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TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD #00-137(APCB)

DEVELOPMENT OF NEW RULES CONCERNING EMISSIONS OF NITROGEN OXIDES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules that would control emissions of nitrogen oxides from Indiana sources. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

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

CITATIONS AFFECTED: 326 IAC 10.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

1. Background

On September 24, 1998, U.S. EPA issued a rule (NO_x SIP call) that requires each of twenty-two (22) states in the eastern United States, including Indiana, to reduce its emissions of nitrogen oxides by 2007. Although the federal rule does not mandate how states are to reduce nitrogen oxide (NO_x) emissions and meet the federally established "budget", U.S. EPA based its calculation of each state's budget on a determination of what it believed to be cost-effective NO_x reductions. The source categories identified by U.S. EPA were electric utility boilers, large industrial boilers, cement kilns, and stationary internal combustion engines. The rule is intended to reduce the transport of ozone and ozone causing pollutants that occurs in this multi-state region. A number of parties challenged the legality of the rule in the U.S. Court of Appeals for the D.C. Circuit.

On May 25, 1999, the court issued a stay of the deadline to respond to the NO_x SIP call until further order of the court. The court ruled on the merits of the litigation concerning the NO_x SIP call on March 3, 2000. The court upheld U.S. EPA's actions for the most part, although it directed U.S. EPA to revisit the establishment of the control requirements for internal stationary combustion engines and revise the number of states that will be required to respond to the NO_x SIP call. The court also lifted the stay on the SIP call and set a deadline of October 28, 2000 for states to submit rules complying with the NO_x SIP call to the U.S. EPA. On August 30, 2000, the court extended the compliance date for the SIP call to May 31, 2004.

IDEM initially started the rulemaking process to respond to the NO_x SIP call by publishing a First Notice of Comment Period on November 1, 1998 (#98-235 (APCB)) and followed with a Second Notice of Comment Period that included draft rule language on May 1, 1999. IDEM had committed to statewide NO_x reductions as part of an attainment demonstration for Clark and Floyd Counties submitted to U.S. EPA in November 1999. After the court issued the stay, IDEM had to decide what course of action was needed to address the attainment demonstration with the SIP call on hold and decided to continue the rulemaking. IDEM republished a Second Notice of Comment Period with draft rule language on February 1, 2000. The draft rule language reflected changes that IDEM believed were adequate to address ozone nonattainment within the state and targeted NO_x reductions from utility and large industrial boilers. The emission limitations were not as stringent as those U.S. EPA had proposed in the NO_x SIP call, but modeling data indicated that the limitations would bring Indiana's nonattainment areas into attainment and address any contribution of Indiana sources to high ozone levels in other states. The air pollution control board preliminarily adopted these rules on August 2, 2000.

Shortly after the court upheld the NO_x SIP Call, IDEM began this separate rulemaking process to develop rules to implement the SIP Call requirements. A First Notice of Comment Period was published on July 1, 2000 (23 IR 2606). IDEM has discussed with U.S. EPA the need to proceed with both NO_x rules and, with U.S. EPA's concurrence, has decided to put the state rule on hold at this time and proceed with rulemaking on the NO_x SIP call rule.

2. Overview of Draft Rules and Process for Public Input

The draft rules included with this Second Notice are largely based on the federal NO_x SIP call rule. They include emission reduction requirements for cement kilns and the U.S. EPA's model trading program that affects electric generating units and large industrial boilers. The emission reductions required by these draft rules meet the targets required by U.S. EPA in the SIP call. They will result in a reduction of 106,029 tons statewide by 2007. This is approximately a thirty-one percent (31%) reduction from what statewide NO_x emissions would be without the rules.¹

¹ This rule addresses three (3) of the largest contributors to Indiana's large stationary source NO_x inventory, or point sources. Point sources account for sixty percent (60%) of total NO_x emissions. Mobile and non-road mobile sources contribute thirty-one percent (31%), and small stationary sources are nine percent (9%). Federal programs addressing motor vehicle engine standards and fuels that will also go into effect between now and 2007 will result in reductions from the mobile source sector.

IDEM has worked extensively with the public during the development of these draft rules, as well as during the previous rulemaking. Regular meetings of a large workgroup with representation from environmentalists, business, and state and local government has met several times and will continue to meet regularly to discuss technical and policy issues. Interested parties have provided both formal and informal comments. During the public comment period for this Second Notice of Comment Period, IDEM will hold public meetings in Gary (December 6, 7–9 p.m., Ivy Tech, Multi-purpose Room), Fort Wayne (December 13, 7–9 p.m., Municipal Building, Omni Room #250), Jeffersonville (December 5, 7–9 p.m., Jeffersonville Library), and Evansville (December 12, 7–9 p.m., IDEM-Southwest Regional Office) to provide additional opportunities to discuss these significant rules.

Following is an overview of the draft rules:

A. Cement Kilns

Rule 10-3 addresses cement kilns. The emission reductions from cement kilns would be achieved by installing specific control or process equipment, such as low NO_x burners or implementing mid-kiln firing, by implementing alternative control measures that achieve the same emissions reductions as low-NO_x burners or mid-kiln firing, or by meeting specific emission limits that vary depending on the type of kiln. The emission limitations or control implementation requirements are similar to those included in the proposed federal implementation plan (FIP) at 63 FR 56394.²

² On October 21, 1998, U.S. EPA promulgated a proposed FIP in relation to the NO_x SIP call. U.S. EPA intends to finalize the FIP in any state that fails to revise its SIP to comply with the NO_x SIP call. The proposed FIP includes a trading program similar to the model trading program included in the NO_x SIP call and includes specific requirements for cement kilns and large stationary internal combustion engines.

IDEM has also included specific pounds of NO_x per ton of clinker produced emission limits. U.S. EPA discussed the ability of kilns that install and use the specific control or process equipment to meet these emission limits (63 FR 56416), but did not include them in the proposed FIP. These limits reflect a thirty percent (30%) reduction from uncontrolled emission factors and were derived by averaging the emission factors for the various kilns from AP-42 and the alternative control techniques (ACT) document for cement kilns and then applying a thirty percent (30%) reduction. As stated by U.S. EPA, the kilns should be able to achieve these limits with the specified equipment or techniques, but there may be more cost-effective alternatives that could also be used to comply with these limits.

Some of the cement kilns affected by this draft rule are also subject to 326 IAC 10-1, which requires NO_x controls at large sources in Clark and Floyd Counties. IDEM has provided in this draft rule that compliance with the NO_x SIP call rule constitutes compliance with 326 IAC 10-1. IDEM seeks specific comment on this language.

