sources intended to be regulated by the NO<sub>x</sub> rule. (NS)

*Response:* IDEM agrees and will make the necessary changes.

### **Allowance Allocation Methodology**

*Comment:* The allowance allocation methodology using the average of the highest heat input values for two (2) of the five (5) years preceding the allocation is supported as well as the use of information from 1995 to 2000 for the initial allocation. (AEP) (IEUAWG) (CIN) (IMPA) (PU) (PEI) (ALCOA) (SLE) (VC)

*Comment:* IDEM should stay with U.S. EPA's model trading rule and use the highest two (2) years of heat input between 1995 and 1997 in the allowance allocation methodology. Longer look back periods may be considered in future allocations. This approach provides equity for smaller electric utilities that have the least operational flexibility. (HE)

*Comment:* IDEM should revise the language to specify that allocations are determined using a five (5) year average rather than the average of the highest two (2) years of the five (5) years to provide more stability in the allowance allocations. (IPL)

*Comment:* New units that operated or were issued construction permit by September 30, 2000, should receive allowances for the first allocation period as "existing" budget units. (CIN)

*Response:* IDEM believes the proposed allocation methodology time periods provide the necessary flexibility to account for abnormal operations. IDEM understands that any particular choice it makes will either be favorable or unfavorable for a particular company. However, positions may well be reversed in the next allocation period. IDEM has reconsidered the time periods to be used for heat input data in light of the availability or nonavailability of heat input data. In order to make sure that information for a particular year will actually be available to IDEM for use in the allocations, IDEM has revised the initial heat input years to 1995 to 1999.

*Comment:* We are opposed to using output as the basis for allowance allocations. The creation of an output based allocation system has economic and energy policy consequences that IDEM has not evaluated and these consequences have an impact on regulatory decisions subject to the jurisdiction of other state and federal administrative agencies. IDEM should commit to working with the potentially affected sources to more fully evaluate the impacts of a transition to output-based system. If such a system is adopted in the future, non-fossil fuel fired units should not be considered for inclusion in the program. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (CTE) (ALCOA) (SLE) (VCDH) (VC)

*Comment:* IDEM should use an output-based allocation system once U.S. EPA has established a uniform approach for measuring output. Output-based allocations treat all EGUs equally, encourage efficiency and allow for more electricity to be generated without increasing emissions. The output-based methodology should be included beginning with the second allocation period. (MWIPS) (EPI) (NS)

*Response:* IDEM is not including an output-based allocation system or a rule commitment at this time because all of the implications of using such an approach have not been developed, but will continue to investigate this option. U.S. EPA is working on guidance that will assist IDEM in the development of an output-based approach. U.S. EPA has also committed to basing the second allocations under the Section 126 rule on output, but has not published any proposed language at this time.

*Comment:* IDEM should extend the allocation period to a minimum of five (5) years. A three (3) year allocation period introduces additional uncertainty into compliance planning decisions and increases the risk of basing future operating constraints on an unrealistically short baseline period. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (IMPA) (VC)

*Comment:* Allocations should be adjusted annually, rather than every three (3) years, to ensure that allocations are based on the most recent data from units and acknowledge rapid change in the industry. (MWIPS) (EPI)

*Comment:* The allocation period of three (3) years is supported as long as the rule is revised to allow new sources to opt into the existing source pool earlier than otherwise allowed by the current rule language. (NS)

*Comment:* Due to the complexity of this rule, allocations should be given on a one-time basis eliminating the need for reallocations every three years. A small set-aside could be held in the event a new source could not obtain NO<sub>x</sub> allocations at a reasonable price. The minimum reallocation should be once every five (5) years, if not done on a one-time basis. (III)

*Response:* IDEM believes that a three (3) year allocation period is a good compromise between these many different proposals.

*Comment:* IDEM should allocate allowances to non-EGU units based on seventeen-hundredths (0.17) pound per million Btus and should not require additional reductions, especially for cleaner units. (BSC)



*Comment:* All non-EGU allowances should be fully allocated to non-EGU units and should not be transferred for other uses. The allocation methodology in the draft rule is supported. (USS) (ALCOA)

*Response:* As currently written, the rule uses seventeen-hundredths (0.17) pound per million Btus, a baseline emission rate or the allowable permit limit, whichever is more stringent, for allocations. IDEM is proposing to have just one (1) set-aside that would be used for new sources, both EGU and non-EGU, and one (1) for energy efficiency and renewable projects, but there are sufficient allowances in the budget such that sources will not make reductions beyond what U.S. EPA contemplated in the SIP call.

*Comment:* IDEM should clarify whether the rule is intended to allocate allowances to EGUs based on fifteen-hundredths (0.15) pound per million Btus or the more stringent of this rate and the allowable emission rate. There seems to be a conflict between 326 IAC 10-4-9(d)(1) and 326 IAC 10-4-9(d)(5)(C)(i). (IKEC)

*Comment:* If an existing or new unit emits NO<sub>x</sub> at a rate of less than the fifteen-hundredths (0.15) pounds per million Btus for EGUs or seventeen-hundredths (0.17) pound per million Btus for non-EGUs, the allocation should be based on the actual or permitted emission rate, whichever is less. (VCDH)

*Response:* IDEM has revised the rule language to clarify that the more stringent rate should be used. An EGU will have allocations based on fifteen-hundredths (0.15) pound per million Btus or the allowable emission rate, whichever is less. If a source has been limited to a stricter emission rate in its permit, it cannot emit greater than that amount. Allocations based on a higher rate would only provide an economic benefit and would be inconsistent with the permitting process.

*Comment:* IDEM should review IMPA's heat input rate and re-calculate the allowances because the allowances calculated are approximately fifty percent (50%) of the amount to which IMPA is entitled. (IMPA)

*Response:* IDEM has received the updated information and has recalculated allowances accordingly.

*Comment:* IDEM should further develop the allocation procedures to allow units that have operated between 1995 and 2000 to receive an allocation for the existing source pool as opposed to the new source set-aside. (PEI)

*Comment:* If a unit has a history of at least one (1) or two (2) years of normal operations, the owner or operator should be given an option to receive an allocation from the existing unit allowance pool. New units should be rolled into the existing program as soon as possible. No unit should be required to receive an allocation from the new source set-aside for more than one allocation period. (PEI) (MWIPS) (EPI) (NS) (VC)

*Response:* IDEM is reviewing the procedures for transitioning a unit from "new" to "existing". IDEM agrees that a unit that has at least one (1) season of operation should be included in the existing source pool as soon as possible. However, the timing of the reallocation schedule may result in a unit drawing from the new source set-aside for several years.

*Comment:* It is unclear whether the reallocations under 326 IAC 10-4-9(f) are given to all budget units or only the units that commence operation after May 1. (III)

*Response:* The original reallocation in subsection (f) would go to the existing units and not back to the new units. IDEM has revised this section to indicate that unused allowances would be returned to the new source set-aside for the next year's allocation.

### **Compliance Supplement Pool**

*Comment:* In the NO<sub>x</sub> SIP call, U.S. EPA proposed to allow states to award additional allowances where needed to avoid transmission system reliability problems. We are skeptical that system reliability problems will result and wish to be notified of any public hearings on this subject. If IDEM includes such provisions, sources should be required to submit the utility's original schedules for control device installation, copies of dated requests for bids for control device installation, documentation between utility and control device contractors and labor providers pertaining to schedules of control device installation, and documentation of efforts by the utility to purchase allowances. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

*Response:* IDEM has included language from the SIP call that would allow a source to petition IDEM for allowances based on a demonstration of need. The draft rule language requires that IDEM ensure the opportunity for a public hearing on the distribution of compliance supplement pool allowances for a demonstration of need.

*Comment:* There is a concern with the partitioning of the compliance supplement pool between electricity generating units (EGUs) and non-EGUs. The setting aside of a disproportionately large specific pool of allowances for non-EGUs could lead to unintended consequences relating to electricity reliability. If IDEM is going to partition the compliance supplement pool, then the share of the pool for non-EGUs should be no greater than this source category's share of the overall budget, which is approximately two percent (2%). (AEP) (HE) (IEUAWG) (IPL) (VC)

*Comment:* The reservation of ten percent (10%) of the pool for non-EGU units is supported. This proposal provides an incentive for non-EGU units to achieve early reductions in advance of the May 31, 2004, compliance date. The language should also allow for a "needs demonstration" in lieu of early reductions. (CTE) (ALCOA)

*Response:* IDEM understands that there are some non-EGUs that will not be installing controls and will not need the allowances. IDEM has revised the language to combine the pool for use by EGUs and non-EGUs. In order to address the issue of oversubscription by a few sources, IDEM has included a process whereby sources that have made early reductions would have their requests combined with all others and the pool would be distributed pro rata. IDEM has divided the pool in two. Up to fifty percent (50%) would be distributed in early 2003 for early reductions in 2002 and the remaining would be distributed in early 2004 for 2003 reductions. This

process should help a source that requests allowances based on “need”, because at least fifty percent (50%) of the pool will be available in 2004 if the source cannot generate early reduction credits in 2003.

*Comment:* IDEM should preliminarily allocate emission reduction credits (ERCs) as soon as possible. The ERCs should be allocated based on the unit contribution to the total heat input in Indiana. Using heat input to allocate ERCs is appropriate because it will correspond to IDEM’s overall methodology for allowance allocations and will give companies the opportunity to earn ERCs roughly commensurate with the proportionate level of emissions reductions they are required to make. If a company did not generate sufficient ERCs to utilize its preliminary allocation, the remaining unearned ERCs would revert to the general state compliance supplement pool, to be reallocated on a pro rata basis to other companies that have generated more ERCs than their preliminary allocation. (AEP) (IEUAWG) (VC)

*Response:* IDEM will review this new proposal, although revisions to the draft rule are somewhat consistent with the suggestions except for timing. IDEM is proposing to collect all early reduction credit requests and distribute the allowances on a pro rata basis early in 2003 and 2004. Up to fifty percent (50%) of the pool would be available for 2002 reductions and the remainder for 2003 reductions or based on “need”.

*Comment:* IDEM should not set-aside any allowances for the demonstration of need as we believe that those allowances will never be claimed because it will be impossible to make the showing required to obtain the allowances. (AEP) (IEUAWG) (HE) (IPL) (VC)

*Response:* IDEM will review these provisions, but is hesitant to not have some allowances available. While the claim may be true for EGUs, this provision is also available to non-EGUs. IDEM will continue to discuss this issue and possible solutions with interested parties.

*Comment:* IDEM should revise 326 IAC 10-4-15 to require notice of award of early reduction credits for a given year to be made not more than ninety (90) days after the annual filing deadline for the application for such allowances. The only exception to this requirement would be in the event that the early reduction pool was oversubscribed with any unclaimed allowances redistributed to sources that earned the rights to more allowances than they were preliminarily allocated. The allocation should be made prior to 2004, as currently written, to address the significant negative impact on compliance planning and implementation under the rule. IDEM should revise the language to require distribution of the allowances within one hundred fifty (150) days after each ozone control period in 2001 through 2003. (AEP) (CIN)

*Response:* The procedures for awarding the allowances is an important issue and IDEM will continue to discuss this issue with affected parties. IDEM has revised the rule to require early reduction credit requests to be filed by December 31 of the year in which the reductions took place and IDEM would distribute the credits by March 31 of the following year. Due to the fact that most, if not all, sources will not have controls in place until 2002, IDEM has limited the early reduction requests to the ozone control periods in 2002 and 2003.

*Comment:* 326 IAC 10-4-15(b) should be revised to allow the use of common stack monitoring to obtain allowances from the compliance supplement pool in accordance with 40 CFR 75. Requiring duct monitoring is excessive and unnecessarily burdensome to sources to obtain compliance supplement pool allowances. Any monitoring system approved under 40 CFR 75 should be acceptable for this purpose. (AEP)

*Response:* IDEM agrees that an approved monitoring system under the acid rain program should be allowed under this rule. It appears that 40 CFR 75.72 would allow for common stack monitoring and this part of the 40 CFR 75, Subpart H monitoring required under 326 IAC 10-4-15.

*Comment:* The compliance supplement pool allowances should not be subject to flow control provisions due to their limited life. The allowances should expire at the end of the 2005 ozone season. IDEM should address this by striking 326 IAC 10-4-15(b)(1)(J). (AEP) (VC)

*Response:* IDEM understands the concerns with the CSP allowances and will discuss this issue with U.S. EPA. To date, U.S. EPA has indicated that flow control will not apply in 2004, but will apply in 2005.

*Comment:* The use of the most stringent permitted limit as the starting point for the calculation of early reduction credits is supported, but IDEM should clarify what constitutes the most stringent limit for units involved in an acid rain program averaging plan. We recommend that this limit be based on the actual limit, not the limit used in demonstrating the acceptability of the averaging plan. IDEM’s proposed approach for use of the compliance supplement pool in the first two (2) years and the ability to generate early reduction credits between 2001 and 2003 is also supported. (AEP) (IEUAWG) (VC)

*Comment:* While IDEM’s proposed approach of allocating allowances from the CSP is supported, the following criteria and procedures should be included in the draft rule.

- Installation of new NO<sub>x</sub> controls must be required as part of an application for early reduction credits.
- The difference between the previous actual NO<sub>x</sub> emission rate and the new (controlled) emission rate should be used to calculate the quantity of early reduction credits. This is preferred over the “most stringent current limit” to ensure real reductions are achieved.
- Credits should be allocated on a pro rata basis as soon as practical after the end of the 2003 ozone control period. All credit applications should be treated equally and if the pool is oversubscribed, all credits should be discounted an equal amount so the

pool is not exceeded.

- Applications for early reduction credits, based on projected reductions, may be submitted in advance of the actual reductions, by a date certain and all complete applications submitted by the date would be considered equally. Following the 2003 ozone control period, all operational data would be “trued up” and allocations adjusted accordingly. (HE)

*Response:* IDEM agrees that the allocation of allowances should be for true reductions and will revise the rule language accordingly.

*Comment:* IDEM should address electricity reliability concerns by doubling the size of the compliance supplement pool, but limiting its use to early reduction credits. This would provide an additional incentive for early reductions with accompanying air quality benefits and promote the development of a viable trading program. (IEUAWG) (IMA) (CIN) (ICC) (VC)

*Comment:* IDEM should look for creative ways to increase the size of the compliance supplement pool within boundaries established by U.S. EPA. Preliminary information provided by IDEM indicates non-EGU sources may not need their full allocation under the proposed allocation methodology. (HE) (IMPA)

*Response:* Information from U.S. EPA has indicated that an increase of the CSP would not be approved and IDEM is working with U.S. EPA on the inventory and associated budgets to identify any flexibility.

*Comment:* IDEM should delete the language under 326 IAC 10-4-15(b)(1)(D) concerning compliance with any state or federal emissions requirements. This enforcement provision is too vague and is not related to NO<sub>x</sub> reductions and should be deleted. (IKEC)

*Response:* IDEM believes that ongoing compliance is a valid criteria for determining whether it is appropriate to approve a request for allowances, but agrees that the language should be narrower. IDEM has revised the language to specify that the unit must be in compliance with any NO<sub>x</sub> emission requirements.

*Comment:* The draft rule requires that 40 CFR 75, Subpart H monitoring start in 2000 to generate early reduction credits from the compliance supplement pool. This is unfair for large affected units that are not part of the Acid Rain program. IDEM should develop alternatives to units that currently do not comply with Subpart H monitoring. (III)

*Response:* U.S. EPA is clear that the monitoring needed to verify early reduction credits should be consistent with the SIP call. IDEM does agree that the rule language should be revised to account for sources that will not begin to generate credits until 2002 or 2003. The 2000 date was meant to address units that would generate credits in 2001 and the need to have one (1) year of monitoring data available.

### **Energy Efficiency and Renewable Set Aside**

*Comment:* IDEM should include a twenty percent (20%) set-aside in the trading program for energy efficiency and renewable energy projects. This would provide an incentive to bring clean energy projects to Indiana and reduce air pollution, including toxic pollutants. Energy efficiency and renewable energy investments can also increase compliance flexibility and improve local economies through higher productivity and the creation of jobs. The set-aside should not be distributed to nuclear power plants or garbage incinerators. (BH) (CR) (JU) (ML) (RV) (ARL) (MS) (MKP) (PJR) (LCS) (LH) (NL) (EMW) (JDH) (JL) (GK) (GG) (SJJ) (BDB) (BJL) (JR) (AH) (DLB) (SM) (KG) (CF) (JK) (AP) (MLS) (KT) (JE) (CS) (LJ) (MG) (LAH) (KP) (JKR) (DM) (KPH) (HC) (BM) (JST) (DR) (SB) (TS) (DL) (BR) (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI) (JCM) (DJS) (RT) (BK) (PMW) (JB) (PSA) (RAB) (SR) (WH) (JDM) (DH) (LB) (GJC) (IA) (GRM) (BSS) (NM) (CLJ) (FS) (JPS) (SZM) (VJ) (CEE) (ST) (JND) (CM) (LS) (SRY) (MSY) (AVDM) (JOS) (RDC) (DBB) (SAC) (JWJ) (JME) (EAC) (SLL) (DGM) (VLJ) (CEZ) (ABY) (TRD) (TLR) (LLS) (RL) (RD) (AMS) (LMN) (GOF) (PG) (PWM) (KSN) (MWK) (ADW) (CBB) (HBR) (TLD) (RSM) (RSS) (MCY) (DFS) (DS) (LFW) (RBJ) (ESS) (JFS) (ABK) (RJG) (BDJ) (TLH) (PB) (BDM) (CSR) (BGL) (LKE) (RMK) (JVG) (SHD) (WW) (SH) (SRY) (KY) (JAC) (SJC) (LCR) (CCN) (STN) (JLM) (SAJ) (AW) (MJN) (SW) (PMV) (MEH) (ALW) (WSB) (KD) (CKS) (EM) (MA) (THN) (JPZ) (MDB) (JMH) (DA) (LM) (DN) (LSH) (LHN) (JSS) (SDL) (JHP) (GMC) (LHM) (DRL) (AHN) (CCI)

*Comment:* The inclusion of a set-aside for energy efficiency or renewable energy set-aside is not supported for the following reasons:

- Setting aside additional allowances increases the stringency of an already aggressive program.
- Energy efficiency and renewable energy sources have no emission reductions of their own.
- Reducing the number of allowances directly allocated to existing sources merely reduces the flexibility source owners have to design the most cost-effective response to their obligations.

Should IDEM pursue a energy efficiency and renewable energy set-aside, the allowances should be created specifically for the set-aside from the new source set-aside. However, IDEM has not advanced any proven methodology that fairly allocates allowances for energy efficiency or renewable energy projects. Because of this, such a rule is premature at this time. In addition, the Energy Policy Division of the Indiana Department of Commerce is currently planning to initiate a program to encourage energy efficiency and distributed generation through the use of grants and low-interest loans. This program is the type that should be used to provide encouragement and incentives for energy efficiency and renewable energy projects and IDEM should defer these issues to the other state agencies charged with this task. (AEP) (HE) (IKEC) (CIN) (IMPA) (USS) (CTE) (ALCOA) (IPL) (VC)

*Comment:* IDEM should not include an energy efficiency and renewable energy set-aside for the following reasons:

- The proposal will have no air quality benefits since the total number of allowances remains the same.

- The set-aside will increase uncertainty and raise electricity generator compliance costs.
- The approach advocated by U.S. EPA would seek to continue mandatory utility-funded demand side management programs and impose an unfair, indirect tax on customers.
- The treatment of “free riders” ensures windfalls to projects that will be implemented anyway because of cost-effectiveness, but it is not a cost-effective means to provide incentives to new projects designed to further U.S. EPA’s air quality goals.
- Many customers may see bill increase because of the set-aside.
- Requiring existing and future generators to subsidize current and future competitors is unfair.
- The proposal is too vague about the allocation of the allowances to be adopted.
- U.S. EPA has overstated the level of participation that can be reasonably assumed.
- Record keeping obligations will deter participation.
- U.S. EPA’s guidance projects outrageously ambitious growth of non-hydro renewable supply resources. (IEUAWG) (SLE)

*Comment:* An energy efficiency and renewable energy set-aside is supported, but the allowances for this set-aside should not be taken from the EGU budget. Many of the projects are not directly related to generation of electricity for sale. One way to address this is to provide allowances from the budget for area and mobile sources. (VCDH)

*Response:* An energy efficiency and renewable energy set-aside is a key policy issue on which discussion will continue. IDEM agrees that such a set-aside would be beneficial. Other states have adopted or have proposed to adopt this type of set-aside using different amounts. New York set-aside three percent (3%) of the trading program budget and Massachusetts set-aside five percent (5%) of the budget. IDEM is proposing to set-aside two percent (2%) of the trading budget, one thousand one hundred forty-one (1,141) tons, for energy efficiency and renewable energy projects. However, the allowances would be derived from the non-EGU budget. A change in status of some non-EGU units since U.S. EPA set the Indiana budget has provided IDEM with additional flexibility to establish this set-aside without creating any additional burden on NO<sub>x</sub> emitting sources. IDEM will continue to evaluate the impact of this set-aside on existing non-EGUs. Based on the types of projects likely to apply for this set-aside, and the relatively small amount of NO<sub>x</sub> avoided by each one, a two percent (2%) set-aside will be ample. Information from the Energy Office, Department of Commerce indicates that this would be more than sufficient for energy efficiency and renewable energy projects expected in Indiana. IDEM does not agree that it makes sense to set-aside twenty percent (20%) of the trading budget for these projects, as many comments have suggested, because it is significantly more than would be used and would require substantially larger controls at EGUs and non-EGUs, with increased costs to those units and to electricity consumers. IDEM also has proposed that, for each year, any unclaimed allowances in the set-aside would be added to the new source set-aside for that year. IDEM has also included a provision that the allowances for energy efficiency or renewable energy projects may be requested annually for a maximum of five (5) years to try and assure that new sources will receive at least some allowances needed for operation.