The draft rules for the cement kilns are found under a new rule, 326 IAC 10-3. This rule includes the following sections:

326 IAC 10-3-1, Applicability

326 IAC 10-3-2, Definitions

326 IAC 10-3-3, Emission limits

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

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

B. Electric Generating Units and Industrial Boilers

The reductions required from large utility and industrial boilers are proposed to be accomplished through participation in a regional cap and trade program among all the states subject to the NO_x SIP call. Electricity generating units (EGUs) and non-electricity generating units (non-EGUs) would be allocated allowances for tons of NO_x that they are allowed to emit during the ozone season. IDEM will allocate NO_x allowances for the affected units and owners or operators of these units will be able to buy, sell, or trade allowances, as necessary, to demonstrate compliance with the unit's NO_x emissions cap. Because this program will be a regional program administered by U.S. EPA, sources will be able to buy, sell or trade allowances across state boundaries and between different types of units and sources. The trading rule includes the following:

326 IAC 10-4-1, Applicability

326 IAC 10-4-2, Definitions

326 IAC 10-4-3, Retired unit exemption

326 IAC 10-4-4, Standard requirements
326 IAC 10-4-5, Computation of time
326 IAC 10-4-6, NO_x authorized account representative for NO_x budget sources
326 IAC 10-4-7, Permit requirements
326 IAC 10-4-8, Compliance certification
326 IAC 10-4-9, NO_x allowance allocations
326 IAC 10-4-10, NO_x allowance tracking system
326 IAC 10-4-11, NO_x allowance transfers
326 IAC 10-4-12, NO_x monitoring and reporting requirements
326 IAC 10-4-13, Individual opt-ins
326 IAC 10-4-14, NO_x allowance banking
326 IAC 10-4-15, Compliance supplement pool

For most of the draft rule IDEM has adapted U.S. EPA's rule language. This approach is prudent because it will assure consistency with U.S. EPA and other states' programs, minimize uncertainty, and allow for streamlined federal approval. IDEM can still receive approval for a rule that differs even further from the federal model, but U.S. EPA would have to carefully review the rules and could ultimately disapprove Indiana's SIP revisions.

IDEM has discretion to develop state specific language for several parts of the rule:

- Indiana can include additional sources in the trading program as long as they can meet the monitoring requirements.
- Indiana can choose not to include an exemption for units that accept a permit limit that limits the unit's ozone season NO_x emissions to twenty-five (25) tons or less.
- Indiana can choose not to allow units not currently subject to the rule to "opt in" to the trading program.
- Indiana can develop its own allowance allocation process provided that:
 - the allocation methodology does not allow excess allowances above the "budget";
 - the methodology conforms to timing for submission of allocations under 40 CFR 96.41; and
 - the state adopts one of two methodologies for issuing early reduction credits.

Several issues have been raised about the rules and the direction that IDEM should take in the development of the rules and many are associated with the limited flexibility that IDEM has in establishing a trading program and responding to the SIP call.

In these draft rules, IDEM has provided proposed language on a number of these issues. However, there are several very significant policy issues that IDEM believes need further discussions with the public before draft rule language can be crafted. For these issues, IDEM has retained the federal language at this time. Examples of these issues include:

- (1) Whether to include an alternative compliance path for sources pursuing a multi-pollutant reduction strategy.
- (2) How to handle in the allowance allocation process, EGUs not included in U.S. EPA's original inventory. These include units built since 1997, sources permitted since that time or currently in the permitting process, and future sources.
- (3) Whether to set aside any of the NO_x allowances to be used for clean energy projects (energy efficiency and/or renewable energy).

Following is a discussion of some of the key issues that have been identified:

- Applicability - As mentioned previously, U.S. EPA stated in the SIP call that states have flexibility in achieving the state's budget as long as the budget established by U.S. EPA is not exceeded. U.S. EPA indicated that controlling NO_x emissions from utility boilers, large industrial boilers, and cement kilns results in the most cost-effective reductions, but this was not mandated. In the first rulemaking, IDEM provided information on other sources of NO_x in Indiana and possible control strategies. IDEM's analysis to date does not reveal significant sources of NO_x that could be controlled more cost-effectively than those included in the federal rule and therefore has not included any other categories in the draft rules. IDEM welcomes comment on this issue, however.

Due to the complications presented in having sources subject to this rule and the Section 126 rule, IDEM has also included an exemption from this rule for sources that are subject to this rule and the U.S. EPA promulgated rule under Section 126 of the CAA.

Commenters have suggested that IDEM include an exemption for very clean units (that is, units whose emissions are inherently below the emission rate presumed in the rule (0.15 lb/mmBtu for EGUs and 0.17 lb/mmBtu for non-EGUs)). IDEM seeks specific comment on this proposal, as well as input on what types of units currently subject to the NO_x SIP call could be characterized as inherently clean. Supporting information, such as emission factors used, is encouraged as well.

- Allowance allocation methodology

- a. Timing and Duration of Allowances. U.S. EPA's model trading rule included a proposed allocation methodology. The methodology uses heat input from certain years multiplied by an emission rate to establish the allowance allocation for a set number of years. In the model rule, U.S. EPA proposes that states would allocate allowances for the initial three (3) years of the program and then allocate allowances annually thereafter. After the initial allocation, the allocations would be done three (3) years in advance of the ozone season for which the allowances could be used. For example, allocations for 2007, 2008, and 2009 would be completed in 2004.

In the Section 126 rulemaking³, U.S. EPA used a methodology that would allocate allowances for five (5) years and the allocation would be done three (3) years in advance. U.S. EPA also used different years for EGUs (1995 through 1997) and non-EGUs (1995) for determining the heat input to be used under the SIP call, but in the Section 126 rule more flexibility was provided for the industrial boilers.

³ Section 126 of the CAA allows states to petition U.S. EPA to require controls on certain sources, if these sources are impacting the state's air quality. On December 17, 1999, U.S. EPA published a Section 126 rule that affects certain sources in Indiana. The rule would require sources (EGUs and large non-EGUs) in the eastern half of Indiana to reduce NO_x emissions and includes a trading program.

Commenters have suggested that IDEM use a longer period of time (1995-2000) to determine baseline allocations because this is more representative of a company's likely usage. Some have suggested the average of the highest two (2) years of the period be used, while others suggest that an overall average is more appropriate. Some commenters support the annual allocations, while others have recommended longer time periods, such as three (3) or five (5) years. Shorter allocation periods would allow for more frequent adjustments to reflect new or retired units. A longer allocation provides greater certainty for sources to plan and, arguably, more stability in the trading market.

In the draft rule, IDEM has included a methodology that would allocate allowances for three (3) years, three (3) years in advance. IDEM would base the allocation on the average of the two (2) years with the highest heat input in the five (5) year period preceding the year in which the allocations are made. IDEM believes this is more representative than an overall average, where one (1) or two (2) years of unusually low heat input (due, for example, to unexplained unit outages) could skew the average. IDEM proposes that the same methodology be used for EGUs and non-EGUs.

b. Input versus Output Based Allowances. As stated above, U.S. EPA uses heat input (input-based) to determine the allowance allocation in the SIP call and the Section 126 rule, but has issued guidance concerning the possible use of an output-based methodology in a trading program. In the Section 126 rulemaking, U.S. EPA has committed to using the output-based methodology after 2006. Output-based allowance allocation is favored by some as a means of rewarding and providing incentives for efficient fuel use that can be used as an alternative form of pollution control. IDEM has included a heat input based approach in this rule. To date, IDEM has not identified a practical way to combine an input and output based approach. Some stakeholders have suggested following U.S. EPA's Section 126 rules and adopting an output-based approach in future years. However, questions remain as to the exact methodology to be used in such an approach. IDEM welcomes further suggestions on this subject and specific rule language that could be included for use in future allocations.

• Allowance set-asides

a. Set-aside for New Sources. The model trading rule included a new source set-aside that would initially be five percent (5%) of the applicable source category budget and two percent (2%) annually in 2006 and thereafter. IDEM has flexibility in determining if a set-aside should be included in the rules and the size of the set-aside, if one is included. The new source set-aside is intended to address growth and would allow new sources to request allowances without having to go to the market to purchase the necessary allowances. The rules require that an affected source must retain allowances in order to operate. Information to date indicates that a five percent (5%) set-aside for EGUs is less than the amount of NO_x already permitted for EGUs since 1998, and additional applications are pending at IDEM. On the non-EGU side, it appears that a five percent (5%) set-aside would greatly exceed what is needed for new sources that have been permitted in the last five (5) years.

Under U.S. EPA's program, "new sources" include:

- (1) units that began operation in 1998 or after;
- (2) units that have received a permit, but have not yet begun to operate;
- (3) units that are currently in the permitting process; and
- (4) future energy projects not yet identified.

IDEM feels it may be legitimate to distinguish among these subcategories. For example, IDEM could include all sources that have operated at least one (1) ozone season in the initial allocation (U.S. EPA's inventory plus subcategory #1). IDEM could also include in the initial allocation units that have received a permit by 2000 (establishing allowances for permitted units that have not yet operated would require a methodology other than using actual historical heat input).

Due to the information that has been prepared and reviewed, IDEM intends to have more discussion with the public and affected sources. IDEM specifically solicits public comment on ways to best handle new source set-aside, with respect to the various categories of new sources. In these draft rules, therefore, IDEM has retained the model federal language.

b. Set-aside for clean energy projects. In addition to a new sources set-aside, IDEM has the flexibility to include an additional set-aside for energy efficiency and renewable energy projects. Advocates of such a set-aside favor it as a form of multi-pollutant reduction, reducing not only NO_x emissions, but also potentially sulfur dioxide, particulate matter, mercury, carbon dioxide, and combustion wastes without compromising system reliability. Clean energy projects can also result in long-term benefit to electric utility consumers through investments in efficient generation and by making "green power" choices available. New York, New Jersey and Massachusetts have included or have proposed to include set-asides that would encourage these types of projects.

Including set-asides in a trading program does provide benefits for new sources and incentives for environmentally beneficial projects, but the set-asides reduce the number of allowances available for existing sources, because the trading program establishes a NO_x emission budget or “cap” that cannot be exceeded. IDEM believes additional public discussion is necessary on this issue as well. U.S. EPA has provided guidance documents on the issue of energy efficiency and renewable energy and these are available at: www.epa.gov/appdstar/state_local_govnt/state_outreach/eeresources.html.

- Compliance supplement pool and early reductions - In response to concerns about the availability of materials and labor and possible electricity reliability issues, U.S. EPA included a compliance supplement pool with the SIP call. The compliance supplement pool provides additional NO_x allowances that would be available for use in the first two (2) years of the program. U.S. EPA established Indiana’s compliance supplement pool at nineteen thousand nine hundred fifteen (19,915) tons of NO_x. This number was derived by estimating what the regional excess emissions would be if one (1) year’s worth of control equipment installation were delayed by a year and then proportionally allocating the emissions to the states.

Under the SIP call, sources could request allowances in two ways. Sources could install controls and reduce NO_x emissions prior to the compliance date and then request allowances for the early reductions. U.S. EPA included two (2) methods for determining the credits that affect the amount of reductions that must be achieved to receive credit and the total amount of credit that can be requested.

The other option available is a demonstration of need. With this option, a source could request allowances if the source could not generate early reductions, cannot meet the May 31, 2004, deadline, was not able to purchase the necessary allowances or power from the grid, and can demonstrate that compliance would create an undue risk or affect energy reliability. If IDEM agrees, then the source can receive the requested allowances after a public process is completed.

U.S. EPA has established a single compliance supplement pool to be used for early reduction credits or demonstrations of need, or both. IDEM can determine how the allowances from the pool could be allocated and could retain all of the allowances for early reductions or for those sources making a satisfactory demonstration of need. A certain percentage of the pool could be designated for early reductions and the remainder for demonstrations of need.

Indiana utilities have raised several concerns with the compliance supplement pool. First, they believe that the pool is not large enough to address the compliance extensions that will be needed due to shortages of labor and supplies, even with the court’s extension of the compliance deadline to 2004. Sources have urged IDEM to increase the size of the pool by as much as one hundred percent (100%). This is inconsistent with the current requirements of the SIP call and would require specific approval from U.S. EPA. Second, they believe that the demonstration of need option is basically unusable by the utilities because they will not be able to demonstrate an inability to purchase electricity from the grid. A third concern that has been raised is the timing of IDEM’s approval of use of the compliance supplement pool. Under U.S. EPA’s model rule, approvals of credits from that pool for early reductions could occur as late as May 2004, which is very late for sources trying to plan their compliance strategies.

In the draft rule, IDEM has reserved most of the pool for early reductions, but has retained a portion for sources that cannot install the necessary controls by the compliance deadline due to conditions beyond their control. IDEM has also reserved a portion of the pool specifically for non-EGUs based on the percentage of non-EGU emissions compared to the EGU budget. IDEM welcomes comment on the methods used for determining early reduction credits and how the compliance supplement pool is distributed. IDEM specifically solicits comments on preferred approaches in the rule for the compliance supplement pool.