### **New Source Set Aside**

*Comment:* IDEM should include a new source set-aside to be used for new, cleaner power plant construction to create construction jobs and replace older, more polluting power plants. The set-aside should be set at five percent (5%) during 2003-2005 and two percent (2%) thereafter. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI) (CIN) (PU) (SLE)

*Comment:* The new source set-aside should be no more than three percent (3%) to avoid exacerbating the strain on electricity reliability in Indiana. In addition, the following should be included:

- the set-aside should be distributed on a first-come, first-served basis.
- new sources should be required to return any unused allowances.
- returned allowances should be allocated to other new sources that did not receive sufficient allowances prior to returning the allowances to any existing sources.
- if the allocation period is longer than two (2) years, then after two (2) years of operation new sources should receive a fixed allocation for the remainder of the allocation period. (IEUAWG) (HE) (VC)

*Comment:* The new source set-aside should be established at three percent (3%) for 2004 through 2006 and two percent (2%) thereafter. (IPL)

*Comment:* IDEM should increase the size of the set-aside to ten percent (10%) for the first three (3) years of the program and four percent (4%) thereafter. An adequate new source set-aside will encourage newer cleaner plants that will ultimately replace older existing sources. (PCEGC)

*Comment:* IDEM should confirm that the new source set-aside system operates in two (2) pools, one (1) for EGUs and one (1) for non-EGUs, and not one (1) pool. IDEM should also confirm that under subscription of the pool would result in allowances being distributed to the existing EGU pool and not to the entire NO<sub>x</sub> budget pool. (IKEC)

*Comment:* No new source set-aside should be established for non-EGUs. The non-EGU budget should be fully allocated to the existing sources affected by the rule and made available to new sources via the trading market. (USS)

*Comment:* The new source set-aside for non-EGUs should only be one percent (1%). IDEM has already provided information indicating that this would be an ample amount for current new sources and would allow the owners and operators of existing units to retain more of their allocations. (CTE) (ALCOA)

*Comment:* Set-asides of five percent (5%) and two percent (2%) are too much for non-EGUs and do not reflect past trends for growth for non-EGUs. (III)

*Comment:* Any set-aside for EGUs must come from the EGU budget and there should be no transfer from the non-EGU budget. (ALCOA)

*Comment:* A sufficient new source set-aside should be established to allow fair access to the marketplace. The set-aside percentages currently in the draft rule should be applied against the entire budget, to be allocated to new EGUs and new non-EGUs alike. (MWIPS) (EPI)

*Comment:* All allocations should use fifteen-hundredths (0.15) pound per million Btus or seventeen-hundredths (0.17) pound per million Btus regardless of permit limits. Such a system promotes fairness, is easy to administer, discourages permittees from seeking relaxed permit limits, and provides incentives to reduce NO<sub>x</sub> emissions beyond regulatory requirements. (MWIPS) (EPI)

*Comment:* IDEM should clarify how set-aside allowances will be allocated.

- Will the set-asides be granted on a first-come, first-served basis or an equal basis for all applications submitted?
- What is the earliest that allocations can be applied for?
- What happens if a unit granted allocations is not constructed or does not use all of the allocations (reallocation is available, but comes after the fact eliminating planning)? (III)

*Comment:* New source set-aside allowances should be distributed on a first-come, first-served basis, based on the date the unit is issued an approved construction permit. Any unused allowances should be allocated to new units that did not receive allowances initially before reallocating the allowances back to existing units. (SLE)

*Response:* IDEM is proposing to have just one (1) new unit set-aside that will originally be established using five percent (5%) of the EGU budget for the 2004 through 2006 time frame and one percent (1%) of the non-EGU budget. For following years the non-EGU percentage would stay the same, but the set-aside would be reduced to reflect using two percent (2%) of the EGU budget. New sources will have to reapply annually, by December 1 of the year prior to the ozone season in which it intends to operate until the source is able to use allowances from the existing source pool and IDEM will consider all applications received by the deadline equally. Allowances will be allocated using fifteen-hundredths (0.15) pound per million Btus (EGUs) or seventeen-hundredths (0.17) pound per million Btus (non-EGUs) or the permitted limit, whichever is more stringent. For new EGUs, a construction permit must be issued and any appropriate notifications have been received by the Indiana Utility Regulatory Commission before a request can be made. If the set-aside is oversubscribed, then allowances will be distributed pro rata. If there are unused allowances and the energy efficiency and renewable energy set-aside was oversubscribed, additional allowances will be distributed to those projects pro rata and any allowances left will be returned to the following year's set-aside. Any allowances not used by new sources after the ozone season are returned to the set-aside for the next year's allocations. Allowances will not be available for trading or selling until the unit is part of the existing source allocation pool and is able to bank unused allowances.

### **Opt-in Program**

*Comment:* The inclusion of opt-in provisions in the draft rule is supported. An opt-in program will increase the coverage of the trading program and help stimulate the emergence of a viable market. (IEUAWG) (HE) (CIN) (SLE) (VCDH) (VC)

*Response:* IDEM appreciates the support.

### **Alternative Compliance Options**

*Comment:* If IDEM does not shift the compliance date to 2005, then it should include innovative compliance provisions similar to those being developed by Ohio. The innovative plan in Ohio would shift the compliance date forward to May 1, 2004, and add twenty percent (20%) of the baseline emission allocation for each source to their 2004 allocation. These provisions provide an affected source with a choice of either operating controls during May 2004 and bank the excess allowances or not operate controls and have the additional allowances deducted for compliance. If the source decides to control emissions, then the allowances could be banked for future unrestricted use or sale. This is a proactive way to encourage the operation of emission controls earlier than needed and further aid in reducing risk of inadvertent noncompliance should a source not be able to obtain the necessary controls in a timely fashion. (AEP) (IEUAWG) (IKEC) (IMA) (CIN) (IMPA) (ICC) (VC)

*Response:* U.S. EPA has indicated that it would not approve such provisions, which would have the effect of increasing the NO<sub>x</sub> budget in future years. IDEM will continue to consider this option and accept comments concerning the inclusion or exclusion of this option.

*Comment:* IDEM should consider an alternative compliance option promoting technological innovation and multi-pollutant controls. IDEM should include provisions in the draft rules that provide for an alternative compliance plans that permits sources, on a unit specific basis, to apply for a compliance date extension up to May 1, 2008. Any unit that has received such approval would have to meet established emission reduction targets no later than May 1, 2008. IDEM should add an additional section to address the alternative compliance option. As a further incentive, IDEM should enlarge the compliance supplement pool by twenty percent (20%) or create an innovative technology pool of identical size. These credits would be available for the ozone control periods in 2004 through 2007 for any unit operating under an approved alternative compliance plan. The addition of the additional allowances will not materially affect U.S. EPA's ability to evaluate the impact of the emission reductions in 2007, especially when U.S. EPA knows

that those tons will be removed by 2008. (AEP) (IEUAWG) (IKEC) (IMA) (ICC) (NS) (VC)

*Comment:* While the alternative compliance plan is supported, IDEM should make sure it accommodate the ability of a company to include installation of new, efficient, cleaner generation. NO<sub>x</sub> reductions should not be limited to the installation of add on control devices. This could be accomplished by allowing affected sources the option to commit to the installation of new, clean, efficient generation in exchange for sufficient time to plan, permit and install the equipment, even if it requires additional time beyond May 31, 2004. (NS)

*Comment:* There are several hurdles that would have to be overcome if IDEM pursues a multi-pollutant compliance option in the rule. Following are comments concerning this compliance option:

- The absence of regulatory incentives will not deter the development of innovative technology, multi-pollutant control, or otherwise. Other venues, aside from regulatory incentives are available.
- There are other regulatory drivers that will promote control of other air pollutants besides NO<sub>x</sub>, such as the potential U.S. EPA regulatory determination regarding utility mercury controls, PM<sub>10</sub> air quality standards, regional haze regulations and new source review enforcement initiatives.
- This alternative is not feasible for units that already have flue gas desulfurization technology deployed. Not all utilities can benefit from such an alternative.
- Multi-pollutant control technology may make sense in the future, but including the option in this rule would not provide any additional inducement.
- If IDEM would consider incorporating the option into the rule, there should be no provision for additional allowances. This would be a red flag for U.S. EPA and the compliance extension is enough incentive. (HE)

*Comment:* Alternative compliance plans for multi-pollutant reductions are supported, but the compliance date should not be extended past May 1, 2007, and no additional allowances provided. IDEM should find ways to accommodate these plans and account for them through the compliance supplement pool. (VCDH)

*Response:* IDEM is not including an alternative multi-pollutant compliance plan at this time. West Virginia included such a provision and U.S. EPA has not shown any sign that it will approve the rule. In a letter, dated November 28, 2000, U.S. EPA-Region 3 indicated specific concerns with the alternative compliance plan and the ability of West Virginia to meet its 2007 budget. As with other alternative compliance options, IDEM will continue to consider and accept comments concerning multi-pollutant compliance plans.

#### **Miscellaneous**

*Comment:* 326 IAC 10-4-5(c), Computation of Time, should be revised to avoid the unintended effect of lengthening the control period should September 30 fall on a weekend. (AEP) (IEUAWG) (HE) (NS) (VC)

*Response:* IDEM agrees and will make suggested changes.

*Comment:* 326 IAC 10-4-1(b)(3)(D), 326 IAC 10-4-4(e) and 326 IAC 10-4-3(e)(7) should be revised to allow for the centralized maintenance of records required by the rule. IDEM has acknowledged the need for centralized record maintenance in the past. (AEP) (IEUAWG) (HE) (IPL) (NS) (VC)

*Response:* IDEM has discussed this issue with U.S. EPA. IDEM understands the concern about keeping records at facilities that are generally unattended. U.S. EPA's concern is that companies with facilities in several states may store all records in a central location, possibly hundreds of miles from the facility. IDEM will continue to discuss this issue to see if both concerns can be addressed, and welcomes specific suggestions.

*Comment:* 326 IAC 10-4-1(b)(3)(E) should be revised to change the November 1 date to synchronize this reporting with other reporting deadlines for the third calendar quarter. (AEP)

*Response:* A specific date was not suggested and it is unclear whether the requested change should be before or after November 1. If reporting deadlines are before November 1, then it would seem that a change is not needed because the rule only requires reporting "by November 1".

*Comment:* 326 IAC 10-4-10(a)(1), 326 IAC 10-4-10(g) and 326 IAC 10-4-10(h) appear to include incorrect cross-references to section 13(j). These references should be section 13(i). (PU) (IPL)

*Response:* IDEM will make the changes.

*Comment:* The NO<sub>x</sub> reduction rule, #98-235 APCB, should be formally removed from consideration. (III)

*Response:* IDEM will formally withdraw #98-235 after this rulemaking has been completed and an effective rule is in place. The SIP call is still in litigation and the Supreme Court has not issued a decision as to whether it will hear the case.

*Comment:* Please describe how a source will move allocations between a compliance account and an overdraft account. (III)

*Response:* As indicated in 326 IAC 10-4-11, an authorized account representative would submit the transfer to U.S. EPA and identify the accounts and allowances involved in the transfer. Within five (5) days of receipt of the transfer, U.S. EPA will record the transfer and within five (5) days of recordation, U.S. EPA will notify the account representatives.

*Comment:* On January 26, 1996, U.S. EPA issued a final rule granting a NO<sub>x</sub> waiver for northwest Indiana. IDEM should recognize the NO<sub>x</sub> waiver by removing NO<sub>x</sub> from the applicability provisions of 326 IAC 2-3-2 as part of the comprehensive rule changes for

the NO<sub>x</sub> SIP call. (IPC)

*Comment:* The Indiana Offset rules should be modified to eliminate NO<sub>x</sub> offset ratios of greater than one to one (1:1). The NO<sub>x</sub> reductions demonstrate attainment and further reductions are not needed and penalize growth. (III)

*Comment:* IDEM recently revised the permitting rules under 326 IAC 2-2 to exclude pollution control projects from rule applicability. This change makes the rule consistent with federal regulations and U.S. EPA guidance. As part of the comprehensive rule changes for the NO<sub>x</sub> SIP call, IDEM should also revise the language under 326 IAC 2-3-1 to include the pollution control project exemption. (IPC)

*Response:* IDEM believes that these suggestions are outside the scope of this rulemaking.

*Comment:* The references to (C)(1) and (C)(2) under 326 IAC 10-4-9(d)(5)(D)(i) should be (C)(i) and (C)(ii) respectively. (IPL)

*Response:* IDEM has revised this section and the references are no longer present.

*Comment:* The proposed trading system is unreliable in its current form and needs a “safe harbor” to prevent unfair and arbitrary consequences. Although the trading program is meant to provide for cost-effective reductions, the trading program is not in place at this time. This means that a source must either implement reductions up-front at its own facilities regardless of cost or gamble that allowances will be available for purchase later. This could be prevented with a safe harbor provision that would insulate a source if no allowances are available or if the price exceeds some threshold amount. Suggested language has been submitted previously. (IPL)

*Response:* IDEM has included the regional trading program in the rule to meet the budget requirements of the NO<sub>x</sub> SIP call. The safe harbor provisions that have been suggested state that a source would enter into an enforceable commitment to purchase allowances if reductions could not be made. However, the commentor goes on to state that “if no allowances are available, or if the price of the allowances exceed some threshold amount,” the source would be insulated from being in violation. IDEM does not see how U.S. EPA would approve these provisions, and IDEM has received no indication from U.S. EPA that they would consider the provisions, because it would allow for an exceedance of the budget. Although a NO<sub>x</sub> SIP call trading program is not in place, the Ozone Transport Region (OTR) has a trading program in place and there may be a Section 126 program in place prior to 2004.

#### **Penalty Provisions**

*Comment:* Based on the likelihood that the only sources that will exceed the allocations will be the sources that cannot purchase allocations on the open market towards the end of the ozone season, the three (3) times penalty is excessive. In addition, this provision is a nonmonetary penalty that IDEM has no authority to impose. Sources should be required to obtain allocations for excess emissions at a one to one (1:1) ratio and penalties should be dealt with in subsection (k)(7). (III)

*Response:* The penalty in 326 IAC 10-4-10(k)(5) is taken directly from the requirements of 40 CFR 96.54(d)(1). Under these sections, the penalty is imposed by U.S. EPA, not IDEM. Additionally, the penalty portions are located so as to correspond to the location of the equivalent sections of the federal rule.

*Comment:* It is unclear why violations are issued for a unit’s exceedance of allocations and excess emissions are based on a unit’s emissions, when the account representative controls allocations for a source. This rule should be written such that a source shall not exceed, in totality, the sum of allocations from all units. (III)

*Response:* U.S. EPA set up the trading program to allocate allowances to individual units and this is consistent with the way U.S. EPA set up the Acid Rain program. Each unit will be monitored and it is this data that will be used to determine compliance. In effect, it is the sum for the source, in that, a unit that may have excess emissions can be brought back into compliance by transferring allocations from other units or through the purchase of allowances.

*Comment:* The proposed rule under 326 IAC 10-4-4(c)(2) and 326 IAC 10-4-10(k)(7) indicate that each ton of excess emissions is a separate violation. This goes beyond what is required under Indiana statutes and IDEM lacks the authority to make this change. (IPL)

*Comment:* The penalty “guideline” in 326 IAC 10-4-10(k)(7) is arbitrary and unlawful in assuming that any excess emissions constitute a violation across each of one hundred fifty-three (153) separate days. The days of violation would be properly determined by identifying the days on which emissions occurred after the necessary emission allowances had been exhausted. (IPL)

*Response:* Because the NO<sub>x</sub> rule is based on a trading program that strictly caps emissions, both regionally and on a source-specific basis, it is appropriate that every ton of emissions over a source’s available allowances should be considered a separate violation. Otherwise, the penalty would not be sufficient to remove the economic benefit of noncompliance and would not deter excess emissions. Furthermore, it makes sense that a source that emits fifty (50) excessive tons should pay a higher penalty than a source that emits one (1) excessive ton. Making each ton a separate violation ensures that the penalty will include the economic benefit of noncompliance and will be proportionate to the severity of the violation.

Additionally, the rule provides that each day of the ozone season constitutes a violation because the rule caps emissions on an ozone season basis and does not assign the emissions of discrete tons to a particular day. If the source exceeds its allowances for the ozone season, then each day of that season is a separate violation. However, the rule does provide flexibility by allowing the owners and operators of the unit to demonstrate that a lesser number of days should be considered.

The state rule defines what is a violation in the same manner as the federal law at 40 CFR 96.6(c)(2) and 96.54(d)(3). Authority

to incorporate these provisions into state rules can be found in IC 13-17-3-4, which provides that the air pollution control board (board) shall adopt rules that are necessary to implement the Clean Air Act (CAA), and in IC 13-17-3-11, which provides that the board has the authority to adopt rules under discretionary authority granted to the state under the CAA and its regulations. Finally, IC 13-30-4-1 provides explicitly that a person who violates any provision of a rule adopted by the board is liable for a penalty per day per violation.

*Comment:* Another arbitrary penalty appears at 326 IAC 10-4-12(i) concerning failure of monitoring equipment to receive formal certification. The rule language states that upon disapproval of a certification, all previous data will be discarded and maximum potential emissions will be assumed for the period. This is arbitrary when reliable information is available. (IPL)

*Response:* The penalty concerning certification is taken directly from the requirements of 40 CFR 96.71(b)(3)(v). U.S. EPA intended to have a strong incentive for monitoring in accordance with the rule.

### **Monitoring**

*Comment:* The language under 326 IAC 10-4-12(b)(1) makes reference to 40 CFR 75.76. In reviewing 40 CFR 75 we are unable to locate 40 CFR 75.76. (AEP)

*Response:* U.S. EPA has indicated that the correct references should be 40 CFR 75.71 and 40 CFR 75.72.

*Comment:* It appears that 326 IAC 10-4-12(c) prohibits units connected to common stacks from using monitoring methods that have been used for a number of years to comply with Acid Rain program requirements. IDEM should revise this subsection to allow common stack monitoring in accordance with 40 CFR 75. (AEP) (RPL)

*Response:* Subsection (c) is primarily timing requirements and refers the reader back to subsection (b) for specific required actions. By revising the rule language based on the previous comment, it appears to address the concern because 40 CFR 75.72 discusses monitoring via a common stack. IDEM will discuss this with U.S. EPA to verify that monitoring methods under the Acid Rain program are allowed under the trading program.

*Comment:* 326 IAC 10-4-12(q)(2) should be reviewed to correct any inaccurate references, specifically the reference to section 10(n). (AEP)

*Response:* IDEM will review the language and correct any inaccurate references.

*Comment:* The draft rule requires monitoring in accordance with 40 CFR 75, Subpart H. These provisions generally require the use of continuous emissions monitoring systems (CEMS). In some cases, units are allowed to monitor using flow monitoring and emission factors determined through testing under Appendices D and E. However, these provisions generally address utility boilers and not industrial boilers. IDEM should either not specify 40 CFR 75 monitoring requirements for industrial boilers and remove the CEMS requirement or specify alternative methodologies. One (1) alternative could be the continuous measurement of fuel usage and use of accurate emission factors, based on annual stack testing similar to the cement kiln provisions in 326 IAC 10-3. IDEM should also confirm that the alternative methodologies available under 40 CFR 75 will continue to be available under this rule. (BSC) (IMPA) (USS) (III) (LTV)

*Response:* As part of the trading program, U.S. EPA has required monitoring consistent with 40 CFR 75, Subpart H. IDEM has discussed the alternative methodologies under 40 CFR 75 and their availability to industrial boilers with U.S. EPA. U.S. EPA has stated that the alternatives would be available as long as existing criteria, including emissions thresholds are met. IDEM will continue to discuss the alternative methodology issue with U.S. EPA. It should be noted that the cement kilns are not included in the trading program and if a kiln opts-in, the kiln will have to monitor according to the trading program and not 326 IAC 10-3.

*Comment:* IDEM has included a certification deadline of May 1, 2001, for units that anticipate requesting early reduction credits. Because this rule will not be effective by that date, we do not believe this certification deadline is appropriate. This deadline is unachievable and unfair to sources that are not part of the acid rain program, but wish to participate in the early reduction credit program. A more appropriate date would be nine (9) months after the rule is effective to address the complex nature of the monitoring requirements under this rule. (CTE) (III)

*Response:* IDEM has revised the rule to reflect the need to have a certification prior to the ozone season for which a source is seeking early reduction credits.

*Comment:* 326 IAC 10-4-12(f)(3) should be revised to include "or breakdowns totaling less than five percent (5%) of the total operating time and repairs." (III)

*Response:* The monitoring provisions under this rule and 40 CFR 75 are very stringent concerning data availability and IDEM will have to discuss this issue with U.S. EPA.

*Comment:* Quarterly reports are unnecessary considering the rule is based on ozone season compliance. (III)

*Response:* Although IDEM agrees that compliance is based on the entire ozone season, IDEM has discussed this issue with U.S. EPA to see what the need or rationale is for quarterly reporting. According to U.S. EPA, the quarterly reporting is needed to assist in identifying problems that could invalidate monitoring data. By having quarterly reporting, U.S. EPA can identify problems early and reduce the amount of time that a source would have invalid data.