Several other issues have been raised on which IDEM seeks comment:

- (1) Are there steps in implementation of the rule where there should be opportunities for public notice and comment?
- (2) Some utilities and business groups have supported the inclusion of an alternative compliance strategy for sources pursuing a multi-pollutant reduction strategy. The proposal would extend the compliance date until 2008 for sources committing to reduce several pollutants, such as sulfur dioxide (SO₂), mercury, and particulate matter in addition to NO_x. If the source was unable to achieve the reductions by 2008, it would nevertheless have to meet the NO_x reduction requirements. This proposal is not consistent with the current requirements of the SIP call and would require specific approval by U.S. EPA.
- (3) When the court extended the compliance date to May 31, 2004, it effectively reduced the compliance period of the first year of the program from five (5) months to four (4). Some commenters have suggested that sources agreeing to operate their controls for the entire ozone season be allocated allowances for the entire five (5) month period. This would in effect, provide additional transition to sources in the cap and trade program without increasing the total number of tons of NO_x emitted during the 2004 ozone season. This is another approach that would require further discussion with U.S. EPA.
- (4) As noted above, certain sources subject to this rule are also subject to U.S. EPA’s Section 126 NO_x reduction rule. In this draft rule, IDEM specified that sources complying with Section 126 findings are not subject to this state rule. IDEM believes that there should be a single NO_x rule covering all Indiana sources and will be discussing with U.S. EPA how to transition to a single rule approach.

IDEM is requesting comment on these issues and any other issues that are not identified above.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from July 1, 2000, through July 31, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Bethlehem Steel Corporation, (BSC)
Indianapolis Power and Light, (IPL)
Ispat Inland Incorporated, (III)
Indiana Steel Environmental Group, (ISEG)
NiSource, (NS)
State Line Energy, (SLE)
Indiana Electric Utility Air Work Group, (IEUAWG)
American Electric Power, (AEP)
Indiana-Kentucky Electric Corporation, (IKEC)
Hoosier Environmental Council, (HEC)
Citizens Action Coalition of Indiana, (CACI)
Natural Resources Defense Council, (NRDC)
Save the Dunes Council, (SDC)
Save the Valley, (SV)
Valley Watch, Incorporated, (VWI)
General Electric Company, (GE)
Aluminum Company of America, (ALCOA)

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

Comments Related to the Need for this Rulemaking and the Effect of Legal Appeals

Comment: IDEM should complete the rulemaking ongoing under #98-235 (APCB) and should not proceed with any other rulemaking concerning NO_x reductions in Indiana. The draft rule under #98-235 (APCB) already proposes sufficient NO_x emissions reductions for both attainment purposes and to address ozone transport and should be submitted to the U.S. EPA as Indiana's response to the NO_x SIP call. (BSC)

Comment: While the D.C. Circuit Court of Appeals upheld the NO_x SIP call, the question of whether additional reductions are required after Indiana addresses its own nonattainment concerns remains. IDEM has stated previously that addressing Indiana's ozone nonattainment problems would make any downwind contribution insignificant. Since IDEM is moving forward with a statewide rule, any further rulemaking should be delayed until after 2007 to allow the effects of that rulemaking to be realized. (IPL)

Comment: There are issues with the NO_x SIP call that must be resolved before a rulemaking can continue. The Court decision remanded a portion of the SIP call for further rulemaking and U.S. EPA must revisit the NO_x reductions for large, stationary internal combustion engines. Because the NO_x SIP call budget does not distinguish allowance allocations between non-utility sources, U.S. EPA will have to conduct notice and comment to address Court concerns and any changes in the NO_x allowance budgets. Until U.S. EPA completes this rulemaking, states cannot move forward to respond to the SIP call for the non-utility sector. (IPL)

Comment: IDEM should complete one (1) rulemaking that includes all state attainment and federal regional transport requirements. Drafting two (2) separate rules within a year or two that are both aimed at achieving NO_x reductions is extremely inefficient and would cost affected sources millions of dollars in immediate retrofits. (III) (ISEG)

Comment: IDEM should consider a NO_x emission rate that is necessary for meeting Indiana's attainment needs and produces equivalent results in downwind nonattainment areas based on adequate modeling and analysis, even if such a rate is not entirely consistent with the NO_x SIP call. It is our understanding that a statewide NO_x emission rate of twenty-five hundredths pound per million British thermal units (0.25 lb/mmBtu) for utility boilers produces comparable results to the fifteen-hundredths (0.15) lb/mmBtu emission rate promulgated by U.S. EPA and there is almost no benefit in going to the lower limit. The SIP call allows a state to submit an alternative SIP that has the same outcome as the SIP call, IDEM should go forward with a SIP that meets Indiana's needs for attainment and has demonstrated equivalent impacts. In addition to the less stringent limit for utility boilers, the SIP should only require industrial boilers to achieve a fifty-five percent (55%) reduction from 1990 emissions. (AEP) (IKEC) (ALCOA)

Response: IDEM has legal obligations that must be met and cannot control the deadlines for meeting those responsibilities. IDEM agrees that it is preferable to develop a single NO_x rule and has put #98-235(APCB) on hold anticipating confirmation by U.S. EPA that the rulemaking will not be needed at this time. With the court stay lifted, IDEM is required to complete rulemaking to respond to and meet the requirements of the SIP call. The court established an October 28, 2000, deadline for the NO_x SIP call and Indiana, along with surrounding states, have a legal obligation to respond to the SIP call. The court did not set aside the SIP call while U.S. EPA completes rulemaking to address those portions of the federal rule that the court remanded to the agency, so IDEM cannot put this rulemaking on hold. This is especially important since IDEM was not able to meet the October deadline and has to move forward expeditiously to lessen or eliminate the possibility of U.S. EPA implementing a federal implementation plan (FIP) in Indiana. U.S. EPA will also implement a FIP if IDEM does not provide a rule that complies with the SIP call. U.S. EPA has already commented

on the deficiencies of #98-235(APCB) when compared to SIP call criteria and expressed concern about being able to approve #98-235(APCB) under the SIP call. Indiana is involved in the federal litigation on the NO_x SIP call and the above approach may be adjusted if a future Supreme Court ruling changes prior rulings.

Comment: IDEM should provide some type of severability language to provide a mechanism to deal with the ramifications if the court invalidates the final federal rule. Since one of the goals of this rulemaking is to respond to the final federal rule, the rule must include language that invalidates those parts of the rule should the final federal rule be overturned or vacated in court. (BSC) (IKEC)

Comment: IDEM should move forward with development of a NO_x SIP call rule, but the implementation of the IDEM rule should be made contingent upon the full implementation of the U.S. EPA NO_x SIP call rule and resolution to all legal challenges. NiSource also recommends that IDEM include a mechanism in the rulemaking under #98-235 (APCB) to defer the rule should the ongoing legal proceedings strike down U.S. EPA's SIP call rule. (NS)

Comment: IDEM should include provisions in the rule that would effectively withdraw the rule under #98-235 (APCB) when this rulemaking is in place and fully implemented. Having two (2) rules may create a conflicting set of requirements. (SLE) (IEUAWG) (AEP)

Comment: IDEM should consider the implications of replacing the rule under #98-235 (APCB), if the NO_x SIP call is ultimately upheld and Indiana is required to adopt rules to respond to the SIP call. If the SIP call rule were to supercede the #98-235 (APCB) rule, any challenges to the SIP call rule could jeopardize the ability to remain compliant with attainment demonstration submittal commitments. IDEM should retain the rule under #98-235 (APCB) as a backstop. (NS)

Response: IDEM does not agree that severability language should be included in the rule. The court has upheld U.S. EPA's NO_x SIP call and set an October 28, 2000, deadline for states to submit rules. The U.S. Supreme Court will decide whether or not it will accept review of the lower court's decision before IDEM intends to bring this rule to the air pollution control board for proposal. If that request is denied, states must move forward. If it is granted, consideration can be given at that time to the next steps for the rule. IDEM is not proposing to withdraw #98-235(APCB) at this time, and will wait for legal proceedings to run their course before making a final decision.

Comment: IDEM's efforts to date to preserve the right of Indiana to address local ozone problems of Indiana's nonattainment areas and use those emission reductions to address the alleged ozone transport issues are supported. We urge IDEM to support and actively participate in any additional state-led effort to seek Supreme Court review of this summer's court ruling on this important matter. (NS)

Response: Indiana joined a petition requesting the Supreme Court review the lower court's decision on this issue.

Comment: Any rulemaking should not require reductions to address the unenforceable eight (8) hour ozone standard. The original NO_x SIP call required reductions meant to address ozone transport as well as the new ozone standard that the courts have ruled is unenforceable. Any emissions budgets should be recomputed to address only the one (1) hour ozone standard. (BSC) (IKEC)

Response: The NO_x SIP call was not initiated to address the eight (8) hour ozone standard. In fact, the work by the Ozone Transport Assessment Group (OTAG) was completed and U.S. EPA had already published its intent to address ozone transport prior to the promulgation of the new standard. While U.S. EPA acknowledged that the reductions called for under the NO_x SIP call would have affected areas under the new standard, the purpose of the SIP call was to address ozone transport effects on downwind areas that were nonattainment under the one (1) hour standard.

Comment: IDEM should include a provision in the SIP call rule that would make its implementation contingent upon the adoption of similar rules by affected states surrounding Indiana so as not to disadvantage Indiana sources. (NS) (SLE) (AEP)

Response: IDEM does not believe that this language is necessary. The NO_x SIP call covers a wide region and will require surrounding states to implement rules to respond to the SIP call also. A federal plan will be implemented if a state fails to adopt a compliant rule. Since the SIP call will require compliance for all affected states at the same time, there will be no disadvantage for Indiana sources.

Comment: IDEM should give the seven (7) regional steering committees sufficient information to understand how any proposed NO_x reductions will help or hurt the attainment prospects of those areas. A rulemaking should not be finalized until there is an understanding of how it impacts the prospects of attainment of the one (1) hour standard in non-attainment areas. (BSC)

Response: IDEM has already provided information concerning attainment issues to the steering committees. Modeling data shows that the reductions required under the SIP call will result in attainment and maintenance of the one (1) hour standard. IDEM will continue to work with interested citizens, businesses, local officials and others in all areas of the state as the rulemaking proceeds, and has scheduled public sessions in early December in Gary, Ft. Wayne, Jeffersonville, and Evansville.

Comment: IDEM should verify whether the modeling in support of the SIP call is statistically meaningful and answer the following questions:

- What is the magnitude of predicted ozone transport from Indiana?
- What is the normal margin of error of the models used for the predictions?
- With the margin of error, is the predicted ozone transport statistically distinguishable from zero?
- Does U.S. EPA data make physically implausible predictions by depicting ozone transport from Indiana as skipping intervening

states and then creating narrow, long-range impacts?

IDEM has a duty under Indiana statutes to confirm the scientific basis of the underlying data. (IPL)

Response: It is clear from modeling performed by IDEM, Lake Michigan Air Directors Consortium (LADCO), OTAG, and others that regional transport of NO_x from Indiana sources does impact areas outside Indiana just as it does areas inside Indiana borders. The model meets statistical requirements determined by U.S. EPA to be necessary for it to be used for regulatory purposes. Regional application of NO_x controls does show reduction in ozone concentrations in downwind areas. As a state with major NO_x emission sources, in the middle of a region with large sources contributing to regional transport, it follows that control of Indiana sources would be a part of the regional solution.

Comment: Current modeling does not substantiate reductions at Ispat. Any minor downwind benefit that may be achieved is seriously compromised by potential disbenefits that further increase already high ozone concentrations locally. This is substantiated through the NO_x waiver option under the Clean Air Act (CAA). (III)

Response: Due to the nature of the regional modeling, it is not possible to identify an individual source's impact on the overall regional ozone problem. Modeling data does generally indicate that any disbenefits that occur are during periods when ozone levels are low and benefits occur when the ozone levels are high and the benefits are needed the most.

Comments Related to Applicability

Comment: IDEM should limit any proposed rulemaking to the source categories contemplated to be controlled by the U.S. EPA. U.S. EPA did work to identify large existing sources of NO_x emissions that could be controlled and achieve cost-effective NO_x reductions. There is no information that sources other than those already identified can achieve reductions for a similar cost. To proceed with additional controls IDEM must develop a detailed technology and cost analysis of the additional sources to verify that these sources can be controlled with a level of impact similar to the SIP call. The rule should not include units smaller than two hundred fifty million (250,000,000) Btu per hour. (GE) (BSC) (III) (ISEG)

Response: The draft rules include only the types and size of units addressed in the NO_x SIP call. Available information indicates that these units are the most cost-effective to control. IDEM welcomes specific suggestions concerning other units or source categories that could also achieve cost-effective reductions.

Comment: IDEM should require a very large proportion of the NO_x 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_x 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_x budget.

Comment: IDEM should include an exemption for sources limiting NO_x emissions to twenty-five (25) tons or less per ozone season. In addition, IDEM could make the exemptions "cleaner" by listing maximum heat input limits for specific categories of fuel burning equipment rather than a tons per season average. (ALCOA)

Comment: Rules that are proposed to address the NO_x SIP call should clearly specify what units are affected and reasonable de minimis levels should be established. It is suggested that if IDEM goes beyond the categories identified in the SIP call, then only units with potential NO_x emissions greater than twenty-five (25) tons per ozone season should be included and an exemption provided for boilers with a heat input capacity less than one hundred million (100,000,000) Btu per hour. (BSC)

Response: The draft rules clearly specify affected units and only includes industrial boilers with a heat input greater than two hundred fifty million (250,000,000) Btus per hour. IDEM has included provisions from U.S. EPA's model rule that exempt units accepting a twenty-five (25) ton per ozone season limit. IDEM welcomes specific suggestions that would help clarify the exemptions.