### **NO<sub>x</sub> Allowance Banking**

*Comment:* The inclusion of flow controls if banked allowances exceed ten percent (10%) creates a "use it or lose it" incentive.



In addition, a source may have to store credits for several years to bring a new or existing unit online. This storage could potentially bring the banked allowances over ten percent (10%) and penalize the project. (III)

*Comment:* Set-asides should not be included in the ten percent (10%) flow control trigger. (III)

*Comment:* U.S. EPA should calculate the available banked allowances at a minimum one (1) year in advance and preferably three (3) years in advance to allow for planning. If this is not possible, the proposed language is preferable. (III)

*Response:* U.S. EPA has not allowed any flexibility with the flow control provisions and it is unlikely that an individual state could dictate how the flow control provisions should function. A new source would have the ability to draw from the new source set-aside and should not be affected by the flow control provisions.

### **Permit Requirements**

*Comment:* IDEM should clarify that all pollution control projects and associated modifications that are necessary to comply with this rule are exempt from new source permitting and performance standard requirements and are to be considered no more than minor source modifications, if modifications at all, under the Title V program. (IEUAWG) (HE) (CIN) (SLE) (NS) (VC)

*Response:* IDEM anticipates that many, if not all, of the modifications will fall under pollution control project exemptions, but IDEM cannot anticipate the nature of every source-specific modification that will be required for each source to comply with the rule. The state rules do not add any permitting requirements that are not federally required. IDEM will follow U.S. EPA policy regarding pollution control exemptions from federal rules as reflected in the WEPCO decision and other federal policies and rules. Title 326 of the Indiana Administrative Code currently contains language regarding permitting control devices. For a source with a Federally Enforceable State Operating Permit (FESOP), the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as exempt, 326 IAC 2-8-10(a)(11) defines when installation of pollution control equipment qualifies as an administrative permit amendment, 326 IAC 2-8-11.1(d)(3) defines when installation of pollution control equipment qualifies as a minor permit revision, and 326 IAC 2-8-11.1(f)(1)(I) defines when installation of pollution control equipment qualifies as a significant permit revision. 326 IAC 2-8-10 and 2-8-11.1 should be reviewed to determine what level of permitting is required for associated modifications at a source.

For a source with a Title V Operating Permit, the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as an exempt modification, 326 IAC 2-7-10.5(d)(3) defines when installation of pollution control equipment qualifies as a minor source modification, and 326 IAC 2-2-1(o)(2)(H) and 2-7-10.5(f)(8) define when installation of pollution control equipment qualifies as a significant source modification. 326 IAC 2-7-10.5, 2-7-11, and 2-7-12 should be reviewed to determine what level of source modification and permit modification is required for the associated modifications at a source.

*Comment:* IDEM should review the cross references under 326 IAC 10-4-7(c) and correct them accordingly. (AEP) (IEUAWG) (HE) (IPL) (VC)

*Response:* IDEM will correct any inaccurate cross references.

*Comment:* The requirement to submit a permit application at least eighteen (18) months prior to the commencement of operation of a new unit is too long to allow for flexibility. Boilers can often times be installed very quickly and IDEM should not require more than two hundred seventy (270) days. (III) (NS)

*Response:* In accordance with 326 IAC 2-1.1-8 and 326 IAC 2-7, IDEM has specific time periods to issue a permit for a new source or a modification to an existing source after receiving a complete application. IDEM agrees that an eighteen (18) month time frame for application review is excessive for the types of permits with review periods that are less than eighteen (18) months. Therefore, IDEM has revised the draft rule to reference the applicable time periods for review of permit applications for new sources and modifications to existing sources in 326 IAC 2-1.1-8 and 2-7.

*Comment:* A process should be defined to insure that information concerning controls is incorporated in operating permits. Everyone needs to know what maintenance and modifications relate to pollution control and what might be related to improvements in generating capacity. The permit modification process should be at no cost to industry and as streamlined as possible. (VCDH)

*Response:* 326 IAC 2-7 and 326 IAC 2-8 and 326 IAC 10-4-7 contain specific requirements for what information sources must submit when requesting a source or permit modification to a Part 70 permit or a permit revision to a Federally Enforceable State Operating Permit (FESOP). 326 IAC 2-7-5, 2-7-6, 2-7-10.5, 2-7-11, and 2-7-12 and 326 IAC 2-8-4, 2-8-5, 2-8-10, and 2-8-11 as well as 326 IAC 10-4-7 contain specific requirements on what information should be included in source and permit modifications to Part 70 permits and permit revisions to FESOPs for sources that will be subject to the draft rule when it is final. In addition, IDEM includes a technical support document (TSD) with every permit decision to describe the basis for issuing the permit decision. The TSD will include a discussion of the modification or change that triggered the requirement for the modification or revision and the effect of that modification or change on the capacity and the potential to emit of the source. 326 IAC 2 includes specific source and permit modification procedural requirements for Part 70 sources, including issuance schedules and fee requirements, and specific permit revision requirements for FESOP sources, including issuance schedules and fee requirements. IDEM will follow the existing rules for the issuance of modifications and revisions for changes required by the draft rule.

### **NO<sub>x</sub> Allowance Tracking System**

*Comment:* IDEM should verify that per 326 IAC 10-4-10(j), allocations do not expire and once held in an account, they can be used in any future year.

*Response:* Once an allowance has been allocated, the allowance is available for use until transferred, deducted for compliance, or retired.

*Comment:* There is an error in 326 IAC 10-4-10(d)(2)(C). The phrase "... any alternate NO<sub>x</sub> authorized account representative any:" should have the second "any" deleted after "representative." (NS)

*Response:* IDEM has made the correction.

*Comment:* 326 IAC 10-4-10(d)(3)(C) and (D) address the procedure for changes to account representatives and alternate representatives and the retention of responsibility for the prior representative until U.S. EPA receives the superseding application. The responsibility should change with the postmarking, or dated receipt from a private carrier for shipping of the change of notice submittal, as allowed in other IDEM regulations for submittals. (NS)

*Response:* IDEM has discussed this issue with U.S. EPA and they have indicated that the language is needed to address problems that could occur during transitional periods between account representatives. U.S. EPA must know with certainty that the person making the submittal is the person responsible for the account and will not make a change until a new certificate has been received.

*Comment:* The language under 326 IAC 10-4-10(n) needs to be revised to say "twenty (20) business days" consistently throughout this section. (NS)

*Response:* IDEM agrees and has included the suggested change.

### **Compliance Date**

*Comment:* We are concerned about whether the draft rules require adequate controls to meet the Indiana NO<sub>x</sub> budget and whether the controls are required to be implemented by the May 31, 2004, deadline. IDEM should adopt a 2007 NO<sub>x</sub> budget consistent with the SIP call and a May 31, 2004, compliance deadline. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI)

*Response:* IDEM has proposed rule language consistent with the model trading rule under the SIP call and a May 31, 2004, compliance deadline.

*Comment:* Shortages of skilled trade labor, materials of construction, and other issues beyond our reasonable control are likely to create electric system reliability concerns if the draft rule does not provide additional flexibility for the installation of controls. To help minimize risk, IDEM should establish a May 1, 2005, compliance date. (AEP) (IMA) (ICC)

*Response:* IDEM has included the compliance supplement pool provisions that U.S. EPA established for compliance extensions. U.S. EPA has clearly indicated that a rule with a compliance date later than May 31, 2004, will be disapproved.

### **Definitions**

*Comment:* The definitions of EGU and large affected unit do not necessarily differentiate in terms of electrical generation. A unit greater than two hundred fifty million (250,000,000) Btus per hour that serves a generator less than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid would not be subject to this rule. (III)

*Comment:* The definition of large affected unit should be revised to subdivision (A) and (C) consistent. A unit that serves an electric generator less than twenty-five (25) megawatts with potential to use no more than fifty percent (50%) of the electrical capacity should be defined as a large affected unit regardless of operation commencement. (III)

*Comment:* 326 IAC 10-4-2(15)(C) should be revised to include "to the grid" after "produces electricity for sale." This would address cogeneration in which electricity is sold back to the source. (III)

*Comment:* We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(15)(A), 326 IAC 10-4-2(15)(B) and 326 IAC 10-4-2(15)(C) and recommend the language of 326 IAC 10-4-2(15)(C) be changed to say "and produces electricity for sale under a firm contract to the electric grid". (NS)

*Comment:* We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(24)(A), 326 IAC 10-4-2(24)(B) and 326 IAC 10-4-2(24)(C) and recommend the language of 326 IAC 10-4-2(24)(C)(i) and (ii) be changed to say "producing electricity for sale under a firm contract to the electric grid". (NS)

*Response:* U.S. EPA promulgated these definitions under the Section 126 rule. The definitions are intended to more clearly define the units that U.S. EPA sought to regulate under the SIP call and the Section 126 rule. By deleting certain dates, IDEM could make some units subject to this rule, even though U.S. EPA did not include them during the rule development. There was concern with the possible deregulation of the electricity generating system that new sources would seek to circumvent the rules by installing large combustion units serving small, less than twenty-five (25) megawatt generators. There has also been increased cogeneration projects that U.S. EPA believed should be subject to the rule. Units commencing operation after a certain year, serving generators less than twenty-five (25) megawatts and having heat input capacity over the threshold, were considered by U.S. EPA to be large non-EGUs under the Section 126 rule.

*Comment:* The definition of "source" is too vague and language should be included to clarify that separate corporations on-site are not part of the same source. (III)

*Response:* The definition of "source" is the same as the "source" definition under 40 CFR 72.2 and does not appear to be inconsistent with the definition of "stationary source" in other state and federal rules. It is important that there be consistency in

definitions among the states in the trading program so that U.S. EPA can administer the program properly.

*Comment:* We believe that the definition of “commence commercial operation” should be changed. A unit should not be deemed to have begun commercial operation during the period of testing prior to beginning normal operation. The IDEM permitting rules acknowledge the need for startup testing prior to normal operation and include relief from certain requirements during the period of bringing the unit into commercial operation. Construction permits also acknowledge this unique time when the emission device is in the final phases of construction prior to beginning normal commercial operations. Therefore, we recommend the language “including test generation” be deleted from this definition. Similarly, the term “generate electricity for sale or use” should be deleted from the definition. The “for use” term is too broad and could be misinterpreted to inappropriately trip a emission source into “commercial operation” upon generation of electricity for use internal to the operation of the emission source (machine). Similarly, the term “generate electricity for sale” is too broad and should be changed to limit the provision to “the generation of electricity for sale to the electric grid”. (NS)

*Comment:* The definition of “commence operation” should be modified to exclude the period of testing prior to the beginning of normal operation. (NS)

*Response:* The suggested changes could have implications on applicability determinations and timing requirements under the rule. IDEM has consulted with U.S. EPA concerning this issue and it is U.S. EPA’s position that the definitions should include “test generation” because NO<sub>x</sub> emissions that must be accounted for occur during these times.

*Comment:* Because this rule is intended to be in place only during the ozone control period, we believe that the “maximum design heat input” should be based on the maximum design heat input that is achievable during the weather conditions of the ozone control period and exclude any values based on conditions that are not representative of the ozone control period. (NS)

*Comment:* Similar to the above comment for 326 IAC 10-4-2(26), the “maximum potential hourly heat input” should not be based on conditions that are not representative of the ozone control period.

*Comment:* We appreciate the IDEM’s recognition of the necessity of and inclusion of the exemptions during periods of startup, shutdown and upsets. However, because this rule is intended to only be applicable during the ozone control period, we suggest that IDEM add the provision that “Maximum potential NO<sub>x</sub> emission rate” be limited to the operating conditions only during the ozone control period, excluding the startup, shutdown and upset periods. It would be inappropriate to determine the maximum potential NO<sub>x</sub> emission rate (to be used for the ozone control period only) based on operating characteristics that are not achievable during the ozone control period.

*Comment:* Several of the definitions relate to the parameters used to calculate a NO<sub>x</sub> emission rate absent monitoring data. Instead of specifying definitions for parameters to be utilized in computations that may unfairly overestimate the emissions, we believe that the IDEM should instead include rule provisions that allow for data substitution, as is allowed in the U.S. EPA’s acid rain program.

*Comment:* As expressed in our comment above, we believe that the definition of this parameter should be limited to the “maximum rated hourly heat input” that is achievable only during the ozone control period. An hourly heat input that is achievable during winter conditions should not be used for the summer ozone control period. (NS)

*Comment:* As previously stated, we believe that because this rule is applicable only during the ozone control period, the parameters that are temperature dependent should be acknowledged and only included as such in the rule. Therefore, the “nameplate capacity”, in reference to the maximum electrical generating output, should only be the electrical generating output that is capable of being achieved during the particular operating period in question. (NS)

*Response:* IDEM has discussed the suggested changes with U.S. EPA and U.S. EPA has indicated that the definitions should remain as is. It is especially important to have language consistent with other states in the regional trading program.

*Comment:* We believe that if 326 IAC 10-4-2(31) is necessary to define, that the averaging period to which the emission limit applies is integral to fairly represent the emission limitations and not artificially and inappropriately increase the stringency of the source’s emission limit. Therefore, we recommend that the phrase “regardless of the averaging period to which the emissions limitation applies” should be deleted. (NS)

*Response:* If the intent is to convert an emission limitation so that it is greater than the published emission limitation, and therefore, receive a larger allocation, IDEM disagrees. This would be inconsistent with other changes that require an allocation based on the more stringent emission rate.

*Comment:* 326 IAC 10-4-2(46) may need further clarification or modification with respect to the NO<sub>x</sub> trading program depending upon the treatment of the Section 126 sources and the outcome of the pending litigation. (NS)

*Response:* IDEM has revised the language of the rule to provide for a smooth transition for Section 126 sources to the state NO<sub>x</sub> rule. Changes to this definition do not appear to be necessary at this time.

*Comment:* It is inappropriate to characterize and define a purchaser of power from a NO<sub>x</sub> budget unit as an owner under 326 IAC 10-4-2(52)(C). The purchaser of power from a NO<sub>x</sub> budget unit, even if it is a life-of-the-unit, firm power contractual arrangement, is not the owner of the unit and not necessarily able to exert any control on the operation of the NO<sub>x</sub> budget unit or control its emissions. To include a purchaser of power from a NO<sub>x</sub> budget unit as an owner inappropriately assigns to such a person authority and responsibility that does not exist. (NS)

*Response:* IDEM understands the concern. Discussions with U.S. EPA indicate that they do believe that a “purchaser” can exert control and the definition should not be changed.

*Comment:* The definition of ozone control period should be examined carefully for use given the court extension of the compliance deadline to May 31, 2004. For simplicity, we recommend that the definition be modified to differentiate the ozone control period in the year 2004 from subsequent years. This is especially important for the compliance language included in the definition of “ton” or “tonnage” under 326 IAC 10-4-2(62) and elsewhere throughout the rule. (NS)

*Response:* IDEM agrees and will make the necessary changes.

*Comment:* The use of the phrase “other specified time period” in 326 IAC 10-4-2(65) raises concerns regarding potential inappropriate applicability to periods outside of the ozone control period. We note that IDEM is careful to include the term “in any ozone control period” when referring to the total or gross output of a unit. Believing that it is the intent of IDEM to only include the time periods during the ozone control period, we suggest IDEM change the language “...period, or other specified time period, produced...” to “...other specified time period during the ozone control period, produced...”. (NS)

*Comment:* The language under 326 IAC 10-4-2(65)(B) should be revised to include “pounds of steam at the total steam pressure (psia)”. (III)

*Response:* IDEM has reviewed the definition and the rule language. This definition does not appear in the rule and should be deleted.

### **Section 126 Rule**

*Comment:* The inclusion of an exemption for sources affected by the Section 126 rule is supported. U.S. EPA initially proposed that the NO<sub>x</sub> SIP call and the Section 126 rules as companion rules to implement significant NO<sub>x</sub> reductions. Only in the event a state SIP revision proved inadequate would the federal Section 126 rule become effective. U.S. EPA has altered this proposal and has concluded that unless a state adopts a rule that includes a May 1, 2003 compliance deadline, the Section 126 rule will stand. While supporting the exemption, IDEM should continue to discuss the situation with U.S. EPA and allow for the removal of the Section 126 rule with the submittal of an approvable SIP rule. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (NS)

*Comment:* IDEM should include the federal 126 rulemaking in this rule and administer that program along with this rule. (IMPA)

*Comment:* Sources affected by the Section 126 rule should not be exempt from this rule beginning in 2004. If there is an issue with the May 31, 2004, deadline, this date can be moved to May 1, 2004. (VCDH)

*Response:* IDEM is committed to a smooth transition for Section 126 sources to the state NO<sub>x</sub> rule and has included language that would make the Section 126 sources subject to this rule on May 1, 2004. We will continue to discuss this approach with U.S. EPA.

### **Compliance Certifications**

*Comment:* It is unclear why each unit must meet allocations as opposed to the source. Compliance should only have to be certified for the source, which would avoid the need to conduct trading among units within the source. (III)

*Response:* The trading program was established to achieve reductions from specific units and allocations are distributed to individual units consistent with the manner in which the Acid Rain program was developed. Because each unit receives a specific allocation, compliance must be certified for each unit. Even if source certification was allowed, sources would be “trading” among units for overall compliance.

*Comment:* The November 30 compliance certification date does not allow enough time to trade once the ozone season is complete and reallocations from set-asides known. Sources will be required to scramble to buy the last few tons to come into compliance within a narrow time frame. (III)

*Response:* The compliance certification date is established by U.S. EPA and U.S. EPA will be administering the program, not IDEM. It is unlikely that U.S. EPA would allow for various states to have different compliance certification dates. In addition, sources know how allowances are calculated and what is necessary for compliance. A source should generally know well in advance of the compliance certification date whether or not allowances will need to be purchased and there are other allowances available than just those reallocated at the end of the season.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On February 7, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules 326 IAC 10-3 and 326 IAC 10-4. Comments were made by the following parties:

Aluminum Corporation of America (ALCOA)

American Electric Power (AEP)

Cinergy (CIN)

Clean Air Action Corporation (CAAC)

Citizens Action Coalition of Indiana (CAC)

Citizens Thermal Energy (CTE)

Concerned Citizens of Grant County (CCGC)

Enron Corporation (EC)

Environmental Law and Policy Center of the Midwest (ELPCM)  
EnviroPower of Indiana (EPI)  
Firestone Building Products Company (FBP)  
Hoosier Energy REC, Incorporated (HE)  
Hoosier Environmental Council (HEC)  
Indiana Community Action Association (ICAA)  
Indiana Electric Utility Air Work Group (IEUWG)  
Indiana Kentucky Electric Company (IKEC)  
Indiana Petroleum Council (IPC)  
Indiana Power and Light Company (IPL)  
Ispat Inland, Incorporated (III)  
Steve Loeschner (SL)  
NiSource (NS)  
Save the Dunes Council (SDC)  
Save the Valley (SV)  
Sierra Club, Hoosier Chapter (SC)  
Tenaska (TNA)  
United Auto Workers, Local 2209 (UAW)  
Valley Watch, Incorporated (VWI)

Following is a summary of the comments received and IDEM's responses thereto:

#### **General**

*Comment:* IDEM should provide information about the health benefits of the rulemaking. Health issues should be considered and control should be required over the entire year and not just the ozone season. (SL)

*Response:* The purpose of this rulemaking is to reduce ozone levels within Indiana and ozone transport from Indiana to downwind states. It is entirely motivated by the goals of meeting health standards for ozone and improving public health. Scientific data developed by states, U.S. EPA and independent scientists over many years demonstrates the importance and need for NO<sub>x</sub> reductions to meet those health goals. In implementing the reductions called for in this rule, IDEM will be taking important steps toward meeting the one (1) hour ozone standard in Indiana and elsewhere. By reducing NO<sub>x</sub> emissions and associated ozone levels, the rule will provide health benefits to citizens in Indiana and downwind states. Because ozone formation is a summer season problem, the rule focuses on obtaining the necessary reductions when the public health problem is prevalent. The specific amount of NO<sub>x</sub> reduction required in this rule are prescribed by the federal NO<sub>x</sub> regulation.

*Comment:* IDEM should include more flexibility in the rulemaking. The current rule provides a short compliance time, few technology choices and limited flexibility. IDEM should focus on getting NO<sub>x</sub> reductions and not where the reductions are coming from. Obtaining NO<sub>x</sub> voluntary reductions from more cost-effective sources increases the flexibility and lowers the costs. (CAAC) (CIN) (IPL) (NS)

*Response:* IDEM agrees that the rule should be as flexible as possible without jeopardizing approval by U.S. EPA. IDEM is considering language that would allow other types of sources to participate in the trading system by generating credits through NO<sub>x</sub> reductions. IDEM will discuss the possibility of generating credits from "nonbudget" sources with U.S. EPA.

*Comment:* The draft rule represents a considerable effort to address concerns raised during the formal comment period. However, there has been little time to sufficiently analyze all the implications of the substantial changes and to make constructive suggestions. The U.S. EPA under the previous administration was relatively inflexible regarding the method a state would use to achieve the reduction of ozone transport and its precursors. The fear of sanctions, even though the sanctions would not be initiated until 2002, and U.S. EPA pressure appear to be the force driving the current fast track schedule and preventing IDEM from fully developing more flexible options. The board should direct IDEM to take some additional time to work out some of the complex details of the rulemaking and to develop this rule in a manner that will minimize the impact on Indiana business and its citizens while still meeting the environmental goals. (IEUWG)

*Response:* IDEM believes it is important to keep the rule moving through the process. Although there has been no indication that U.S. EPA intends to change its policy or position on adoption and implementation of NO<sub>x</sub> rules by the states, Indiana's current schedule provides the additional time suggested by the commenters prior to consideration of final adoption.

*Comment:* IDEM should not mandate on-site retention of records and companies with multiple sources should be given the option of centralized record keeping. (IEUWG)

*Response:* IDEM understands the problem of record retention at un-staffed sites, but also agrees with U.S. EPA that any centralized record keeping must have some limitations to ensure that records are reasonably available.

*Comment:* The board should not delay the rulemaking and should go forward with preliminary adoption. Any unresolved issues can be resolved between preliminary and final adoption. (HEC) (SC) (CCGC) (HE)

*Response:* IDEM agrees and will work with affected sources and interested parties to resolve outstanding issues prior to final adoption.

### **Small Source Exemption**

*Comment:* The inclusion of language exempting sources restricting emissions below twenty-five (25) tons during the ozone season from compliance with the rule is supported. However, the language should be revised to reduce complexity and provide clarity. (AEP)

*Response:* IDEM has been discussing, and will continue to discuss, the exemption language with U.S. EPA to develop language that is clear and provides flexibility without being overly complex.

### **Section 126**

*Comment:* IDEM should not include sources that are affected by the Section 126 requirements in this rulemaking. The language should be revised to exempt these sources from this rule. The proposed language is not specific enough to address the complexities of the transition that would be needed to incorporate the Section 126 sources into this rule. IDEM should advocate that U.S. EPA withdraw the Section 126 rule once Indiana submits a compliant rule. (CIN) (IEUWG) (AEP)

*Response:* IDEM understands the concerns with transitioning between the Section 126 rule and this rulemaking. IDEM will continue discussions with U.S. EPA, sources and the public on this subject.

*Comment:* The rule should not be preliminarily adopted at this time. The rulemaking should be delayed for a few months so that IDEM can work with the new U.S. EPA administration to resolve how sources subject to the Section 126 rule will be treated. There is still litigation pending on the Section 126 rule and U.S. EPA had previously stated that sources would not be subject to the Section 126 remedy if a state had an approved SIP call rule. (IKEC)

*Comment:* IDEM should delay this rulemaking and wait for the pending decision in the D.C. Circuit Court of Appeals in the Section 126 litigation and the pending litigation relating to the allowance allocations on which this rule is based. (AEP)

*Response:* As noted in a previous response, IDEM believes that moving forward on the current schedule is essential. Any changes in the legal status of the Section 126 rules can either be addressed prior to final adoption or subsequently, through amendments to the rule, if necessary.

### **Permitting Issues**

*Comment:* There is a concern with the current new source review requirements for nonattainment areas. The rules should be revised to address the installation of pollution control projects, remove the permitting threshold for NO<sub>x</sub> and reconsider the interpretation of the new source requirements. (IPC) (III)

*Response:* Section 182(f) of the Clean Air Act (CAA) required that NO<sub>x</sub> be treated as a nonattainment pollutant for ozone in Lake and Porter Counties in the same manner as volatile organic compounds (VOCs). The provisions were adopted by the air pollution control board in July of 1993, published in the Indiana Register in January 1994, and incorporated into the state implementation plan (SIP). On January 26, 1996 in 40 CFR 52.777(i), the U.S. EPA granted a waiver of the requirements of Section 182(f) of the CAA for Lake and Porter Counties, including the lower NO<sub>x</sub> threshold for nonattainment new source review. Since the treatment of NO<sub>x</sub> as a nonattainment pollutant for ozone is no longer a CAA-required part of the SIP and the NO<sub>x</sub> SIP Call addresses the role of NO<sub>x</sub> in ozone nonattainment areas, IDEM will remove the Section 182(f) requirements from the new source review rules. Therefore, since Indiana does not have any nonattainment areas for NO<sub>2</sub>, the portions of the modifications involving increases in NO<sub>x</sub> would be reviewed under the Prevention of Significant Deterioration (PSD) requirements in 326 IAC 2-2.

It should be noted that if a pollution control project does not qualify as a physical or operational change and/or does not result in a significant net emissions increase of any regulated pollutant, it is not considered a major modification under 326 IAC 2-2 or 2-3. If the project is not considered a major modification, the project is exempt from major new source review and permitting requirements without having to be reviewed as a pollution control project exemption. Sources should refer to the U.S. EPA guidance memorandum, "Pollution Control Projects and New Source Review (NSR) Applicability" (July 1, 1994) as well as the WEPCO decision for guidance in determining whether a project is a major modification or exempt. IDEM has also requested U.S. EPA to provide more specific guidance on permitting issues related to the NO<sub>x</sub> SIP call. If a pollution control project in a nonattainment area does result in a significant net increase in emissions of the nonattainment pollutant, the project will have to meet the requirements of and be reviewed in accordance with the U.S. EPA guidance as a significant source modification. These requirements include obtaining offsets for the nonattainment pollutants that will be part of the significant net increase in emissions. Therefore, while the guidance provisions are not specifically stated in the rules, IDEM will consider the guidance provisions when an application is received for review. IDEM will also continue to consider ways to address permitting issues associated with the installation of NO<sub>x</sub> control equipment needed to comply with the rule.

*Comment:* There is a serious concern over an abuse of the current permitting system with regard to "peaker plants". These sources are being allowed to be permitted as "minor sources", but stricter controls need to be put in place to protect affected citizens. Sources should be defined and regulated based on equal periods of operation, especially peaker plants that have a much more concentrated operating year that leads to a more concentrated daily level of pollution. (CCGC)

*Response:* IDEM appreciates the public's concern regarding air permits for "peaker plants". The major source permitting rules base applicability on a tons per year basis; therefore, sources are allowed to request limits on their potential to emit on a tons per year

basis to restrict them to below major source applicability levels. During the permitting process, sources must demonstrate that they can comply with the state and federal requirements and the limits they request, and the air quality modeling must show that emissions from these sources will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) and must demonstrate that their emissions will not have a significant impact on the environment and human health. While it is not typically prohibited for sources to concentrate their operating year into a short time period, it is taken into account by using air quality models to determine the impact of a new source's emissions on the surrounding area. IDEM determines if the emissions will cause or significantly contribute to a violation of air quality standards by comparing the modeling results with the NAAQS and maximum allowable increases under the Prevention of Significant Deterioration (PSD) rules. The models typically use the proposed maximum hourly emission rate of the source (after required controls and considering any required hourly emission limits) to determine the impacts such that the worst case exposures are considered.

*Comment:* IDEM should include a clear, concise statement that the required pollution control equipment installation for the rule is exempt from new source permitting requirements. Requiring these projects to go through the permitting process would likely result in delays with already extremely tight construction schedules. IDEM's responses to date have been vague and ambiguous. The air pollution control board (board) should direct IDEM to provide clarity and guidance on this issue. (IPL)

*Response:* IDEM appreciates that sources need clear guidance on this issue and has asked U.S. EPA to provide more specific interpretations. As IDEM has stated previously, based on conversations with U.S. EPA to date, it does anticipate that the installation of NO<sub>x</sub> controls would be a pollution control project and exempt from permitting. However, IDEM cannot make a broad statement that any of the construction is exempt from permitting requirements without knowing specifics of the projects, especially for federal permitting requirements. IDEM will continue to explore ways to address permit requirements for plant changes required to comply with this rulemaking.

### **Compliance Supplement Pool**

*Comment:* There is a continuing concern that significant technological challenges caused by this rule could result in a potential risk to electrical reliability. U.S. EPA underestimated the costs and the number of control devices needed to comply with the rule. The potential risk to electrical reliability can be addressed by doubling the amount of allowances in the compliance supplement pool. (CIN) (IEUWG)

*Response:* U.S. EPA has not indicated that this proposal would be approved, but IDEM will continue discussions with U.S. EPA about possible alternatives.

*Comment:* The proposal to allow potentially up to fifty percent (50%) of all compliance supplement pool allowances for direct compliance extensions is opposed. We do not believe that the showing required by U.S. EPA to obtain a direct compliance extension can be met and there is no need for these provisions. (IEUWG)

*Response:* The rule, as written, would not allow up to fifty percent (50%) of the CSP to go solely for demonstrations of need, unless there were no requests for early reductions during the 2003 ozone control period. IDEM anticipates that many more sources will be generating early reduction credits and not relying on the demonstration of need. While the demonstration may be difficult for EGUs, as currently written, U.S. EPA and IDEM have included the option for non-EGUs also. In addition, IDEM continues discussions with U.S. EPA concerning acceptable alternative language.

*Comment:* IDEM should not allow non-EGUs to participate from the compliance supplement pool (CSP). This pool was intended to assist EGUs and help mitigate potential electric system reliability issues and the inclusion of non-EGUs could take a larger percentage of the allowances from the pool from sources it was intended to assist. Non-EGUs are not required to make the significant reductions that the EGUs will have to make, so these sources do not need allowances from the CSP. (IEUWG)

*Response:* IDEM disagrees. Although electric reliability issues are discussed in the SIP call, 63 FR 57428-57430, U.S. EPA also discusses non-EGUs. In fact, U.S. EPA discusses and included rule language that would allow non-EGUs to receive allowances for early reduction credits or a demonstration of need. Some non-EGUs in Indiana will be required to install control equipment and are in a position similar to that of EGUs.

*Comment:* IDEM should conduct a preliminary, advance allocation of early reduction credits (ERCs) based on each source's contribution to total heat input in Indiana. This approach will provide companies with compliance certainty, but will nonetheless ensure that companies actually reduce emissions before they are eligible for CSP credits. (IEUWG)

*Response:* It is not clear that this will, in fact, provide the certainty stated. IDEM does not believe that an advance allocation based on heat input contribution would provide any certainty of the allowances that may actually be awarded. The award will be made on the difference in emission rates between the baseline year and the reduction year. The sources with the greatest reduction will receive the greatest reward subject to adjustments that would be made prior to the allocation.

*Comment:* The CSP allowances should be exempt from flow control, consistent with the final Section 126 rule. (IEUWG)

*Response:* Reviewing the language under the Section 126 rule, 40 CFR 97, it does not appear that the CSP allowances are exempt from flow control, except for the first year 2003. The language under 40 CFR 97.43(c)(8) states that the allowances will be treated as banked allowances in 2004, the second year of the program. Because the allowances would be treated as banked allowances, the flow control provisions would apply and this is consistent with the language in this rule that treats these allowances as banked

allowances in 2005.

### **Alternative Compliance Plans**

*Comment:* The rulemaking should be delayed until IDEM can discuss the alternative compliance plans, such as the Ohio proposal, have been thoroughly discussed with U.S. EPA. IDEM has stated in the response to comments that U.S. EPA has indicated that this proposal would not be approvable. IDEM should continue to pursue this with the new U.S. EPA administration and a delay of a few months would allow these discussions to take place. (IKEC)

*Comment:* IDEM should address reliability concerns by adopting the approach advocated by Ohio. This proposal would advance the compliance deadline to May 1, 2004, and allocate an additional block of allowances equal to twenty percent (20%) of the source's 2007 baseline emissions which would cover the emissions from May 1 to May 30. (IEUWG)

*Response:* IDEM will continue to discuss these provisions with U.S. EPA prior to final adoption.

*Comment:* IDEM has the opportunity to encourage utilities to go beyond the mandatory NO<sub>x</sub> reductions by providing a mechanism for utilities to voluntarily apply technologies that reduce multiple pollutants. The inclusion of such a program will enhance Indiana's environment over the long term. Some of Indiana's neighboring states have included such a program in their draft rules and we believe IDEM has the authority to include and U.S. EPA has the authority to approve such a program. A multi-pollutant reduction program will allow Indiana and U.S. EPA to address air quality issues on a more holistic, cost effective and environmentally sound manner. (AEP)

*Response:* While some other states have proposed this option as part to their SIP call rulemaking, information to date indicates that U.S. EPA has objected to this proposal. In addition, information from West Virginia indicates that the state withdrew this option after U.S. EPA objections.

### **New Source Set-Aside**

*Comment:* There is concern that the five percent (5%) set-aside will be oversubscribed and that new sources will not receive necessary allowances and will be forced to purchase allowances from the market, if a willing seller can be found. These concerns and problems may increase when the set-aside is reduced to two percent (2%). This is especially true with the current rule language that could force a new source to obtain allowances from the set-aside for as much as six (6) years. These provisions could discourage the construction of new base load plants. IDEM should revise the language to increase the set-aside to ten percent (10%) for the first two (2) allocation periods, allocate allowances on an annual basis three (3) years in advance, and return any unused allowances to the new source pool for pro-rata distribution each year. Another alternative would be for the state to hold all allowances and auction the allowances to both existing and new sources each year. The proceeds could be used to fund energy efficiency, pollution reduction or renewable resource project grants. (EPI)

*Comment:* The size of the new source set-aside is too small and the time to get out of the pool and receive allowances as an existing source is too long. IDEM should revise the rule to include annual allocations. (TNA)

*Response:* IDEM understands the concerns about the availability of allowances for new sources and the amount of time a source would need to draw from the set-aside. IDEM must balance the need for new source allowances with the amount of control and associated costs for existing sources, because an increase in the allowance set-aside means a greater amount of control is needed by existing sources. Holding an auction could require sources that have made large investments in control measures to spend even more money to acquire allowances. IDEM will continue to review these issues, especially the transition from a "new" to an "existing" source, and discuss possible alternatives with interested parties.

*Comment:* The new source set-aside provisions should be revised as follows:

- Allowances should be allocated on a first-come, first-served basis, based on the date the source is issued an approved construction permit.
- New sources should be required to return any unused allowances and those allowances should be allocated to other new sources that did not receive sufficient allocations.
- Any unused allowances after reallocation to other new sources should be returned to existing sources.
- After two (2) years of operation, new sources should receive a fixed allocation for the remainder of the applicable allocation period. (IEUWG)

*Response:* IDEM believes that a pro-rata distribution is a fairer method of distributing the allowances to ensure that all projects get some portion of the set-aside and are not forced to the market for all of the needed allowances. In addition, the issuance of a construction permit does not assure that a particular project will be built. Requiring the project to not only have a construction permit issued, but also required notifications to the Indiana Utility Regulatory Commission provides more assurance that the allowances will be used. Due to the number of projects that have been proposed in Indiana, the set-aside is likely to be oversubscribed in the near future and IDEM believes that any unused allowances should be made available for the following year. By setting a fixed allocation, allowances for newer sources would be restricted further.

*Comment:* There is concern that the banking of unused new source set-aside allowances, in conjunction with the size of the banked pool that is accumulated across the multi-state trading area, may have the unintended consequence of triggering flow control and thereby discounting the value of banked allowances. (IEUWG)



*Response:* IDEM understands the concern of banking new source set-aside allowances, but information to date indicates that the pool will be oversubscribed for several years to come and there will be no allowances banked. Massachusetts included provisions in their rule that would return allowances to existing sources, if the banked allowances reached a certain level.

*Comment:* The five percent (5%) new source set-aside should incorporate renewable types of energy. (CCGC)

*Response:* According to U.S. EPA guidance concerning energy efficiency and renewable energy set-asides, renewable energy projects should be awarded allowances from either the new source set-aside or the energy efficiency and renewable energy set-aside, but not both. The proposed rule includes these projects in the energy efficiency and renewable energy set aside, and IDEM believes that represents a good balance between different types of new generation.

### **Energy Efficiency Set-Aside**

*Comment:* The current two percent (2%) energy efficiency and renewable energy set-aside is supported as long as it does not penalize sources by making their limit more stringent, but the set-aside should not include nonemitting sources. Including nonemitting sources, such as wind power, can only increase the cost of this already expensive rule. (CIN) (IEUWG)

*Comment:* The energy efficiency and renewable energy set-aside is supported as currently written. (IPL)

*Comment:* Inclusion of an energy efficiency and renewable energy set-aside is strongly supported and would provide benefits to both Indiana's environment and economy. A clean energy set-aside would:

- Improve the environment above and beyond the NO<sub>x</sub> by displacing conventional generation and reducing the associated pollutants including sulfur dioxide, mercury, fine particulates, and carbon dioxide.
- Save businesses and households money, create local jobs, and improve productivity.
- Enhance the electric reliability system.

(SV) (SC) (VWI) (CAC) (ELPCM) (ICAA) (FBP) (SDC) (HEC) (UAW) (EC)

*Response:* IDEM appreciates the support.

*Comment:* The size of the energy efficiency and renewable energy set-aside should be increased. There is concern about utilities getting credit for making improvements that they would have made without the set-aside and the unused allowances being shifted to the new source set-aside. (HEC) (CCGC) (SC)

*Response:* The amount of allowances proposed by IDEM is consistent with other states that have included this set-aside. While comparing a percentage of a budget to another state or to the new source set-aside may indicate that IDEM has not included a significant number of allowances, this comparison can be deceiving. In reviewing the information from other states distributed at the board meeting, this is how the Indiana rule compares to other states:

- Indiana = 1,141 tons (2%).
- Maryland = 436 tons (3%).
- Massachusetts = 640 tons (5%).
- New York = 1,240 tons (3%).

IDEM understands the concern that some sources may receive allowances for projects that would have been undertaken absent the set-aside and will continue to work with interested parties on this issue as well as others, including the use of unused allowances.

### **Penalty Provisions**

*Comment:* The rule requires installation of unproven technology and nonexistent trading program and the penalty provisions are extreme and overly punitive. The requirements that each ton of excess emissions is a separate violation and that any excess emissions is a violation of each day of the ozone season is excessive. Language should be included to provide for waivers or minor violations, especially if a source has been in compliance except for a few days at the end of the ozone season. (IPL)

*Response:* After reviewing the language under 326 IAC 10-4-7(k)(7), it appears that the remedy is already provided. The penalty language under subdivision (A) states:

“For purposes of determining the number of days of violation, if a NO<sub>x</sub> budget unit has excess emissions for an ozone control period, each day in the ozone control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered (emphasis added).”

If a unit has been in compliance except for the last few days of the ozone control period and it is not possible to purchase or otherwise acquire the needed allowances, the source has the opportunity to “demonstrate that a lesser number of days should be considered.” IDEM appreciates the concept that “days of violation” may not be appropriate in the context of a cap and trade program, where the significant issue is whether the source has exceeded its cap and by how much. IDEM will continue to consider this comment prior to final adoption.

### **Allocation Methodology**

*Comment:* The rule should be revised to include 2000 heat input data for the initial allocations. This information will be available prior to the final adoption of the rule because U.S. EPA is required to have this information by March 1 of each year. This will also make the language more consistent with how allowances are allocated in later allocations. (CIN) (IEUWG)

*Response:* IDEM is committed to using the most recent and representative data available. However, the rule needs a system where the data will be readily available and consistent from source to source. IDEM believes that U.S. EPA's acid rain database is the best

source at this time.

*Comment:* The rule should be revised to change the allocation methodology for the nonelectricity generating units (non-EGUs). By revising the rule to allocate either on a historical baseline, seventeen-hundredths (0.17) pound per million Btus, or a sixty percent (60%) reduction from 1995 levels, IDEM would be leveling the playing field, reducing costs, and still meet the same target. (ALCOA) (CTE)

*Response:* IDEM is investigating various options with the allocation methodology in an attempt to establish a fair and cost-effective methodology that still achieves the necessary reductions.

*Comment:* The allocation methodology should be revised to change the way the heat input for allocations is derived. Instead of using the average of the highest two (2) years over a five (5) year period, the language should be changed to just use the average over the entire five (5) years. A five (5) year average reduces some of the peaks and valleys out of the equation and adds a greater degree of predictability. (IPL)

*Response:* No matter which method is chosen, some companies benefit and some do not, although the differences in actual allowance allocations are small. IDEM believes that the current rule language provides an appropriate balance.

*Comment:* The multi-year allocation is supported, but IDEM should revise the language to extend the allocation to five (5) years. This would enhance certainty, promote long-term compliance planning and stimulate development of the trading market. (IEUWG) (AEP)

*Response:* IDEM believes that the balance between compliance planning and moving new sources into the “existing source pool” in a timely manner is achieved with a shorter allocation period.

*Comment:* The rule does not provide the necessary incentives to encourage clean energy projects. More flexibility should be provided for these projects. One way to provide additional incentive is to change the allocation methodology to treat units equally and not use a more stringent permit limit for allocations to existing units. Another incentive would be to revise the rule to use output rather than heat input for future allocations. (NS)

*Response:* IDEM will continue to work with interested parties to develop appropriate incentives prior to going to the board for final adoption.

#### **Monitoring Requirements**

*Comment:* The rule currently requires monitoring requirements in accordance with 40 CFR 75, but the language should be revised to allow for continuous emissions monitoring systems (CEMS) meeting the requirements of 40 CFR 60. (IPC)

*Response:* In discussions with U.S. EPA, they have not indicated that there is any flexibility for units in the trading program to use any monitoring other than monitoring under 40 CFR 75. U.S. EPA believes that precise and accurate information is needed for measuring emissions, that the 40 CFR 60 data availability requirements are not as stringent as those under 40 CFR 75, and that all sources participating in the trading program must use the same monitoring program. However, IDEM is considering other ways to treat inherently low emitting sources under this rule.