Comment: If a rule will apply to a poorly defined source, for example, a source with over one hundred (100) tons of emissions during the ozone season, then provisions should be included to address equity and cost-effectiveness. Emission limits for these sources should not be more stringent than that applied to other well defined sources and the limits should apply to the average emissions from the source. In addition, reasonable monitoring requirements should be included for these sources. U.S. EPA identified the source categories and emission limits that could achieve cost-effective reductions and this information is not available for the poorly defined sources. Allowing internal trading, within the source, and reasonable monitoring requirements would assist in addressing cost-effectiveness. (BSC) (III)

Response: IDEM has not included sources or source categories not included in the SIP call.

Comment: Other options for reducing NO_x should be considered, specifically reductions from mobile sources. Mobile source emissions far outweigh the emissions from stationary point sources that are contemplated under the SIP call. The reductions from mobile sources would benefit the entire state and could occur with minimal cost or inconvenience. (BSC) (ALCOA)

Response: With respect to mobile sources, U.S. EPA is moving forward with several national programs intended to reduce NO_x emissions. Federal Tier II and low sulfur standards have been evaluated in the modeling and do provide positive benefits, especially on a local level. IDEM has carefully reviewed Indiana's NO_x point source inventory to identify all possible types of sources where reductions could be achieved and evaluated, to the extent there is information available, the comparative cost-effectiveness of

different approaches.

Comments Related to Emissions Limitations

Comment: In proceeding with the NO_x SIP call rulemaking, IDEM should establish quantitative numerical emission limits and should avoid across the board emission reductions, such as a ten percent to thirty percent (10%–30%) reduction. Many units may have an emission rate below a rule limit and to require these “cleaner” units to achieve additional reductions is inequitable. In addition, a well controlled unit using state of the art controls may not be able to achieve further reductions, especially in a cost effective manner. (BSC) (III)

Response: The draft rules require compliance with control techniques, specific emission limits, or a NO_x trading program that establishes allowances based on a specific emission rate. The draft rules do not include across the board reductions.

Comment: Any NO_x rule should not have emission limits that are more stringent for large industrial boilers greater than two hundred fifty million (250,000,000) Btu per hour than for electric generating units. (ISEG)

Response: Large industrial boilers are included in the NO_x trading program and the emission rate used to allocate NO_x allowances is not as stringent as the emission rate for electric generating units.

Comment: Any emission limits and reporting requirements should only apply for the five (5) month ozone season and the averaging period should be the entire ozone season. (BSC) (ALCOA)

Comment: Any proposed rule for NO_x reductions should allow the emissions to be based on tons per ozone season, as opposed to a rate-based emission limit. (IKEC)

Response: The NO_x trading program rule requires compliance only during the ozone season and with a tons per ozone season cap.

Comment: IDEM should eliminate barriers, even including cross-media barriers, that prevent lower emitting units from operating during periods of peak demand. This includes permit conditions that limit wastewater temperature that result in a low emitting unit having to reduce operation while the electricity is replaced by a much higher emitting utility boiler. (BSC)

Response: This issue is outside the scope of the rulemaking.

Comment: IDEM should adopt a state rule that meets the SIP call requirements without sacrificing the flexibility that U.S. EPA has provided. Specifically, IPL recommends that the state rule should include the following elements:

- Seasonal averaging plans that may include any units in the state and that may incorporate the use of fuel-switching and other compliance methods.
- Rate-based emission limits, rather than a fixed tonnage budget per unit.
- An emission limit of twenty-five hundredths pound per million British thermal units (0.25 lb/mmBtu), with additional reductions from other sources including mobile sources.
- A two thousand dollar (\$2,000) per ton “Safe Harbor” to protect against requiring controls that are not cost effective and do not contribute to ozone transport. These provisions could be included in the averaging plan section.
- Maximum flexibility to incorporate any action by the courts or U.S. EPA that may extend the compliance date. (IPL)

Response: IDEM has included U.S. EPA’s model trading program in the draft rules. These rules implement a trading program rather than averaging and a unit or source is free to use fuel switching, add-on controls, or other control measures to reduce NO_x emissions. The rules for utility boilers establishes an ozone season budget and a fifteen hundredths pound per million Btu (0.15 lb/mmBtu) emission rate for allowance allocation in order to conform to the SIP call. The rules do not include a “Safe Harbor” due to the availability of a broad regional trading program to reduce costs. IDEM has provided rules that are consistent with the compliance date established by the court on August 30, 2000.

Comment: IDEM should adopt adequate controls to achieve the emission reductions necessary to meet the state’s NO_x budget as required by the SIP call. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: IDEM has included draft rules that incorporate the emission reductions required by the NO_x SIP call.

Comments Related to Definitions

Comment: If IDEM proceeds with a rulemaking that targets fossil fuel combustion, then the definition of fossil fuel under 40 CFR 60.41(b) should be included. U.S. EPA has confirmed on several occasions that coke oven gas and blast furnace gas are not fossil fuels. (BSC)

Response: Although information from U.S. EPA in 1977 may have indicated that these fuels would not be considered fossil fuels, recent conversations with U.S. EPA indicate that they are considered to be “fossil fuel” and units combusting these fuels were included in U.S. EPA’s inventory as being controlled under the SIP call.

Comment: IDEM should revise the definition of “NO_x authorized account representative” to take into account units with multiple owners. U.S. EPA has dealt with this issue in the Acid Rain program as it pertained to the “designated representative” and the definition should reflect that flexibility. (ALCOA)

Response: IDEM has included definitions and rule language that are consistent with 40 CFR 96 and 40 CFR 72 requirements. The definition of “designated representative” under 40 CFR 72.2 appears to be very similar to the definition of “NO_x authorized account representative” under 40 CFR 96 and the draft rules. The draft rule language is also similar to the requirements under 40 CFR 72.22. IDEM has consulted with U.S. EPA and U.S. EPA does not believe that the language under 40 CFR 74.4(c)(1) allows for a co-owned

unit to have more than one (1) account representative.

Comments Related to Trading Program, Allowance Allocations, and Growth Estimates

Comment: IDEM should incorporate a robust interstate emissions trading program in the rule to promote cost effective emissions reductions by affected facilities in an expeditious manner. The trading program should include the following elements:

- Multi-owner trading to allow for low cost reductions to be achieved outside of a single source. Reductions should be allowed to be traded among all areas, irrespective of the attainment status of the area.
- Individual opt-in provisions to allow units not affected by the rule to reduce NO_x emissions. This reduces compliance costs by allowing units not necessarily affected by the rule(s) that can reduce NO_x cheaper than affected units to pass the benefit onto affected units. The provisions should allow alternative monitoring and reporting requirements to reduce compliance costs.
- Shutdown units should be allowed to opt-in to reduce the overall cost of compliance. (III) (ISEG) (SLE) (IEUAWG) (AEP) (IKEC)

Response: IDEM has included the model trading program language included under the NO_x SIP call. The program is a multi-state regional trading program administered by U.S. EPA and includes provisions that allows other units to opt-in to the program. The program allows for a retired unit exemption, but previously shutdown units are not allowed to opt-in to the program. The draft rules require monitoring consistent with 40 CFR 75 and those rules include alternatives under 40 CFR 75.19 and Appendices D and E. IDEM will continue to work with interested parties to refine the trading program rule.

Comment: IDEM should adopt a NO_x trading program consistent with U.S. EPA's model trading program in the NO_x 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_x, 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: In previous rule language concerning a trading program, IDEM had included language that raised very specific legal concerns. In one section, IDEM included language that specified that nothing in these regulations limits the authority of IDEM or U.S. EPA to terminate or limit a source's right to emit under an allowance. This language is clearly overreaching, appears to violate due process of law and must be deleted. In another section, it appears to give force of law to every U.S. EPA recordation of an allowance transfer or deduction, "Without any further review." Basic principles of administrative law provide that when there is an up-front power such as this there must be some method of review. IDEM should revise this language to provide a method for review. (ALCOA)

Response: IDEM has included U.S. EPA's model trading rule in the draft rules and the language comes from the model rule. The rule does include provisions where U.S. EPA would limit a source's use of an allowance (flow control provisions) or where a source must forfeit additional allowances due to excess emissions. IDEM can discuss this issue with U.S. EPA to determine the amount of flexibility that IDEM has with this language. As to the phrase "without further review", it appears there is some confusion as to the meaning of the phrase. The language concerns permitting issues and the actions necessary to account for allowance allocations, transfers, and deductions. The review that is being referenced here is any IDEM review that would normally be required when amending a permit and the language effectively eliminates any IDEM or U.S. EPA permit review if there is an allocation, transfer, or deduction. IDEM will attempt to clarify and welcomes any specific suggestions on this issue.

Comment: IDEM should grant allowances for the longest period possible to allow the maximum certainty in planning and adopt a ten (10) year cycle of allowance allocations for this rulemaking with the allocations made five (5) years in advance. (AEP) (ALCOA)

Comment: The initial allocation period should be short to address uncertainty and to allow for orderly transition of new sources into the program and a five (5) year allocation period for subsequent periods. (NS)

Response: At this time, the draft trading rule includes a three (3) year allocation initially followed by three (3) year allocations distributed three (3) years in advance. IDEM expects to have specific discussion on this issue and welcomes further specific comments.

Comment: IDEM should establish a five percent (5%) new source set-aside for the first allocation period and two percent (2%) thereafter with all unused allowances returned pro-rata to sources at the end of the ozone control season. (NS) (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: The draft rule language includes the set-asides proposed in U.S. EPA's model rule and establishes a five percent (5%) set-aside for the initial allocation and a two percent (2%) set-aside thereafter. This issue is clearly a very important one, and IDEM will continue discussions with all interested parties prior to preliminary adoption.

Comment: The rules should allow sources to opt in units into the program. (NS)

Response: The trading program provisions do include a section allowing for opt-ins as long as the units can comply with the trading program monitoring requirements.

Comment: Growth estimates used in any modeling inventory should be evaluated. Sources in nonattainment areas have built-in restrictions through the permit process and may not be able to grow as predicted by a projected growth rate. (BSC)

Response: The inventory included growth estimates that examined regional growth based on source classification code (SCC). Because the estimates were based on regional growth, the values may not reflect actual growth for an individual source. However, in the situation where U.S. EPA assumed growth where growth will not occur, there should be a benefit for the source under the trading program.

Comment: Flow control provisions should be excluded for the first two (2) ozone control seasons while companies are working to meet the reduction requirements and likely gaining operating experience with the new control equipment. (NS)

Response: The August court decision extending the compliance date has created uncertainty about the implementation of flow control provisions. IDEM will be discussing the issue with U.S. EPA. The trading program rule excludes flow control provisions for the first year of the program and would begin in 2005. U.S. EPA will be administering the trading program and the flow control will be implemented by U.S. EPA, not IDEM.

Comment: IDEM should include language that would use historical utilization data or multi-year averaging for heat input determinations when calculating allowance allocations. If a narrow time frame is established, sources that had abnormally low ozone season utilization or major outages would not receive allowances that would reflect more normal utilization. The same methodology should be applied to utility and industrial boilers. (SLE) (ALCOA)

Response: IDEM has included language that would allow sources to use the average of the highest two (2) years from 1995 to 2000 and the highest two (2) of five (5) years for subsequent allocations. IDEM seeks specific suggestions concerning proper time frames and needed flexibility.

Comment: We strongly recommend that IDEM include a fifteen percent (15%) set aside in its rule for allocation to qualifying energy efficiency and renewable energy development. IDEM should include an output based compliance option modeled on the program contained in U.S. EPA's Section 126 rulemaking. Including such a set aside in a NO_x trading program creates incentives for greater investments in clean energy alternatives and can reduce growth in NO_x emissions associated with increased electric consumption, can avoid the need for additional generation capacity, and can save consumer dollars. Energy efficiency and renewable energy investments can also increase compliance flexibility and improve local economies through higher productivity and the creation of jobs. The rule language should be crafted to provide an incentive to construct new, more efficient units, but nuclear plants and municipal waste incinerators should not be allowed to participate. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI) (NS)

Response: IDEM has not included an output based compliance option in the draft rule at this time, although the agency is reviewing available information concerning this option. While U.S. EPA has committed to using an output based methodology in the future, the current Section 126 rule does not include this type of provision. The next response addresses the comment about energy efficiency and renewable energy.

Comment: If IDEM wishes to implement energy efficiency or renewable energy programs, it should be done only using allowances designed for such programs and not using allocations from existing utility units. (SLE) (IEUAWG) (AEP)

Response: The draft rules do not include a set-aside for energy efficiency or renewable energy programs. However, U.S. EPA is providing guidance for establishing and using these types of set-asides and IDEM will be reviewing these documents to determine if these should be recommended under the trading rule and if additional allowances can be obtained elsewhere. IDEM will continue discussions with the public and affected sources on this issue.

Comment: Any NO_x reduction rule should allow a flexible averaging program, including, at a minimum, interstate system emissions averaging, for compliance purposes. Rule language should be included that allows averaging between all types of units affected by the rule under an IDEM approved averaging plan. The language should also recognize units owned by multiple ownership and not require that a unit in an averaging plan have the same owner and authorized representative. (ALCOA) (IKEC)

Response: IDEM has not included rule language concerning averaging plans in the draft rules. The U.S. EPA model trading program has been included and the scope of the trading program is much broader than what has been proposed previously under #98-235 (APCB).

Comments Related to Monitoring and Reporting

Comment: IDEM should minimize any special reporting required under this rule and to incorporate reporting requirements into existing reporting schedules to the maximum extent possible. (SLE) (IEUAWG) (AEP)

Response: IDEM will review the draft rule and attempt to maintain consistency with existing requirements. IDEM also seeks any specific suggestions concerning reporting requirements.