*Comment:* The rule should be revised to allow alternative monitoring requirements for units that use a low NO<sub>x</sub> emissions fuel. This would reduce monitoring costs and provide an incentive for sources to switch to low NO<sub>x</sub> fuels. (III)

*Response:* As noted above, IDEM is seriously exploring options for addressing units that burn inherently low NO<sub>x</sub> emitting fuels.

### **326 IAC 10-3**

### **326 IAC 10-4**

SECTION 1. 326 IAC 10-3 IS ADDED TO READ AS FOLLOWS:

#### **Rule 3. Nitrogen Oxide Reduction Program for Specific Source Categories**

##### **326 IAC 10-3-1 Applicability**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 1. (a) This rule applies to any Portland cement kiln with process rates equal to or greater than:**

**(1) long dry kilns of twelve (12) tons per hour (TPH);**

**(2) long wet kilns of ten (10) TPH;**

**(3) preheater kilns of sixteen (16) TPH; or**

**(4) precalciner and combined preheater and precalciner kilns of twenty-two (22) TPH.**

**(b) A unit subject to this rule and a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants, or an emission limit established under 326 IAC 2 shall comply with the limitations and**

requirements of this rule or the limitations and requirements of a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants, or an emission limit established under 326 IAC 2, whichever is more stringent. For a unit subject to this rule and 326 IAC 10-1, compliance with this rule shall be deemed to be compliance with 326 IAC 10-1, and the limits established in section 3(a) of this rule shall supersede those in 326 IAC 10-1-4(b)(1).

(c) The requirements of this rule shall not apply to a unit that is participating in the NO<sub>x</sub> budget trading program under 326 IAC 10-4.

(d) The requirements of this rule shall not apply during startup and shutdown periods and periods of malfunction. (*Air Pollution Control Board; 326 IAC 10-3-1*)

### 326 IAC 10-3-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Long dry kiln" means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is dry.

(2) "Long wet kiln" means a Portland cement kiln fourteen (14) feet or larger in diameter and four hundred (400) feet or greater in length that employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(3) "Low-NO<sub>x</sub> burners" means a type of cement kiln burner system designed to lower NO<sub>x</sub> formation by controlling flame turbulence, delaying fuel/air mixing, and establishing fuel-rich zones for initial combusting, that for firing of solid fuel by a kiln's main burner includes an indirect firing system or comparable technique for the main burner to lower the amount of primary combustion air supplied with the pulverized fuel. In an indirect firing system, one (1) air stream is used to convey pulverized fuel from the grinding equipment and another air stream is used to supply primary combustion air to the kiln burner with the pulverized fuel, with intermediate storage of the fuel.

(4) "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.

(5) "Mid-kiln firing" means the secondary firing in a kiln system 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:

(A) burning part of the fuel at a lower temperature; and

(B) reducing conditions at the fuel injection point that may destroy some of the NO<sub>x</sub> formed upstream in the kiln system.

(6) "Ozone control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(7) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one (1) or more of the forms of calcium sulfate as an interground addition.

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

(9) "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and a second burner is used to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(10) "Preheater kiln" means a Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(11) "Shutdown" means the cessation of operation of a Portland cement kiln for any purpose.

(12) "Startup" means the setting in operation of a Portland cement kiln for any purpose.

(*Air Pollution Control Board; 326 IAC 10-3-2*)

### 326 IAC 10-3-3 Emissions limits

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. (a) After May 31, 2004, an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the ozone control period of each year unless the owner or operator complies with one (1) of the following:

(1) Operation of the kiln with one (1) of the following:

(A) Low-NO<sub>x</sub> burners.

(B) Mid-kiln firing.

(2) A limit on the amount of NO<sub>x</sub> emitted when averaged over the ozone control period as follows:

(A) For long wet kilns, six (6) pounds of NO<sub>x</sub> per ton of clinker produced.

(B) For long dry kilns, five and one-tenth (5.1) pounds of NO<sub>x</sub> per ton of clinker produced.

(C) For preheater kilns, three and eight-tenths (3.8) pounds of NO<sub>x</sub> per ton of clinker produced.

(D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO<sub>x</sub> per ton of clinker produced.

(3) Installation and use of alternative control techniques that may include kiln system modifications, such as conversions to semi-drying processing, subject to department and U.S. EPA approval, that achieve a thirty percent (30%) emissions decrease from baseline ozone control period emissions. Baseline emissions shall be the average of the sum of ozone control period emissions for the two (2) highest emitting years from 1995 through 2000.

(b) The owner or operator of any Portland cement kiln proposing to install and use an alternative control technique under subsection (a)(3) shall submit the proposed alternative control technique and calculation of baseline emissions with supporting documentation to the department and U.S. EPA for approval by May 1, 2003. The department shall include approved plan with emission limitations in the source's operating permit.

(c) Ozone control period emissions shall be determined using one (1) of the following methods:

(1) The average of the emission factors for the type of kiln from the Compilation of Air Pollutant Emission Factors (AP-42)\* and the Alternative Control Techniques Document-NO<sub>x</sub> Emissions from Cement Manufacturing\*.

(2) The site-specific emission factor developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E\*, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions.

(3) An alternate method for establishing the emissions factors, when submitted with supporting data to substantiate such emissions factors and approved by the department and U.S. EPA as set forth in subsection (b).

\*Copies of the Code of Federal Regulations (CFR), the Compilation of Air Pollutant Emission Factors (AP-42) and the Alternative Control Techniques Document-NO<sub>x</sub> Emissions from Cement Manufacturing referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-3*)

#### 326 IAC 10-3-4 Monitoring and testing requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of a Portland cement kiln complying with section 3(a)(1) of this rule shall operate and maintain the device according to a preventative maintenance plan prepared in accordance with 326 IAC 1-6-3.

(b) Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of a Portland cement kiln complying with section 3(a)(2) or 3(a)(3) of this rule shall either:

(1) complete an initial performance test and subsequent annual testing during the ozone control period of each year consistent with the requirements of 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E\* and 326 IAC 3 or an alternate method approved pursuant to section 3(b) of this rule; or

(2) monitor NO<sub>x</sub> emissions during the ozone control period of each year using a NO<sub>x</sub> CEMS in accordance with 40 CFR 60, Subpart A\* and 40 CFR 60, Appendix B\*, and comply with the quality assurance procedures specified in 40 CFR 60, Appendix F\* and 326 IAC 3, as applicable.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air*

**326 IAC 10-3-5 Record keeping and reporting**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 5. (a)** Beginning May 31, 2004, and each ozone control period thereafter, any owner or operator of a Portland cement kiln shall comply with the following record keeping and reporting requirements:

(1) An owner or operator complying with section 3(a)(1) of this rule shall create and maintain records that include, but are not limited to, the following:

(A) All routine and nonroutine maintenance, repair, or replacement performed on the device or devices.

(B) The date, time, and duration of any startup, shutdown, or malfunction in the operation of a kiln or the device or devices.

(2) An owner or operator complying with section 3(a)(2) or 3(a)(3) of this rule shall create and maintain records that include, but are not limited to, the following:

(A) The emissions, in pounds of NO<sub>x</sub> per ton of clinker produced from each affected Portland 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.

(D) If a unit is equipped with a CEMS, identification of time periods:

(i) during which NO<sub>x</sub> standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances; and

(ii) for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(E) All records required to be produced or maintained shall be retained on site for a period of five (5) years. The records shall be made available to the department or the U.S. EPA upon request.

(b) The owner or operator shall comply with the following reporting requirements:

(1) By May 31, 2004, submit to the department the following information:

(A) The identification number and type of each unit subject to this rule.

(B) The name and address of the plant where the unit is located.

(C) The name and telephone number of the person responsible for demonstrating compliance with this rule.

(D) Anticipated control measures.

(2) Submit a report documenting for that unit the total NO<sub>x</sub> emissions and the average NO<sub>x</sub> emission rate for the ozone control period of each year to the department by October 31, beginning in 2004 and each year thereafter.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-5*)

SECTION 2. 326 IAC 10-4 IS ADDED TO READ AS FOLLOWS:

**Rule 4. Nitrogen Oxides Budget Trading Program**

**326 IAC 10-4-1 Applicability**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 1. (a)** This rule establishes a NO<sub>x</sub> emissions budget and NO<sub>x</sub> trading program for electricity generating units and large affected units as described in this rule. The following units shall be NO<sub>x</sub> budget units, and any source that includes one (1) or more NO<sub>x</sub> budget units shall be a NO<sub>x</sub> budget source, and shall be subject to the requirements of this rule:

(1) An electricity generating unit (EGU) as defined under section 2(15) of this rule.

(2) A large affected unit as defined in section 2(25) of this rule.

(b) A unit described under subsection (a) shall not be a NO<sub>x</sub> budget unit, if the unit has a federally enforceable permit that meets the requirements of subdivisions (1) through (3):

(1) The federally enforceable permit includes terms and conditions that restrict the unit to burning only natural gas or fuel oil during the ozone control period in 2004 or the first year of operation for the source and each ozone control period thereafter.

(2) The federally enforceable permit includes terms and conditions that restrict the unit's operating hours during each ozone control period to the number of hours, determined in accordance with subdivision (3)(B) and (3)(C), that limits the unit's potential NO<sub>x</sub> mass emissions for the ozone control period to twenty-five (25) tons or less.

(3) For each ozone control period, the federally enforceable permit must do the following:

(A) Restrict the unit to burning only natural gas or fuel oil during an ozone control period in 2004 or later and each ozone control period thereafter.

(B) Include one (1) of the following mechanisms for ensuring that the unit's ozone control period NO<sub>x</sub> emissions do not exceed twenty-five (25) tons:

(i) Limit the unit's total actual control period emissions to twenty-five (25) tons of NO<sub>x</sub> emissions, measured by a continuous emissions monitoring system (CEMS).

(ii) Restrict the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential NO<sub>x</sub> mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions, where the unit's potential NO<sub>x</sub> mass emissions shall be calculated as follows:

(AA) Select the default NO<sub>x</sub> emission rate in 40 CFR 75.19(c)(1)(ii), Table 2\* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example only natural gas or only fuel oil, that has the highest default NO<sub>x</sub> emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Multiply the default NO<sub>x</sub> emission rate under subitem (AA) by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(24) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iii) Restrict the unit's usage of each fuel that it is authorized to burn such that the unit's potential NO<sub>x</sub> mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated as follows:

(AA) Identify the default NO<sub>x</sub> emission rate in 40 CFR 75.19(c)(1)(ii), Table 2 for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Identify the percentage of the ozone control period during which the unit intends to burn each type of fuel that is authorized under the fuel use restriction in clause (A). For each fuel type, multiply this percentage by twenty-five (25) tons and multiply the results by two thousand (2,000) pounds per ton to identify the maximum emissions from each fuel type during the ozone control period.

(CC) Calculate the maximum amount of each fuel that may be burned at the source, using the default NO<sub>x</sub> emission rate under item (AA) and the total emissions allowable from each fuel type.

(C) Require that the owner or operator of the unit shall retain records, on site at the source that includes the unit for a period of five (5) years, demonstrating that the terms and conditions of the permit related to these restrictions were met.

(D) Require that the owner or operator of the unit shall report the unit's hours of operation, treating any partial hour of operation as a whole hour of operation, or such other parameter as is being used to demonstrate compliance with the twenty-five (25) ton per ozone control period during each ozone control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

(4) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

(A) is issued a federally enforceable permit under this subsection; or

(B) whose federally enforceable permit issued by the department under this subsection:

(i) is revised to remove any restriction;

(ii) includes any restriction that is no longer applicable; or

(iii) does not comply with any restriction.

(5) A unit described under this subsection shall be a NO<sub>x</sub> budget unit, subject to the requirements of this rule if one (1) of the following occurs for any ozone control period:

(A) The fuel use restriction under subdivision (3)(A) or the operating hours restriction under subdivision (3)(B) and (3)(C) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable.

(B) The unit does not comply with the fuel use restriction under subdivision (3)(A) or the operating hours restriction under subdivision (3)(B) and (3)(C).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the ozone control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

(c) A unit subject to 40 CFR 97\* shall be subject to the requirements of this rule on May 1, 2004, and shall no longer be subject to 40 CFR 97\* as of that date. Allowances for such unit shall be allocated in accordance with section 9 of this rule for the 2004 ozone control period and thereafter.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-1*)

### 326 IAC 10-4-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account certificate of representation" means the completed and signed submission required by section 6 of this rule 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 the source or sources and of the NO<sub>x</sub> budget units at the source or sources with regard to matters under the NO<sub>x</sub> budget trading program.

(2) "Account number" means the identification number given by the U.S. EPA to each NO<sub>x</sub> allowance tracking system account.

(3) "Acid rain emissions limitation" means, as defined in 40 CFR 72.2\*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).

(4) "Allocate" or "allocation" means the determination by the department or the U.S. EPA 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.

(5) "Automated data acquisition and handling system" or "ADHS" means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H\*, 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 40 CFR 75, Subpart H\*.

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

(7) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(8) "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.

(9) "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 subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO<sub>x</sub> budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section 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 section 1 of

this rule shall be the unit's date of commencement of commercial operation.

(10) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, startup of a unit's combustion chamber subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO<sub>x</sub> budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO<sub>x</sub> budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> budget unit under section 1 of this rule shall be the unit's date of commencement of operation.

(11) "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.

(12) "Compliance account" means a NO<sub>x</sub> allowance tracking system account, established by the U.S. EPA for a NO<sub>x</sub> budget unit under section 10 of this rule, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for an ozone control period for the purpose of meeting the unit's NO<sub>x</sub> budget emissions limitation.

(13) "Compliance certification" means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO<sub>x</sub> budget source's or a NO<sub>x</sub> budget unit's compliance or noncompliance with this rule and that is signed by the NO<sub>x</sub> authorized account representative in accordance with section 6 of this rule.

(14) "Continuous emission monitoring system" or "CEMS" means the equipment required under 40 CFR 75, Subpart H\* to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO<sub>x</sub>. The following systems are component parts included, consistent with 40 CFR 75\*, in a continuous emission monitoring system:

(A) Flow monitor.

(B) Nitrogen oxides pollutant concentration monitors.

(C) Diluent gas monitor, oxygen or carbon dioxide, when the monitoring is required by 40 CFR 75, Subpart H\*.

(D) A continuous moisture monitor when the monitoring is required by 40 CFR 75, Subpart H\*.

(E) An automated data acquisition and handling system.

(15) "Electricity generating unit" or "EGU" means the following:

(A) For units that commenced operation before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid.

(B) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid.

(C) For units that commence operation on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five (25) megawatts and produces electricity for sale.

(16) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO<sub>x</sub> authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H\*.

(17) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the primary use of a single end user, such as cogeneration and fuel cell systems.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, and hydropower projects.

(D) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units, except for equipment that is a NO<sub>x</sub> budget unit.

(E) Improvements to existing fossil fuel fired electrical generation units that decrease the heat rate used to generate electricity.

Energy efficiency or renewable energy projects do not include nuclear power projects.

(18) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

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

(20) "Fossil fuel" means any of the following:

(A) Natural gas.

(B) Petroleum.



(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(21) "Fossil fuel-fired" means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(22) "General account" means a NO<sub>x</sub> allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(23) "Generator" means a device that produces electricity.

(24) "Heat input" means the product, in million British thermal units per unit of time (mmBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO<sub>x</sub> authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H\*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(25) "Large affected unit" means the following:

(A) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus 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.

(B) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus 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.

(C) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour that:

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

(ii) at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five (25) megawatts or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

(26) "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 the unit's total costs, pursuant to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(27) "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 and federally enforceable permit conditions limiting the heat input.

(28) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D\* to report heat input. Calculate this value in accordance with 40 CFR 75\*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75\*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO<sub>2</sub>) concentration, in percent of CO<sub>2</sub>.

(ii) The minimum oxygen (O<sub>2</sub>) concentration, in percent of O<sub>2</sub>.

(29) "Maximum potential NO<sub>x</sub> emission rate" means:

- (A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/mmBtu);
  - (B) calculated in accordance with 40 CFR 75, Appendix F, Section 3\*;
  - (C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2\*; and
  - (D) either the:
    - (i) maximum oxygen (O<sub>2</sub>) concentration in percent of O<sub>2</sub>; or
    - (ii) minimum carbon dioxide (CO<sub>2</sub>) concentration in percent of CO<sub>2</sub>;
- under all operating conditions of the unit except for unit startup, shutdown, and upsets.
- (30) “Maximum rated hourly heat input” means a unit-specific maximum hourly heat input, in million British thermal units (mmBtu), that is the higher of either the manufacturer’s maximum rated hourly heat input or the highest observed hourly heat input.
- (31) “Monitoring system” means any monitoring system that meets the requirements of 40 CFR 75, Subpart H\*, including the following:
- (A) A continuous emissions monitoring system.
  - (B) An excepted monitoring system under 40 CFR 75.19\* or 40 CFR 75, Appendix D or E\*.
  - (C) An alternative monitoring system.
- (32) “Most stringent state or federal NO<sub>x</sub> emissions limitation” means, with regard to a NO<sub>x</sub> budget opt-in source, the lowest NO<sub>x</sub> emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.
- (33) “Nameplate capacity” means the maximum electrical generating output, in megawatt electrical (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.
- (34) “Nontitle V permit” means a federally enforceable permit issued by the department under 326 IAC 2-8.
- (35) “NO<sub>x</sub> allowance” means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO<sub>x</sub>) budget trading program to emit up to one (1) ton of NO<sub>x</sub> during the ozone control period of the specified year or of any year thereafter. “NO<sub>x</sub> allowance” also includes authorization to emit up to one (1) ton of nitrogen oxides during the ozone control period of the specified year or of any year thereafter by the U.S. EPA under 40 CFR 97\*.
- (36) “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 U.S. EPA from a NO<sub>x</sub> allowance tracking system compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H\*, or for any other allowance surrender obligation under this rule.
- (37) “NO<sub>x</sub> allowance tracking system” means the system by which the U.S. EPA records allocations, deductions, and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> budget trading program.
- (38) “NO<sub>x</sub> allowance tracking system account” means an account in the NO<sub>x</sub> allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO<sub>x</sub> allowances.
- (39) “NO<sub>x</sub> allowance transfer deadline” means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances 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 ozone control period immediately preceding the deadline.
- (40) “NO<sub>x</sub> allowances held” or “hold NO<sub>x</sub> allowances” means the NO<sub>x</sub> allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO<sub>x</sub> allowance tracking system account.
- (41) “NO<sub>x</sub> authorized account representative” means either of the following:
- (A) 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 section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> budget trading program.
  - (B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.
- (42) “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 and for an ozone control period under section 10(i) and 10(k) of this rule, adjusted by any deductions of the NO<sub>x</sub> allowances for any of the following reasons:
- (A) To account for actual utilization under section 9(e) of this rule for the ozone control period.
  - (B) To account for excess emissions for a prior ozone control period under section 10(k)(5) of this rule.
  - (C) To account for withdrawal from the NO<sub>x</sub> budget trading program.
  - (D) For a change in regulatory status, for a NO<sub>x</sub> budget opt-in source under section 13(g) through 13(i) of this rule.
- (43) “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 source.

- (44) “NO<sub>x</sub> budget opt-in source” means a source that includes one (1) or more NO<sub>x</sub> budget units:
- (A) that has elected to become a NO<sub>x</sub> budget source under the NO<sub>x</sub> budget trading program; and
  - (B) whose NO<sub>x</sub> budget opt-in permit has been issued and is in effect under section 13 of this rule.
- (45) “NO<sub>x</sub> budget permit” means the legally binding and federally enforceable written document, or portion of the document:
- (A) issued by the department under this rule, including any permit revisions; and
  - (B) specifying the NO<sub>x</sub> budget trading program requirements applicable to the following:
    - (i) A NO<sub>x</sub> budget source.
    - (ii) Each NO<sub>x</sub> budget unit at the NO<sub>x</sub> budget source.
    - (iii) 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.
- (46) “NO<sub>x</sub> budget source” means a source that includes one (1) or more NO<sub>x</sub> budget units.
- (47) “NO<sub>x</sub> budget trading program” means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 97\* and pursuant to 40 CFR 51.121\*, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.
- (48) “NO<sub>x</sub> budget unit” means a unit that is subject to the NO<sub>x</sub> budget trading program emissions limitation under section 1(a) or 13(a) of this rule.
- (49) “Operating” means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO<sub>x</sub> budget permit under section 13(d) of this rule.
- (50) “Operator” means any person who operates, controls, or supervises a NO<sub>x</sub> budget unit, a NO<sub>x</sub> budget source, or a unit for which an application for a NO<sub>x</sub> budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.
- (51) “Opt-in” means to elect 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 section 13 of this rule.
- (52) “Overdraft account” means the NO<sub>x</sub> allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO<sub>x</sub> budget source where there are two (2) or more NO<sub>x</sub> budget units.
- (53) “Owner” means any of the following persons:
- (A) 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 section 13(d) of this rule is submitted and not denied or withdrawn.
  - (B) 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 section 13(d) of this rule is submitted and not denied or withdrawn.
  - (C) 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 section 13(d) of this rule 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 the 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 section 13(d) of this rule is submitted and not denied or withdrawn.
  - (D) With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person’s ownership interest with respect to NO<sub>x</sub> allowances.
- (54) “Ozone control period” means the period as follows:
- (A) For 2004, beginning May 31 and ending on September 30, inclusive.
  - (B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year, inclusive.
- (55) “Receive” or “receipt of” means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.
- (56) “Recordation”, “record”, or “recorded” means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the U.S. EPA from one (1) NO<sub>x</sub> allowance tracking system account to another, for purposes of allocation, transfer, or deduction.
- (57) “Reference method” means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A\*.
- (58) “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 U.S. EPA, under section 10(e) through 10(g) of this rule.

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

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

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(61) "Title V operating permit" means a permit issued under 326 IAC 2-7.

(62) "Title V operating permit regulations" means the rules under 326 IAC 2-7.

(63) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO<sub>x</sub> budget emissions limitation, total tons for an ozone 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 40 CFR 75, Subpart H\*, with any remaining fraction of a ton equal to or greater than five-tenths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than five-tenths (0.50) ton deemed to equal zero (0) tons.

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

(65) "Unit" means a fossil fuel-fired:

(A) stationary boiler;

(B) combustion turbine; or

(C) combined cycle system.

(66) "Unit operating day" means a calendar day in which a unit combusts any fuel.

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

(68) "United States Environmental Protection Agency" or "U.S. EPA" means the administrator of the U.S. EPA or the administrator's duly authorized representative. The department authorizes the U.S. EPA to assist the department in implementing this rule by carrying out the functions set forth for the U.S. EPA in this rule.

(69) "Utilization" means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75\* if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75\* for the year, or shall be based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75\* for the year.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-2*)

### 326 IAC 10-4-3 Retired unit exemption

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. (a) This section applies to any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired.

(b) Any NO<sub>x</sub> budget unit, other than a NO<sub>x</sub> budget opt-in source, that is permanently retired shall be exempt from the NO<sub>x</sub> budget trading program, except for the provisions of this section and sections 1, 2, 5, and 9 through 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO<sub>x</sub> authorized account representative, authorized in accordance with section 6 of this rule, shall submit a notice to the department and the U.S. EPA. The notice shall state, in a format prescribed by the department, that the unit:

(1) is permanently retired; and

(2) shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule.

(3) If the unit is located at a source that is required, or but for this exemption would be required, to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule for the unit not less than eighteen (18) months prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(4) If the unit is located at a source that is required, or but for this exemption would be required, to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(5) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative 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 the requirements arise, or must be complied with, after the exemption takes effect.

(6) A unit that is exempt under this section is not eligible to be a NO<sub>x</sub> budget opt-in unit under section 13 of this rule.

(7) The owners and operators shall retain records at the source demonstrating that the unit is permanently retired for a period of five (5) years. The five (5) year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the following dates:

(A) The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> budget permit application under subdivision (3) or (4).

(B) The date on which the NO<sub>x</sub> authorized account representative is required under subdivision (3) or (4) to submit a NO<sub>x</sub> budget permit application.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H\*, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-3*)

#### 326 IAC 10-4-4 Standard requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 4. (a) The owners, operators, and NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source shall comply with the following permit requirements:

(1) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub> budget unit required to have a federally enforceable permit at the source shall submit the following:

(A) A complete NO<sub>x</sub> budget permit application under section 7(c) of this rule to the department in accordance with the deadlines specified in section 7(b) of this rule.

(B) Any supplemental information that the department determines is necessary in order to review a NO<sub>x</sub> budget permit application in a timely manner and issue or deny a NO<sub>x</sub> budget permit.

(2) The owners and operators of each NO<sub>x</sub> budget source required to have a federally enforceable permit and each NO<sub>x</sub>

budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> budget permit and operate the unit in compliance with the NO<sub>x</sub> budget permit.

(3) 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, nor to have a NO<sub>x</sub> budget permit, under section 7 of this rule for the NO<sub>x</sub> budget source.

(b) 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 following monitoring requirements:

(1) The monitoring requirements of 40 CFR 75\* and section 12 of this rule.

(2) The emissions measurements recorded and reported in accordance with 40 CFR 75\* and section 12 of this rule shall be used to determine compliance by the unit with the NO<sub>x</sub> budget emissions limitation under subsection (c).

(c) The owners and operators of each NO<sub>x</sub> budget source shall comply with the following NO<sub>x</sub> requirements:

(1) The owners and operators of each NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under section 10(i) of this rule, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the ozone control period from the unit, as determined in accordance with 40 CFR 75\* and section 12 of this rule, plus any amount necessary to account for actual utilization under section 9(e) of this rule for the ozone control period.

(2) 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 the Clean Air Act (CAA) and this rule.

(3) A NO<sub>x</sub> budget unit shall be subject to the requirements under subdivision (1) starting on the later of:

(A) May 31, 2004; or

(B) the date on which the unit commences operation.

(4) NO<sub>x</sub> allowances shall be held in, deducted from, or transferred among NO<sub>x</sub> allowance tracking system accounts in accordance with sections 9 through 11, 13, and 14 of this rule.

(5) A NO<sub>x</sub> allowance shall not be deducted, in order to comply with the requirements under subdivision (1), for an ozone control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.

(6) A NO<sub>x</sub> allowance allocated under the NO<sub>x</sub> budget trading program is a limited authorization to emit one (1) 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 section 3 of this rule and no provision of law shall be construed to limit the authority of the U.S. EPA or the department to terminate or limit the authorization.

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

(8) Upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, 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.

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

(1) Surrender the NO<sub>x</sub> allowances required for deduction under section 10(k)(5) of this rule.

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under section 10(k)(7) of this rule.

(e) The owners and operators of each NO<sub>x</sub> budget source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the NO<sub>x</sub> budget source and each NO<sub>x</sub> budget unit at the source shall keep on site at the source each of the following documents for a period of five (5) years. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the department or the U.S. EPA:

(A) The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 6(h) of this rule. The certificate and documents shall be retained on site at the source beyond the five (5) year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO<sub>x</sub> authorized account representative.

(B) All emissions monitoring information, in accordance with 40 CFR 75\* and section 12 of this rule, provided that to the extent that 40 CFR 75\* and section 12 of this rule provides for a three (3) year period for record keeping, the three (3) year period shall apply.

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

(D) 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.

(2) 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 section 8, 12, or 13 of this rule.

(f) The owners and operators of each NO<sub>x</sub> budget source shall be liable as follows:

(1) 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 section 3 of this rule shall be subject to enforcement pursuant to applicable state or federal law.

(2) 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 the applicable state or federal law.

(3) 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.

(4) 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.

(5) 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 the source and of the NO<sub>x</sub> budget units at the source.

(6) 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 the unit. Except with regard to the requirements applicable to units with a common stack under 40 CFR 75\* and section 12 of this rule, the owners and operators and the NO<sub>x</sub> authorized account representative of one (1) 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.

(g) 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 section 3 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 CAA.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-4*)

#### 326 IAC 10-4-5 Computation of time

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 5. (a) 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.

(b) 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.

(c) Unless otherwise stated, if the final day of any time period except the ozone control period as defined under section 2(54) of this rule, under the NO<sub>x</sub> budget trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. (*Air Pollution Control Board; 326 IAC 10-4-5*)

#### 326 IAC 10-4-6 NO<sub>x</sub> authorized account representative for NO<sub>x</sub> budget sources

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Except as provided under subsection (f), each NO<sub>x</sub> budget source, including all NO<sub>x</sub> budget units at the source, shall have one (1) and only one (1) 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.

(b) 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.

(c) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), 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 the 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 department, the U.S. EPA, or a court regarding the source or unit.

(d) A NO<sub>x</sub> budget permit shall not be issued, and a NO<sub>x</sub> allowance tracking system account shall not be established for a NO<sub>x</sub> budget unit at a source, until the U.S. EPA has received a complete account certificate of representation under subsection (h) for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> budget units at the source.

(e) The following shall apply to a submission made under the NO<sub>x</sub> budget trading program:

(1) 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 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."

(2) The department and the U.S. EPA shall accept or act on a submission made on behalf of the owner or operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a NO<sub>x</sub> budget source chose to designate an alternate NO<sub>x</sub> authorized account representative:

(1) An account certificate of representation may designate one (1) and only one (1) 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 U.S. EPA of a complete account certificate of representation under subsection (h), 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 this subsection, subsections (a), (g), and (h), and section 10(c) through 10(e) of this rule, whenever the term NO<sub>x</sub> authorized account representative is used in this rule, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative.

(g) The following shall apply when changing the NO<sub>x</sub> authorized account representative, the alternate NO<sub>x</sub> authorized account representative or there are 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 U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the 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 U.S. EPA 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 U.S. EPA of a superseding complete account certificate of representation under subsection (h). Notwithstanding the 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 U.S. EPA 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 shall be made as follows:

(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, the new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO<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 department or the U.S. EPA, as if the new owner or operator were included in the list.

(B) Within thirty (30) days following any change in the owners and operators of a NO<sub>x</sub> budget source or a NO<sub>x</sub> budget unit, including the addition of a new owner or operator, the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

(h) 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 U.S. EPA:

(1) 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.

(2) 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.

(3) 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.

(4) The following certification statement by the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as the NO<sub>x</sub> authorized account representative or 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 owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the U.S. EPA, or a court regarding the source or unit."

(5) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(i) The following shall apply to an objection concerning the NO<sub>x</sub> authorized account representative:

(1) Once a complete account certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA 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 department or the U.S. EPA under the NO<sub>x</sub> budget trading program.

(3) Neither the department nor the U.S. EPA 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.

*(Air Pollution Control Board; 326 IAC 10-4-6)*

### **326 IAC 10-4-7 Permit requirements**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15-5; IC 13-17

Sec. 7. (a) For each NO<sub>x</sub> budget source required to have a federally enforceable permit, the permit shall include a NO<sub>x</sub> budget permit administered by the department as follows:

(1) For NO<sub>x</sub> budget sources required to have a Part 70 operating permit under 326 IAC 2-7, the NO<sub>x</sub> budget portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section or section 13 of this rule.

(2) For NO<sub>x</sub> budget sources required to have a FESOP permit, the NO<sub>x</sub> budget portion of the FESOP permit shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section or section 13 of this rule.

(3) 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.

(b) The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> budget source required to have a federally enforceable permit shall submit to the department a complete NO<sub>x</sub> budget permit application under subsection (c) as follows:

(1) For NO<sub>x</sub> budget sources required to have a Part 70 operating permit under 326 IAC 2-7 the following shall apply:

(A) For any source, with one (1) or more NO<sub>x</sub> budget units that commence operation before January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering the NO<sub>x</sub> budget units to the department within the applicable permit application review time frames in 326 IAC 2-1.1-8 and 326 IAC 2-7, assuming the maximum review time is required, such that the source submits the application before May 31, 2004.

(B) For any source, with one (1) or more NO<sub>x</sub> budget unit that commences operation on or after January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget unit to the department within the applicable permit application review time frames in 326 IAC 2-1.1-8 and 326 IAC 2-7, assuming the maximum review time is required, such that the source submits the application before the later of:

(i) May 31, 2004; or

(ii) the date on which the NO<sub>x</sub> budget unit commences operation.

(C) For permit renewal, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with 326 IAC 2-7-4(a)(1)(D).

(2) For NO<sub>x</sub> budget sources required to have a FESOP permit under 326 IAC 2-8 the following shall apply:

(A) For any source, with one (1) or more NO<sub>x</sub> budget units that commence operation before January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget units to the department at least two hundred seventy (270) days before May 31, 2004.

(B) For any source, with one (1) or more NO<sub>x</sub> budget units that commences operation on or after January 1, 2001, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) covering each NO<sub>x</sub> budget unit to the department at least two hundred seventy (270) days before the later of:

(i) May 31, 2004; or

(ii) the date on which the NO<sub>x</sub> budget unit commences operation.

(C) For permit renewal, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> budget permit application under subsection (c) for the NO<sub>x</sub> budget source covering the NO<sub>x</sub> budget units at the source in accordance with 326 IAC 2-8-3(h).

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), 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 department:

(1) Identification of the NO<sub>x</sub> budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable.

(2) 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 section 1(a) or 13 of this rule.

(3) The standard requirements under section 4 of this rule.

(4) 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:

(A) "I certify that each unit for which this permit application is submitted under 326 IAC 10-4-13 is not a NO<sub>x</sub> budget unit under 326 IAC 10-4-2(a) and is not covered by a retired unit exemption under 326 IAC 10-4-3 that is in effect."

(B) 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 326 IAC 10-4-13 is currently operating, as that term is defined under 326 IAC 10-4-1(45)."

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, 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 department, all elements required for a complete NO<sub>x</sub> budget permit application under subsection (c) as approved or adjusted by the department.

(e) Each NO<sub>x</sub> budget permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under section 10, 11, or 13 of this rule, 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.

(f) Notwithstanding IC 13-15-5, the initial NO<sub>x</sub> budget permit covering a NO<sub>x</sub> budget unit for which a complete NO<sub>x</sub> budget permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) Except as provided in subsection (e), the department shall revise the NO<sub>x</sub> budget permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a NO<sub>x</sub> budget source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a NO<sub>x</sub> budget source with a FESOP permit. (*Air Pollution Control Board; 326 IAC 10-4-7*)

### **326 IAC 10-4-8 Compliance certification**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 8. (a)** For each ozone control period in which one (1) 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 department and the U.S. EPA by November 30 of that year, a compliance certification report for each source covering all NO<sub>x</sub> budget units.

(b) The NO<sub>x</sub> authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the U.S. EPA, concerning each NO<sub>x</sub> budget unit at the source and subject to the NO<sub>x</sub> budget emissions limitation for the ozone control period covered by the report:

(1) Identification of each NO<sub>x</sub> budget unit.

(2) At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub> allowances that are to be deducted from each unit's compliance account under section 10(k) of this rule for the ozone control period.

(3) 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 40 CFR 75, Subpart H\* and section 12 of this rule, the percentage of allowances that is to be deducted from each unit's compliance account under section 10(k)(8) of this rule.

(4) The compliance certification under subsection (c).

(c) In the compliance certification report under subsection (a), 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 the following:

(1) Whether the unit was operated in compliance with the NO<sub>x</sub> budget emissions limitation.

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO<sub>x</sub> emissions to the unit, in accordance with 40 CFR 75, Subpart H\* and section 12 of this rule.

(3) 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 40 CFR 75, Subpart H\* and section 12 of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made.

(4) Whether the facts that form the basis for certification under 40 CFR 75, Subpart H\* and section 12 of this rule 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 40 CFR 75, Subpart H\* and section 12 of this rule, if any, has

changed.

(5) If a change is required to be reported under subdivision (4), the NO<sub>x</sub> authorized account representative shall specify the following:

(A) The nature of the change.

(B) The reason for the change.

(C) When the change occurred.

(D) 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.

(d) The department or the U.S. EPA 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.

(e) The U.S. EPA may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-8*)

#### 326 IAC 10-4-9 NO<sub>x</sub> allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department under subsection (c) for an ozone control period shall equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO<sub>x</sub> emissions that are available for allocation as NO<sub>x</sub> allowances under this section are as follows:

(1) Forty-three thousand six hundred fifty-four (43,654) tons for electricity generating units in 2004 through 2006 and forty-five thousand thirty-three (45,033) tons thereafter.

(2) Nine thousand eight hundred fifty-five (9,855) tons for large affected units.

The total number of NO<sub>x</sub> allowances shall be adjusted, as needed, to account for units exempted under section 1(b) of this rule.

(b) The department shall allocate NO<sub>x</sub> allowances to NO<sub>x</sub> budget units according to the following schedule:

(1) A three (3) year allocation that is three (3) years in advance of the ozone control period that the allowances may be used with an initial three (3) year allocation shall be as follows:

(A) By June 30, 2001, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By December 31, 2003, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By December 31, 2006, the department shall submit to the U.S. EPA the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, and 2012.

(D) By December 31, 2009, and by December 31 every three (3) years thereafter, the department shall submit to the U.S. EPA, the NO<sub>x</sub> allowance allocations, in accordance with subsection (c), for the ozone control periods four (4) years, five (5) years, and six (6) years after the year of the allowance allocation.

(2) If the department fails to submit to the U.S. EPA the NO<sub>x</sub> allowance allocations in accordance with this subdivision, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding ozone control period.

(c) The heat input, in million British thermal units (mmBtu), used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> budget unit under section 1 of this rule shall be as follows:

(1) For a NO<sub>x</sub> allowance allocation under subsection (b)(1)(A), the average of the two (2) highest amounts of the unit's heat

input for the ozone control periods in 1995 through 1999.

(2) For a NO<sub>x</sub> allowance allocation under subsection (b)(1)(B) through (b)(1)(D), the unit's average of the two (2) highest heat inputs for the ozone control period in the years that are one (1), two (2), three (3), four (4), and five (5) years before the year when the NO<sub>x</sub> allocation is being calculated.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75\* if the NO<sub>x</sub> budget unit was otherwise subject to the requirements of 40 CFR 75\* for the year, or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75\* for the year. The owner or operator of a NO<sub>x</sub> budget unit shall submit heat input data within thirty (30) days if requested by the department.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO<sub>x</sub> budget units that have been in operation for two (2) years prior to the year in which allocations are made a total number of NO<sub>x</sub> allowances equal to the amount under subsection (a)(1), in accordance with the following procedures:

(1) The department shall allocate NO<sub>x</sub> allowances to each electricity generating unit in an amount equaling fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent, multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all electricity generating unit for an ozone control period under subdivision (1) does not equal the amount under subsection (a)(1), the department shall adjust the total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units for the ozone control period under subdivision (1) so that the total number of NO<sub>x</sub> allowances allocated equals the amount under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(1); and

(B) dividing by the total number of NO<sub>x</sub> allowances allocated under subdivision (1), and rounding to the nearest whole NO<sub>x</sub> allowance, as appropriate.

(3) The department shall allocate NO<sub>x</sub> allowances to each large affected unit in an amount equaling one (1) of the following:

(A) For units operating each year between 1995 and 1999, seventeen-hundredths (0.17) pound per million British thermal units or the baseline emission rate, whichever is more stringent, multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO<sub>x</sub> allowance, as appropriate. The baseline emission rate shall be the average ozone control period emission rate for the years 1995 through 1999.

(B) For units that did not operate each year between 1995 and 1999, seventeen-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent.

(4) If the initial total number of NO<sub>x</sub> allowances allocated to all large affected units for an ozone control period under subdivision (3) does not equal the amount under subsection (a)(2), the department shall adjust the total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> budget units for the ozone control period under subdivision (3) so that the total number of NO<sub>x</sub> allowances allocated equals the amount under subsection (a)(2). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(2); and

(B) dividing by the total number of NO<sub>x</sub> allowances allocated under subdivision (3), and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

For units having emission limitation only in tons on an annual basis, the allowable emission rate in pounds per million Btu (lb/mmBtu) shall be determined by dividing the emission limitation by eight thousand seven hundred sixty (8,760) hours, multiplying by two thousand (2,000) pounds and dividing the result by unit's permitted heat input rate.

(e) For new NO<sub>x</sub> budget units that commenced operation, or are projected to commence operation, on or after May 1, 2000, or for projects that reduce NO<sub>x</sub> emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during an ozone control period beginning May 1, 2004, the department shall allocate NO<sub>x</sub> allowances in accordance with the following procedures:

(1) The department shall establish one (1) allocation set-aside for new NO<sub>x</sub> budget units and one (1) allocation set-aside for energy efficiency and renewable energy projects for each ozone control period as follows:

(A) The new unit allocation set-aside shall be allocated NO<sub>x</sub> allowances equal to two thousand four hundred nine (2,409) tons in 2004, 2005, and 2006, and one thousand thirty (1,030) tons thereafter.

(B) The energy efficiency and renewable energy allocation set-aside shall be allocated NO<sub>x</sub> allowances equal to one thousand one hundred forty-one (1,141) tons.

(2) The NO<sub>x</sub> authorized account representative of a new NO<sub>x</sub> budget unit or a general account may submit to the department a request, in writing or in a format specified by the department, for NO<sub>x</sub> allowances as follows:

(A) For a new NO<sub>x</sub> budget unit, for one (1) ozone control period under subsection (b), during which the NO<sub>x</sub> budget unit commenced, or is projected to commence, operation. The NO<sub>x</sub> authorized account representative shall reapply each year

until the NO<sub>x</sub> budget unit is eligible to use NO<sub>x</sub> allowances allocated under subsection (d).

(B) For energy efficiency or renewable energy projects, project sponsors may request the reservation of NO<sub>x</sub> allowances, for one (1) control period in which the project is implemented. The NO<sub>x</sub> authorized account representative may reapply each year, not to exceed five (5) ozone control periods. Requests for allowances may be made only for projects implemented within two (2) years of the beginning of the first ozone control period for which allowances are requested. Projects must equal at least one (1) ton of NO<sub>x</sub> emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO<sub>x</sub> emissions.

The NO<sub>x</sub> allowance allocation request must be submitted by December 1 of the year prior to the first ozone control period for which the NO<sub>x</sub> allowance allocation is requested and for new NO<sub>x</sub> budget units, after the date on which the department issues a permit to construct the NO<sub>x</sub> budget unit and the engineering division, Indiana utility regulatory commission has received the required notification prior to unit startup.

(3) In a NO<sub>x</sub> allowance allocation request under this subsection, the NO<sub>x</sub> authorized account representative may request for an ozone control period, NO<sub>x</sub> allowances in an amount that does not exceed the following:

(A) For an electricity generating unit:

(i) fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent;

(ii) multiplied by the NO<sub>x</sub> budget unit's maximum design heat input, in million British thermal units per hour; and

(iii) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(B) For a large affected unit:

(i) seventeen-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent;

(ii) multiplied by the NO<sub>x</sub> budget unit's maximum design heat input, in million British thermal units per hour; and

(iii) multiplied by the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate.

(C) For energy efficiency or renewable energy projects:

(i) Projects in section 2(17)(A) and 2(17)(B) of this rule and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during an ozone season and the following formula:

$$\text{Allowances} = (\text{kWS} * 0.0015) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone season by the project.

(ii) Projects in section 2(17)(A) and 2(17)(B) of this rule and that are sponsored by NO<sub>x</sub> allowance account holders that own or operate units subject to the emission limitations of this rule will be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{kWS} * 0.000375) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone season by the project.

(iii) Projects in section 2(17)(C) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone season and according to the following formula:

$$\text{Allowances} = (\text{kWG} * 0.0015) / 2000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of kilowatt hours of electricity generated during an ozone season by the project.

(iii) Projects in sections 2(17)(D) and 2(17)(E) of this rule receive allowances based upon the difference in emitted NO<sub>x</sub> per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

$$\text{Allowances} = [(\text{Et1} - \text{Et2}) * \text{h}] * 0.25$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = The emission rate in pounds per megawatt hour of NO<sub>x</sub> of the unit before improvement or replacement.

**Et<sub>2</sub>** = The emission rate in pounds per megawatt hour of NO<sub>x</sub> of the unit after improvement or replacement.

**h** = The number of hours in operation during the ozone season.

Allowances will be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department will consult the Indiana department of commerce concerning verification and certification.

(4) The department shall review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation by December 1 of each year as follows:

(A) Upon receipt of the NO<sub>x</sub> allowance allocation request, the department shall determine whether, and shall make any necessary adjustments to the request to ensure that, for electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(A), for large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(B), and for energy efficiency and renewable energy projects the number of allowances specified are consistent with the requirements of subdivision (3)(C).

(B) If the remaining allocation set-aside for the ozone control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO<sub>x</sub> allowances requested, as adjusted under clause (A), to the NO<sub>x</sub> budget unit. Any unused allowances shall be added to the new source set-aside for distribution to new units.

(C) If the allocation set-aside for the ozone control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances less than the number requested, as adjusted under clause (A), the department shall allocate the remaining allocation set-aside to the NO<sub>x</sub> budget units on a pro rata basis.

(D) After a new budget unit has operated in one (1) control period it becomes an existing budget unit and the department will allocate allowances for the control period commencing three (3) years in the future according to subsections (b) and (d). The unit will continue to receive allowances from the new unit set-aside according to subdivision (3) until it is eligible to use allowances allocated under subsection (d).

Within sixty (60) days of receipt of a NO<sub>x</sub> allowance allocation request, the department shall take appropriate action under subdivision (4) and notify the NO<sub>x</sub> authorized account representative that submitted the request and the U.S. EPA of the number of NO<sub>x</sub> allowances allocated for the ozone control period to the NO<sub>x</sub> budget unit or energy efficiency or renewable energy projects.

(f) For a new NO<sub>x</sub> budget unit that is allocated NO<sub>x</sub> allowances under subsection (e) for an ozone control period, the U.S. EPA will deduct NO<sub>x</sub> allowances under section 10(k)(1) or 10(k)(8) of this rule to account for the actual utilization of the unit during the ozone control period. The U.S. EPA will 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 (0) if the number calculated is less than zero (0):

(1) NO<sub>x</sub> allowances deducted for actual utilization for electricity generating units = (Unit's NO<sub>x</sub> allowances allocated for ozone control period) - (Unit's actual ozone control period utilization × fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate, whichever is more stringent).

(2) NO<sub>x</sub> allowances deducted for actual utilization for large affected units = (Unit's NO<sub>x</sub> allowances allocated for ozone control period) - (Unit's actual ozone control period utilization × seventeen-hundredths (0.17) pound per million British thermal units or the allowable emission rate, whichever is more stringent), where:

(A) "Unit's NO<sub>x</sub> allowances allocated for ozone control period" is the number of NO<sub>x</sub> allowances allocated to the unit for the ozone control period under subsection (e)(2); and

(B) "Unit's actual ozone control period utilization" is the utilization, in million British thermal units, as defined in section 2 of this rule, of the unit during the ozone control period.

(3) Any allowances remaining in the account shall be returned to the new source set-aside.

(g) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for an ozone control period, the U.S. EPA will notify the department whether any NO<sub>x</sub> allowances remain in the allocation set-asides for the ozone control period. Any NO<sub>x</sub> allowances not distributed from the allocation set-asides shall be returned to the new unit allocation set-aside for use in the next year's allocation.

\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana

46204. (Air Pollution Control Board; 326 IAC 10-4-9)

**326 IAC 10-4-10 NO<sub>x</sub> allowance tracking system**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 10. (a)** The U.S. EPA will establish compliance and overdraft accounts consistent with subsection (c). NO<sub>x</sub> allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:

- (1) Allocations of NO<sub>x</sub> allowances pursuant to section 9 or 13(i) of this rule.
- (2) Deductions or transfers of NO<sub>x</sub> allowances pursuant to one (1) of the following:
  - (A) Section 8(d), 8(e), 11, 13, or 14 of this rule.
  - (B) Subsection (j), (k), or (m).

**(b)** The U.S. EPA will establish, upon request, a general account for any person consistent with subsection (d). Transfers of allowances pursuant to section 11 of this rule shall be recorded in the general account in accordance with this section.

**(c)** Upon receipt of a complete account certificate of representation under section 6(h) of this rule, the U.S. EPA will establish the following:

- (1) A compliance account for each NO<sub>x</sub> budget unit for which the account certificate of representation was submitted.
- (2) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO<sub>x</sub> budget units.

**(d)** Any person may apply to open a general account for the purpose of holding and transferring allowances. The establishment of a general account shall be subject to the following:

**(1)** A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

**(A)** The following information concerning the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative:

- (i) Name.
- (ii) Mailing address.
- (iii) E-mail address, if any.
- (iv) Telephone number.
- (v) Facsimile transmission number, if any.

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

**(C)** 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.

**(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 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 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 persons and that each person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account."

**(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.

**(F)** Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA will be under any obligation to review or evaluate the sufficiency of the documents, if submitted.

**(2)** Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

**(A)** The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

**(B)** 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 the person. Any person having an ownership interest with respect to NO<sub>x</sub> allowances 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 U.S. EPA or a court regarding the general account.

(C) 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 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."

(D) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (C).

(3) The following shall apply to the designation of a NO<sub>x</sub> authorized account representative, alternate NO<sub>x</sub> authorized account representative, or persons having an ownership interest with respect to NO<sub>x</sub> allowances in the general account:

(A) An application for a general account may designate the following:

(i) One (1) and only one (1) NO<sub>x</sub> authorized account representative.

(ii) One (1) and only one (1) 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.

(B) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), any representation, action, inaction, or submission by any alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO<sub>x</sub> authorized account representative.

(C) The NO<sub>x</sub> authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the 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 U.S. EPA 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.

(D) The alternate NO<sub>x</sub> authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the 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 U.S. EPA 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.

(E) 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 persons having an ownership interest with respect to the NO<sub>x</sub> allowances in the account certificate of representation, the 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 U.S. EPA, as if the new person were included in the list.

(F) Within thirty (30) days following any change in the persons having an ownership interest with respect to NO<sub>x</sub> allowances in the general account, including the addition of persons, the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO<sub>x</sub> allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (3)(C) through (3)(F), no objection or other communication submitted to the U.S. EPA 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 U.S. EPA under the NO<sub>x</sub> budget trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

(e) The U.S. EPA will assign a unique identifying number to each account established under subsection (c) or (d).

(f) Following the establishment of a NO<sub>x</sub> allowance tracking system account, all submissions to the U.S. EPA 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. The U.S. EPA will assign a unique identifying number to each NO<sub>x</sub> authorized account representative.

(g) The U.S. EPA will record the NO<sub>x</sub> allowances for 2004 in the NO<sub>x</sub> budget units' compliance accounts and the allocation set-asides, as allocated under section 9 of this rule. The U.S. EPA will also record the NO<sub>x</sub> allowances allocated under section 13(i)(1) of this rule for each NO<sub>x</sub> budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO<sub>x</sub> budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA will record NO<sub>x</sub> allowances, as allocated to the unit under section 9 or 13(i)(2) of this rule, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the U.S. EPA will also record NO<sub>x</sub> allowances, as allocated under section 9 of this rule, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(i) When allocating NO<sub>x</sub> allowances to and recording them in an account, the U.S. EPA will 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.

(j) The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> budget emissions limitation for an ozone control period in a given year only if the NO<sub>x</sub> allowances:

(1) were allocated for an ozone control period in a prior year or the same year; and

(2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO<sub>x</sub> allowance transfer deadline for that ozone control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO<sub>x</sub> allowance transfer deadline for that ozone control period.

(k) The following shall apply to deductions for purposes of compliance with a unit's allocations:

(1) Following the recordation, in accordance with section 11(b) or 11(c) of this rule, of NO<sub>x</sub> allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO<sub>x</sub> allowance transfer deadline for an ozone control period, the U.S. EPA will deduct NO<sub>x</sub> allowances available under subsection (j) to cover the unit's NO<sub>x</sub> emissions, as determined in accordance with 40 CFR 75, Subpart H\*, or to account for actual utilization under section 9(e) of this rule, for the ozone control period:

(A) from the compliance account; and

(B) only if no more NO<sub>x</sub> allowances available under subsection (j) remain in the compliance account, from the overdraft account.

In deducting allowances for units at the source from the overdraft account, the U.S. EPA will begin with the unit having the compliance account with the lowest NO<sub>x</sub> allowance tracking system account number and end with the unit having the compliance account with the highest NO<sub>x</sub> allowance tracking system account number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA will deduct NO<sub>x</sub> allowances first under subdivision (1)(A) and then under subdivision (1)(B) until:

(A) the number of NO<sub>x</sub> allowances deducted for the ozone control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with 40 CFR 75, Subpart H\*, from the unit for the ozone 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 section 9(e) of this rule for the ozone control period; or

(B) no more NO<sub>x</sub> allowances available under subsection (j) remain in the respective account.

(3) 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 this section. The identification shall be made in the compliance certification report submitted in accordance with section 8(a) through 8(c) of this rule.

(4) The U.S. EPA will deduct NO<sub>x</sub> allowances for an ozone 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 subdivision (3), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Those NO<sub>x</sub> allowances that were allocated for the ozone control period to the unit under section 9 or 13 of this rule.

(B) Those NO<sub>x</sub> allowances that were allocated for the ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(C) Those NO<sub>x</sub> allowances that were allocated for a prior ozone control period to the unit under section 9 or 13 of this rule.

(D) Those NO<sub>x</sub> allowances that were allocated for a prior ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(5) After making the deductions for compliance under subdivisions (1) and (2), the U.S. EPA will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for an ozone control period after the ozone control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(6) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA will deduct the required number of NO<sub>x</sub> allowances, regardless of the ozone control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(7) Any allowance deduction required under subdivision (5) 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 CAA or applicable state law. The following guidelines shall be followed in assessing fines, penalties, or other obligations:

(A) For purposes of determining the number of days of violation, if a NO<sub>x</sub> budget unit has excess emissions for an ozone control period, each day in the ozone control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(B) Each ton of excess emissions is a separate violation.

(8) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with 40 CFR 75, Subpart H\*, the following shall apply:

(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 unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for an ozone control period. The identification shall be made in the compliance certification report submitted in accordance with section 8(a) through 8(c) of this rule.

(B) Notwithstanding subdivision (2)(A), the U.S. EPA will deduct NO<sub>x</sub> allowances for each unit, in accordance with subdivision (1), until the number of NO<sub>x</sub> allowances deducted equals either of the following:

(i) The unit's identified percentage of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with 40 CFR 75, Subpart H\*, from the common stack for the ozone control period for which compliance is being determined.

(ii) If no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual utilization under section 9(e) of this rule for the ozone control period.

(9) The U.S. EPA will record in the appropriate compliance account or overdraft account all deductions from an account pursuant to this section.

(l) The U.S. EPA may at its own discretion and on its own motion correct any error in any NO<sub>x</sub> allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA will notify the NO<sub>x</sub> authorized account representative for the account.

(m) The NO<sub>x</sub> authorized account representative of a general account may instruct the U.S. EPA 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 recordation under section 11(a) of this rule, an allowance transfer of all NO<sub>x</sub> allowances in the account to one (1) or more other NO<sub>x</sub> allowance tracking system accounts.

(n) If a general account shows no activity for a period of one (1) year or more and does not contain any NO<sub>x</sub> allowances, the U.S. EPA may notify the NO<sub>x</sub> authorized account representative for the account that the account shall be closed and deleted from the NO<sub>x</sub> allowance tracking system following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) business day period unless before the end of the twenty (20) business day period the U.S. EPA receives a correctly submitted transfer of NO<sub>x</sub> allowances into the account under section 11(a) of this rule or a statement submitted by the NO<sub>x</sub> authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-10*)

### **326 IAC 10-4-11 NO<sub>x</sub> allowance transfers**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 11. (a)** The NO<sub>x</sub> authorized account representatives seeking recordation of a NO<sub>x</sub> allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the NO<sub>x</sub> allowance transfer shall include the following elements in a format specified by the U.S. EPA:

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

(b) Within five (5) business days of receiving a NO<sub>x</sub> allowance transfer, the U.S. EPA will record a NO<sub>x</sub> allowance transfer by moving each NO<sub>x</sub> allowance from the transferor account to the transferee account as specified by the request, provided the following:

- (1) The transfer is correctly submitted under subsection (a).
- (2) The transferor account includes each NO<sub>x</sub> allowance identified by serial number in the transfer.
- (3) The transfer meets all other requirements of this section.

A NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for an ozone control period prior to, or the same as, the ozone control period to which the NO<sub>x</sub> allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO<sub>x</sub> allowance allocations in section 10(h) of this rule.

(c) Where a NO<sub>x</sub> allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record the transfer.

(d) The following notification requirements shall apply to NO<sub>x</sub> allowance transfers:

- (1) Within five (5) business days of recordation of a NO<sub>x</sub> allowance transfer under subsection (b), the U.S. EPA will notify each party to the transfer. Notice shall be given to the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts.
- (2) Within ten (10) business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts subject to the transfer of the following:
  - (A) A decision not to record the transfer.
  - (B) The reasons for nonrecordation.

(e) Nothing in this section shall preclude the submission of a NO<sub>x</sub> allowance transfer for recordation following notification of nonrecordation. (*Air Pollution Control Board; 326 IAC 10-4-11*)

### **326 IAC 10-4-12 NO<sub>x</sub> monitoring and reporting requirements**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 12. (a) 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 40 CFR 75, Subpart H\*. For purposes of complying with the requirements, the definitions in section 2 of this rule and 40 CFR 72.2\* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 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 (CEMS), respectively, as defined in section 2 of this rule.

(b) The owner or operator of each NO<sub>x</sub> budget unit and a 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 section 13 of this rule must meet the following requirements:

(1) Install all monitoring systems required under this subpart for monitoring NO<sub>x</sub> mass. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input, and flow, in accordance with 40 CFR 75.71\* and 40 CFR 75.72\*.

(2) Install all monitoring systems for monitoring heat input, if required under subsection (q) for developing NO<sub>x</sub> allowance allocations.

(3) Successfully complete all certification tests required under subsections (e) through (k) and meet all other provisions of this section and 40 CFR 75\* applicable to the monitoring systems under subdivisions (1) and (2).

(4) Record and report data from the monitoring systems under subdivisions (1) and (2).

(c) The owner or operator must meet the requirements of subsection (b)(1) through (b)(3) on or before the following dates and must record and report data on and after the following dates:

(1) NO<sub>x</sub> budget units for which the owner or operator intends to apply for early reduction credits under section 15(c) of this rule must comply with the requirements of this section by May 1 of the year prior to the year in which early reduction credits will be generated.

(2) Except for NO<sub>x</sub> budget units under subdivision (1), NO<sub>x</sub> budget units that commence operation before January 1, 2003, must comply with the requirements of this section by May 31, 2004.

(3) NO<sub>x</sub> budget units that commence operation on or after January 1, 2003, and that report on an annual basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) May 31, 2004.

(B) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for electricity generating units, ninety (90) days after the date that the unit commences commercial operation.

(4) NO<sub>x</sub> budget units that commence operation on or after January 1, 2003, and that report on a control season basis under subsection (o)(4) must comply with the requirements of this section by the later of the following dates:

(A) The earlier of:

(i) one hundred eighty (180) days after the date on which the unit commences operation; or

(ii) for electricity generating units, ninety (90) days after the date on which the unit commences commercial operation.

(B) If the applicable deadline under clause (A) does not occur during an ozone control period, May 1 immediately following the date determined in accordance with clause (A).

(5) For a NO<sub>x</sub> budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision (1), (2), or (3) or section 13 of this rule, compliance by the later of the following dates:

(A) Ninety (90) days after the date that emissions first exit to the atmosphere through the new stack or flue.

(B) If the unit reports on a control season basis under subsection (o)(4) and the applicable deadline under clause (A) does not occur during the ozone control period, May 1 immediately following the applicable deadline in clause (A).

(6) For a unit for which an application for a NO<sub>x</sub> budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under section 13 of this rule.

(d) The owner or operator of a NO<sub>x</sub> budget unit that misses the certification deadline under subsection (c)(1):

(1) is not eligible to apply for early reduction credits under section 15 of this rule; and

(2) becomes subject to the certification deadline under subsection (c)(2).

(e) The owner or operator of a NO<sub>x</sub> budget under subsection (c)(3) or (c)(4) must determine, record, and report NO<sub>x</sub> mass, heat input, if required for purposes of allocations, and any other values required to determine NO<sub>x</sub> mass, for example, NO<sub>x</sub> emission rate and heat input or NO<sub>x</sub> concentration and stack flow, using the provisions of 40 CFR 75.70(g)\*, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(f) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* 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 subsection (p).

(2) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* 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 the emissions in accordance with the applicable provisions of this rule and 40 CFR 75\*, except as provided for in 40 CFR 75.74\*.

(3) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall disrupt the CEMS, 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 75\*, except as provided for in 40 CFR 75.74\*.

(4) No owner or operator of a NO<sub>x</sub> budget unit or a non-NO<sub>x</sub> budget unit monitored under 40 CFR 75.72(b)(2)(ii)\* shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emission monitoring system under this section, except under one (1) of the following circumstances:

(A) During the period that the unit is covered by a retired unit exemption under section 3 of this rule.

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

(C) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subsection (h)(2).

(g) 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 75\*, except the following:

(1) If, prior to January 1, 1998, the U.S. EPA approved a petition under 40 CFR 75.17(a) or 40 CFR 75.17(b)\* for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66\* for an alternative to a requirement in 40 CFR 75.17\*, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the U.S. EPA under subsection (p)(1) to determine if the approval applies under the NO<sub>x</sub> budget trading program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR 75.72\*, or for any NO<sub>x</sub> concentration CEMS used under the provisions of 40 CFR 75.71(a)(2)\*, the owner or operator shall meet the requirements of subsection (h).

(h) 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, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19\* shall also meet the requirements of subsection (i) and the owner or operator of a unit that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E\* shall also meet the requirements of subsection (j). The owner or operator of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72\*, or that uses a NO<sub>x</sub> concentration CEMS under 40 CFR 75.71(a)(2)\* also shall comply with the following initial certification and recertification procedures:

(1) The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H\*, that includes the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20\*. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection (c). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no monitoring system was previously installed, initial certification according to 40 CFR 75.20\* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS that the U.S. EPA or the department determines significantly affects the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input or to meet the requirements of 40 CFR 75.21\* or 40 CFR 75, Appendix B\*, the owner or operator shall recertify the monitoring system according to 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 the U.S. EPA or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b)\*. Examples of changes that require recertification include replacement of the

analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Requirements for the certification approval process for initial certifications and recertification are as follows:

(A) The NO<sub>x</sub> authorized account representative shall submit to the appropriate U.S. EPA regional office and the department a written notice of the dates of certification in accordance with subsection (n).

(B) The NO<sub>x</sub> authorized account representative shall submit to the department a certification application for each CEMS required under 40 CFR 75, Subpart H\*. A complete certification application shall include the information specified in 40 CFR 75, Subpart H\*.

(C) Except for units using the low mass emission excepted methodology under 40 CFR 75.19\*, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3)\*. A provisionally certified monitor may be used under the NO<sub>x</sub> budget trading program for a period of time not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the CEMS or associated component thereof under clause (B). Data measured and recorded by the provisionally certified CEMS or associated component thereof, in accordance with the requirements of 40 CFR 75\*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue a notice within the one hundred twenty (120) day period, each CEMS that meets the applicable performance requirements of 40 CFR 75\* and is included in the certification application shall be deemed certified for use under the NO<sub>x</sub> budget trading program. The issuance of notices shall be as follows:

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75\*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) A certification application shall be considered complete when all of the applicable information required to be submitted under clause (B) has been received by the department. If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii).

(iii) If the certification application shows that any CEMS or associated component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under item (ii) has been met, the department shall issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified CEMS or associated component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subsection (i) for each CEMS or associated component thereof which is disapproved for initial certification.

(iv) The department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (m).

(i) If the department issues a notice of disapproval of a certification application under subsection (h)(3)(D)(iii) or a notice of disapproval of certification status under subsection (h)(3)(D)(iv), then the following shall apply:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i)\*:

(A) For units monitoring or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19\*:

- (i) the maximum potential NO<sub>x</sub> emission rate; and
- (ii) the maximum potential hourly heat input of the unit.

(B) For units monitoring or intending to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor:

- (i) the maximum potential concentration of NO<sub>x</sub>; and
- (ii) the maximum potential flow rate of the unit under 40 CFR 75, Appendix A, Section 2.1\*.

(2) The NO<sub>x</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subsection (h)(3)(A) and (h)(3)(C).

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(j) The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19\* shall meet the applicable general operating requirements of 40 CFR 75.10\*, the applicable requirements of 40 CFR 75.19\*, and the applicable certification requirements of subsections (e) through (i) and (k), 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:

(1) For units that are reporting on an annual basis under subsection (o)(4) that commenced operation:

(A) before its compliance deadline under subsection (c), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for department review; or

(B) after its compliance deadline under subsection (c), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for department review.

(2) For units that are reporting on an ozone control period basis under subsection (o)(4)(B)(ii) that:

(A) commenced operation before its compliance deadline under subsection (c) where the certification application is submitted:

(i) before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review; or

(ii) after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review;

(B) commences operation after its compliance deadline under subsection (c), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the department's review; or

(C) has not operated after its compliance deadline under subsection (c), where the certification application is submitted after May 1, but before October 1, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19\* until the completion of the period for the department's review.

(k) The NO<sub>x</sub> authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E\* shall apply to the department for certification prior to use of the system under the NO<sub>x</sub> trading program. The NO<sub>x</sub> authorized account representative shall apply for recertification following a replacement, modification, or change according to the procedures in subsection (h). The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subsection (h)(3) and 40 CFR 75.20(f)\*.

(l) Whenever any monitoring system fails to meet the quality assurance requirements of 40 CFR 75, Appendix B\*, data shall be substituted using the applicable procedures in:

(1) 40 CFR 75, Subpart D\*;

(2) 40 CFR 75, Appendix D\*; or

(3) 40 CFR 75, Appendix E\*.

(m) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or associated component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (e) through (k) or the applicable provisions of 40 CFR 75\*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of the system or associated component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the U.S. EPA or the department. By issuing the notice of disapproval, the department revokes prospectively the certification status of the



system or component. The data measured and recorded by the system or component 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. The owner or operator shall follow the initial certification or recertification procedures in subsections (e) through (k) for each disapproved system.

(n) The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> budget unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61\*, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the department.

(o) The NO<sub>x</sub> authorized account representative shall comply with all record keeping and reporting requirements in this subsection and with the requirements of section 6(e) of this rule as follows:

(1) 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 40 CFR 75, Subpart F\* or 40 CFR 75, Subpart G\* and that includes data and information required under this section or 40 CFR 75, Subpart H\* is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72\*, the submission must also be signed by the designated representative or the alternative designated representative.

(2) The owner or operator of a NO<sub>x</sub> budget unit shall comply with the following monitoring plan requirements:

(A) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62\*, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H\*.

(B) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62\*, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H\*.

(3) The NO<sub>x</sub> authorized account representative shall submit an application to the department within forty-five (45) days after completing all initial certification or recertification tests required under subsections (e) through (k), including the information required under 40 CFR 75, Subpart H\*.

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

(i) the units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(ii) the units commencing operation prior to May 31, 2004, that are not required to certify monitors by May 1 prior to the year in which early reduction credits are generated under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 31, 2004, the partial calendar quarter from May 31, 2004, through June 30, 2004. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 31, 2004; or

(iii) for a unit that commences operation after May 31, 2004, 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 do either the following:

(i) Meet all of the requirements of 40 CFR 75\* related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in clause (A)(i).

(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3)\* through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b)\*. The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with the following:

(AA) The units that elect to comply with the early reduction credit provisions under section 14 of this rule, the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification.

(BB) The units commencing operation prior to May 1, 2002, that are not required to certify monitors by May 1, 2001, under subsection (c)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter

from May 1, 2002, through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002.

(CC) For units that commence operation after May 1, 2002, during the ozone 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 commenced operation.

(DD) For units that commence operation after May 1, 2002, and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(EE) for units that commence operation after May 1, 2002, and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection (h)(3)(C) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(C) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75, Subpart H\* and 40 CFR 75.64\* and the following:

(i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR 75, Subpart H\* for each NO<sub>x</sub> budget unit, or group of units using a common stack, as well as information required in 40 CFR 75, Subpart G\*.

(ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR 75, Subpart H\* 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 department and the U.S. EPA a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state the following:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 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 monitoring plan and the substitute values do not systematically underestimate NO<sub>x</sub> emissions.

(iii) For a unit that is reporting on an ozone control period basis under this subdivision, the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under 40 CFR 75, Subpart D\* are calculated using only values from an ozone control period and do not systematically underestimate NO<sub>x</sub> emissions.

(p) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section.

(A) Application for an alternative to any requirement of this section is in accordance with this subsection only to the extent that the petition is approved by the U.S. EPA, in consultation with the department.

(B) Notwithstanding this subdivision, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72\*, the petition is governed by subdivision (2).

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section.

(A) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66\* to the department and the U.S. EPA 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 section is in accordance with this section only to the extent

the petition under this subsection is approved by both the department and the U.S. EPA.

(q) The following applies to the monitoring and reporting of NO<sub>x</sub> mass emissions:

(1) The owner or operator of a unit that elects to monitor and report 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 at the unit level using the procedures set forth in 40 CFR 75\* for any source that has source allocations based upon heat input.

(2) The owner or operator of a 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 at the unit level using the procedures set forth in 40 CFR 75\* for any source that is applying for early reduction credits under section 15(b) of this rule.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-12*)

### 326 IAC 10-4-13 Individual opt-ins

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 13. (a) A unit may qualify to become a NO<sub>x</sub> budget opt-in source under this section if the unit meets the following requirements:

(1) Is not a NO<sub>x</sub> budget unit under section 1 of this rule.

(2) Has all of its emissions vented to a stack.

(3) Is currently operating.

A unit that is a NO<sub>x</sub> budget unit, is covered by an exemption under section 1(b) of this rule or a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO<sub>x</sub> budget opt-in source.

(b) Except otherwise as provided in this rule, a NO<sub>x</sub> budget opt-in source shall be treated as a NO<sub>x</sub> budget unit for purposes of applying sections 1 through 12 and 14 of this rule.

(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 source, located at the same source as one (1) or more NO<sub>x</sub> budget units, shall have the same NO<sub>x</sub> authorized account representative as the NO<sub>x</sub> budget units.

(d) 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 subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:

(1) A complete NO<sub>x</sub> budget permit application under section 7(c) of this rule.

(2) A monitoring plan submitted in accordance with section 12 of this rule.

(3) A complete account certificate of representation under section 6(h) of this rule, if no NO<sub>x</sub> authorized account representative has been previously designated for the unit.

The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source shall submit a complete NO<sub>x</sub> budget permit application under section 7(c) of this rule to renew the NO<sub>x</sub> budget opt-in permit in accordance with section 7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.

(e) The department 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 under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:

(1) The department 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 under subsection (d). 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 section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under section 12 of this rule, the NO<sub>x</sub> emissions rate and the heat input of the unit shall be monitored and reported in accordance with section 12 of this rule for one (1) full ozone control period during which

monitoring system availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO<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 subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the ozone control period and the unit's baseline NO<sub>x</sub> emissions rate shall be calculated as the unit's total NO<sub>x</sub> mass emissions, in pounds, for the ozone control period divided by the unit's baseline heat rate.

(4) After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under subdivision (3), the department shall serve a draft NO<sub>x</sub> budget opt-in permit on the NO<sub>x</sub> authorized account representative of the unit.

(5) Within twenty (20) days after the issuance of the draft NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO<sub>x</sub> budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO<sub>x</sub> budget opt-in permit application.

(6) If the NO<sub>x</sub> authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO<sub>x</sub> budget opt-in permit in accordance with section 7(a) of this rule.

(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO<sub>x</sub> budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO<sub>x</sub> budget opt-in source under subsection (a), the department shall issue a draft denial of a NO<sub>x</sub> budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) 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 subsection (d) 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 must submit a new application for a NO<sub>x</sub> budget permit under subsection (d).

(9) The effective date of the initial NO<sub>x</sub> budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of the initial NO<sub>x</sub> budget opt-in permit by the department. The unit shall be a NO<sub>x</sub> budget opt-in source 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) The following shall apply to the content of a NO<sub>x</sub> budget opt-in permit:

(1) Each NO<sub>x</sub> budget opt-in permit, including any draft or proposed NO<sub>x</sub> budget opt-in permit, if applicable, shall contain all elements required for a complete NO<sub>x</sub> budget opt-in permit application under section 7(c) of this rule as approved or adjusted by the department.

(2) Each NO<sub>x</sub> budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 1 of this rule and, upon recordation by the U.S. EPA under this section and sections 10 and 11 of this rule, 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 source 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 source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO<sub>x</sub> budget trading program:

(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(2) Before a NO<sub>x</sub> budget opt-in source covered by a request under subdivision (1) 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 subdivision (6), the following conditions must be met:

(A) For the ozone control period immediately before the withdrawal is to be effective, the NO<sub>x</sub> authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO<sub>x</sub> budget opt-in source has excess emissions for the ozone control period immediately before the withdrawal is to be effective, the U.S. EPA will deduct or have deducted from 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 source is located, the full amount required under section 10(k)(5) through 10(k)(7) of this rule for the ozone control period.

(C) After the requirements for withdrawal under this subdivision and subdivision (1) are met, the U.S. EPA will deduct from 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 source is located, NO<sub>x</sub> allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO<sub>x</sub> allowances allocated to that source under subsection (i) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO<sub>x</sub> budget opt-in source'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 source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

(3) A NO<sub>x</sub> budget opt-in source 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 the NO<sub>x</sub> budget opt-in source was a NO<sub>x</sub> budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO<sub>x</sub> allowances required, the department shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in source of the acceptance of the withdrawal of the NO<sub>x</sub> budget opt-in source as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> budget opt-in source that the NO<sub>x</sub> budget opt-in source's request to withdraw is denied. If the NO<sub>x</sub> budget opt-in source's request to withdraw is denied, the NO<sub>x</sub> budget opt-in source shall remain subject to the requirements for a NO<sub>x</sub> budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO<sub>x</sub> budget permit covering the NO<sub>x</sub> budget opt-in source to terminate the NO<sub>x</sub> budget opt-in permit as of the effective date specified under subdivision (1). A NO<sub>x</sub> budget opt-in source shall continue to be a NO<sub>x</sub> budget opt-in source until the effective date of the termination.

(7) If the department denies the NO<sub>x</sub> budget opt-in source's request to withdraw, the NO<sub>x</sub> authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO<sub>x</sub> budget opt-in source withdraws from the NO<sub>x</sub> budget trading program and its NO<sub>x</sub> budget opt-in permit is terminated under this section, the NO<sub>x</sub> authorized account representative may not submit another application for a NO<sub>x</sub> budget opt-in permit under subsection (d) for the unit prior to the date that is four (4) years after the date on which the terminated NO<sub>x</sub> budget opt-in permit became effective.

(h) When a NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule, the NO<sub>x</sub> authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO<sub>x</sub> budget opt-in source's regulatory status, within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning a NO<sub>x</sub> budget opt-in source:

(1) When the NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule, the department shall revise the NO<sub>x</sub> budget opt-in source's NO<sub>x</sub> budget opt-in permit to meet the requirements of a NO<sub>x</sub> budget permit under section 7(d) and 7(e) of this rule as of an effective date that is the date on which the NO<sub>x</sub> budget opt-in source becomes a NO<sub>x</sub> budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO<sub>x</sub> budget unit under subdivision (1), 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 ozone control period as follows:

(A) Any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget unit, as a NO<sub>x</sub> budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO<sub>x</sub> budget opt-in permit was effective.

(B) If the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) is during an ozone 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 source, under subsection (i) for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(3) The NO<sub>x</sub> authorized account representative shall ensure that the compliance account of the NO<sub>x</sub> budget unit under subdivision (1), 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 subdivision (2). If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA will deduct the required number of NO<sub>x</sub> allowances, regardless of the ozone control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(4) For every ozone control period during which the NO<sub>x</sub> budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO<sub>x</sub> budget unit under subdivision (1) shall be treated, solely for the purposes of NO<sub>x</sub> allowance allocations under section 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) and shall be allocated NO<sub>x</sub> allowances under section 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO<sub>x</sub> budget permit revision under subdivision (1) is during an ozone control period, the following number of NO<sub>x</sub> allowances shall be allocated to the NO<sub>x</sub> budget unit. The number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub> budget unit under section 9(c) through 9(e) of this rule for the ozone

control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(5) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget opt-in source does not renew its NO<sub>x</sub> budget opt-in permit under subsection (d), the U.S. EPA will 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 source is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior ozone control period as any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> budget opt-in source under subsection (i) for any ozone control period after the last ozone 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 source is located includes the NO<sub>x</sub> allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the U.S. EPA will deduct the required number of NO<sub>x</sub> allowances, regardless of the ozone control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO<sub>x</sub> budget opt-in source's compliance account. If any NO<sub>x</sub> allowances remain in the compliance account after completion of the deduction and any deduction under section 10(j) and 10(k) of this rule, the U.S. EPA will close the NO<sub>x</sub> budget opt-in source's compliance account and will 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 source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

(i) The department shall allocate NO<sub>x</sub> allowances to a NO<sub>x</sub> budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO<sub>x</sub> budget opt-in permit is effective, the department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source and submit to the U.S. EPA the allocation for the ozone control period in accordance with subdivision (3).

(2) By no later than December 31, after the first ozone control period for which the NO<sub>x</sub> budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source, and submit to the U.S. EPA allocations for the next ozone control period, in accordance with subdivision (3).

(3) For each ozone control period for which the NO<sub>x</sub> budget opt-in source has an approved NO<sub>x</sub> budget opt-in permit, the NO<sub>x</sub> budget opt-in source shall be allocated NO<sub>x</sub> allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO<sub>x</sub> allowance allocations shall be the lesser of the following:

(i) The NO<sub>x</sub> budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO<sub>x</sub> budget opt-in source's heat input, as determined in accordance with section 12 of this rule, for the ozone control period in the year prior to the year of the ozone control period for which the NO<sub>x</sub> allocations are being calculated.

(B) The department shall allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> budget opt-in source in an amount equaling the heat input, in million British thermal units, determined under clause (A) multiplied by the lesser of the following:

(i) The NO<sub>x</sub> budget opt-in source's baseline NO<sub>x</sub> emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3).

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

\*Copies of the Code of Federal Regulations (CFR) and referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-13*)

#### 326 IAC 10-4-14 NO<sub>x</sub> allowance banking

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 14. (a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account as follows:

(1) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account unless and until the NO<sub>x</sub> allowance is deducted or transferred under:

(A) section 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or

**(B) subsection (b).**

(2) The U.S. EPA will 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 U.S. EPA has made all deductions for a given ozone control period from the compliance account or overdraft account pursuant to section 10(j) and 10(k) of this rule, 40 CFR 97\*, or a federal implementation plan.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO<sub>x</sub> allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO<sub>x</sub> allowances may be used for compliance in the ozone control period for the current year as follows:

(1) The U.S. EPA will determine the total number of banked NO<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked NO<sub>x</sub> allowance may be deducted for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA will determine the following ratio:

(i) One-tenth (0.10) multiplied by the sum of the trading program budget for the ozone control period.

(ii) Divided by the total number of banked NO<sub>x</sub> allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(B) The U.S. EPA will multiply the number of banked NO<sub>x</sub> allowances in each compliance account or overdraft account by the ratio determined under clause (A). 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 section 10(k) of this rule. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO<sub>x</sub> allowances are used to make a deduction, two (2) NO<sub>x</sub> allowances must be deducted for each deduction of one (1) NO<sub>x</sub> allowance required under section 10(k) of this rule.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-14*)

### **326 IAC 10-4-15 Compliance supplement pool**

**Authority:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

**Sec. 15. (a)** The department may allow sources required to implement NO<sub>x</sub> emission control measures by May 31, 2004, and subject to this rule, to demonstrate compliance in the 2004 and 2005 ozone seasons using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2005 ozone season.

(b) The department may distribute NO<sub>x</sub> allocations from the compliance supplement pool to NO<sub>x</sub> budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue credits to NO<sub>x</sub> budget units that implement emissions reductions beyond all applicable requirements during the ozone season in 2002 and 2003 according to the following provisions:

(A) The department shall complete the issuance process by no later than March 31 of the year after the control measures were implemented.

(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP), state law or rule, or be otherwise required by the Clean Air Act (CAA).

(C) The emissions reduction must be verified by the source as actually having occurred during an ozone season in 2002 and 2003.

(D) Each NO<sub>x</sub> budget unit for which the owner or operator requests any early reduction credits under this section shall

monitor NO<sub>x</sub> emissions in accordance with 40 CFR 75, Subpart H\* starting in the ozone control period prior to the ozone control period for which the early reduction credits are requested and for each ozone control period for which the early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the ozone control period prior to the ozone control period for which the early reduction credits are requested, and the unit must be in compliance with any applicable state or federal NO<sub>x</sub> emissions or emissions-related requirements during the ozone control period for which the early reduction credits are requested.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H\*.

(F) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> budget unit that meets the requirements of clauses (B) through (D) may submit to the department a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the ozone control period for 2002 and 2003. The request shall include the following:

(i) In the early reduction credit request, the NO<sub>x</sub> authorized account may request early reduction credits for the ozone control period in an amount equal to the unit's heat input for the ozone control period multiplied by the difference between the following:

(AA) The unit's actual average NO<sub>x</sub> emission rate in the ozone control period prior to the first ozone control period for which the early reduction credits are requested.

(BB) The unit's NO<sub>x</sub> emission rate for the ozone control period in which the early reductions occurred, divided by two thousand (2,000) pounds per ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO<sub>x</sub> emission rate reductions on which the request is based are made or a later date approved by the department.

(G) The department shall allocate NO<sub>x</sub> allowances from the compliance supplement pool, to NO<sub>x</sub> budget units meeting the requirements of this subdivision, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of clauses (B) through (D) and (F)(ii) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of clauses (B) through (D).

(ii) If the compliance supplement pool has an amount of NO<sub>x</sub> allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for 2002 and 2003, as adjusted under item (i), the department shall allocate to each NO<sub>x</sub> budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under item (i).

(iii) If the compliance supplement pool has an amount of NO<sub>x</sub> allowances less than the number of early reduction credits in all accepted early reduction credit requests for 2002 and 2003, as adjusted under item (i), the department shall allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> budget unit covered by the accepted requests according to the formula, A unit's allocated early reduction credits = ((unit's adjusted early reduction credits) ÷ (total adjusted early reduction credits requested by all units)) × (available NO<sub>x</sub> allowances from the compliance supplement pool) where:

(AA) Unit's adjusted early reduction credits is the number of early reduction credits for the unit for 2002 and 2003 in accepted early reduction credit requests, as adjusted under item (i).

(BB) Total adjusted early reduction credits requested by all units is the number of early reduction credits for all units for 2002 and 2003 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO<sub>x</sub> allowances from the compliance supplement pool is the number of NO<sub>x</sub> allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By March 31 of the year following the request, the department shall submit to the U.S. EPA the allocations of NO<sub>x</sub> allowances determined under clause (G). The U.S. EPA will record the allocations to the extent that they are consistent with the requirements of clauses (B) through (G).

(I) NO<sub>x</sub> allowances recorded under clause (H) may be deducted for compliance under section 10(k) for the ozone control periods in 2004 or 2005. Notwithstanding section 14(a) of this rule, the U.S. EPA will deduct as retired any NO<sub>x</sub> allowance that is recorded under clause (G) and is not deducted for compliance in accordance with section 10(k) of this rule for the ozone control period in 2004 or 2005.

(J) NO<sub>x</sub> allowances recorded under clause (G) are treated as banked allowances in 2005 for the purposes of section 14(a) and 14(b) of this rule.

(K) Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in this rule.

(2) The department may issue to NO<sub>x</sub> budget units that demonstrate a need for an extension of the May 31, 2004, compliance deadline according to the following provisions:

(A) The department shall initiate the issuance process by the later date of September 30, 2002, or after the department



issues credit according to the procedures in subdivision (1).

**(B)** The department shall complete the issuance process by no later than May 31, 2004.

**(C)** The department shall issue credit to a source only if the source demonstrates the following:

**(i)** For electricity generating units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this rule.

**(ii)** For large affected units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).

**(iii)** For a unit subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

**(iv)** For a unit subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

**(D)** The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a NO<sub>x</sub> budget unit under subdivision (C).

**(c)** The total number of NO<sub>x</sub> allowances available from the compliance supplement pool shall not exceed nineteen thousand nine hundred fifteen (19,915) tons of NO<sub>x</sub>. No more than fifty percent (50%) of the compliance supplement pool shall be allocated in 2003 for early reduction implemented in 2002. The remainder of the compliance supplement pool shall be allocated in 2004 for early reduction implemented in 2003 and any demonstrations of need. Any NO<sub>x</sub> allowances that remain in the compliance supplement pool after the 2005 ozone control period shall be retired.

\*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-4-15*)

### **Notice of Public Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on May 22, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed new rules 326 IAC 10-3 and 326 IAC 10-4.*

*The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).*

*Additional information regarding this action may be obtained from Roger Letterman, Rule Development section, (317) 232-8342 or (800) 451-6027, press 0, and ask for extension 2-8342 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Janet G. McCabe

Assistant Commissioner  
Office of Air Management