Comment: Any rule should include alternatives to continuous emissions monitoring (CEMS) for demonstrating compliance. CEMS should only be required for units identified in the SIP call. Alternatives, such as predictive emission monitoring systems or emission calculations based on stack tests and fuel use, should be provided as an option to allow for a cost-effective means of demonstrating

compliance. (ISEG)

Response: IDEM has not included units not included in the SIP call. Units that are subject to the trading program are required to use CEMS or approved alternatives under 40 CFR 75 to verify emissions. For cement kilns, IDEM has proposed CEMS, annual stack testing, or operation and maintenance requirements for kilns that install and operate specific control technologies.

Comment: Under this rule, IDEM should allow the use of existing monitoring protocols to demonstrate compliance with the provisions of this rule to the maximum extent possible, including 40 CFR 75, Subpart H. Since most of the affected sources are already monitoring NO_x emissions in some fashion under an existing program, the continuation of the existing monitoring protocols will aid in reducing the costs without sacrificing the data necessary to demonstrate compliance. (IEUAWG)

Response: The monitoring requirements under the draft trading program rule includes the Part 75 monitoring requirements. Some units under the trading program may have to change monitoring practices, but the large majority of units will continue to use their existing monitoring.

Comments Related to the Compliance Deadline, Early Reductions, Compliance Extensions, and Reliability

Comment: IDEM should include reductions from all appropriate source categories and reduce the dependence on emission reductions from electric generating units (EGUs). If it is not possible to achieve the U.S. EPA budget with this approach, IDEM should provide a mechanism in the rule to increase the Compliance Supplement Pool (CSP) and provide credit to companies for initiating actions for:

- installing and operating NO_x controls before the compliance date;
- making commitments for installation of NO_x controls in an expeditious manner; and
- for commitments for installation of new, efficient generation.

If these provisions are not included, then IDEM should adopt a phased approach that would rely on evaluating air quality reductions obtained from the rulemaking under #98-235 (APCB) and surrounding state's NO_x reductions. Additional reductions would only be required if the one (1) hour ozone standard is not being met at some future date, preferably May 2005. (NS)

Response: IDEM has included the source categories and emission rates discussed in the NO_x SIP call. The draft rules do provide for a compliance supplement pool, although the amount of allowances is what was included in the SIP call and IDEM would have to confer with U.S. EPA before any increase could be incorporated. There are provisions for giving credit for early reductions and in case of need, but there are no provisions for giving credit for commitments to install new generation.

Comment: Early reduction credits (ERCs) should be available as widely and as early as possible to allow for the maximum amount of early reductions that occur within the state to be creditable and help provide planning certainty. ERCs should be provided to companies that install and operate control equipment or commit to invest in new, clean electricity generation by a certain date. The ERCs should be separate from the compliance supplement pool and a better program to provide more allowances is needed, if the May 1, 2003, compliance date is maintained. A separate CSP should be created that can be accessed upon a reasonable showing that installation of the NO_x controls necessary to respond to this rule cannot be achieved by the compliance date and allocations should be made as soon as possible to facilitate reasonable compliance planning by affected parties. (NS) (SLE) (IEUAWG) (AEP)

Response: IDEM has included provisions that would provide early reduction credits and the ability to petition for allowances based on a demonstration of need. IDEM is not sure that a separate pool of allowances could be created without approval by the U.S. EPA. The rule language reflects the court decision to move the compliance date to May 31, 2004.

Comment: In the NO_x 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. (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: IDEM should establish a compliance date of May 1, 2003, to be consistent with the NO_x SIP call. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Comment: The rule should include a compliance date that is later than the May 1, 2003, deadline to account for the time delay from the original SIP submittal date and the new submittal date. A date that should be considered is May 1, 2005. The difficulty in complying with a new rule is exacerbated due to several factors arising from a shorter time period between adoption of the new rule and the compliance date. The factors include:

- The strong possibility that material and labor shortages will occur due to the large quantity of NO_x control projects that will need to be undertaken in the region during this compressed time period.
- Consideration of the extra outages that will be necessary to install the control equipment without interfering with the peak demand season.
- The potential electric system reliability concerns associated with multiple outages. (SLE) (IEUAWG) (AEP)

Comment: IDEM should delay the compliance date of the SIP call rule to reflect, at a minimum, the forty-two (42) month period for compliance implementation included in the original U.S. EPA NO_x SIP call rule. The forty-two (42) month schedule is still an

aggressive implementation schedule for affected utilities. To comply with a SIP call rule that includes a shorter schedule will be a daunting task. A shorter schedule would be especially difficult for utilities considering installing new, clean and efficient generation. Delaying the compliance date would be especially helpful if IDEM does not include other provisions to assist with implementation. As an alternative, IDEM should establish a compliance date that is related to the effective date of the rule. Existing sources should be given three (3) years from the effective date of the rule to comply and new sources should achieve compliance the first control period following startup. (IPL) (IKEC) (NS)

Comment: IDEM should include provisions that provide for a one (1) year extension to the compliance date if sources are unable to comply because of shortages in materials or labor or because of regional electric system reliability concerns. (IPL)

Response: On August 30, 2000, the court established a new compliance date of May 31, 2004, and IDEM has included this date in the rule. The trading program rule also includes compliance supplement pool provisions to address material and labor shortages and electric system reliability issues.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#00-137(APCB) NO_x SIP Call

Kathryn A. Watson, Chief

Air Programs Branch

Office of Air Management

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 Management, 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) 233-0430.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by January 2, 2000.

Additional information regarding this action may be obtained from Roger Letterman, Office of Air Management, (317) 232- 8342 or dial (800) 451-6027, press 0, and ask for extension 2-8342 (in Indiana).

DRAFT RULE

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_x budget trading program under 326 IAC 10-4.

(d) The requirements of this rule shall not apply during start-up and shut-down 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_x burners” means a type of cement kiln burner system designed to lower NO_x 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 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_x 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_x 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_x burners.

(B) Mid-kiln firing.

(2) A limit on the amount of NO_x emitted when averaged over the ozone control period as follows:

(A) For long wet kilns, six (6) pounds of NO_x per ton of clinker produced.

(B) For long dry kilns, five and one-tenth (5.1) pounds of NO_x per ton of clinker produced.

(C) For preheater kilns, three and eight-tenths (3.8) pounds of NO_x per ton of clinker produced.

(D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO_x 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_x 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 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_x 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 Management, 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_x emissions during the ozone control period of each year using a NO_x CEMS in accordance with 40 CFR 60, Subpart A* and 40 CFR 60, Appendix B*, and comply 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 10-3-4*)

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_x 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_x 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_x emissions and the average NO_x 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 Management, 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_x emissions budget and NO_x trading program for electricity generating units and large affected units as described in this section. The following units shall be NO_x budget units, and any source that includes one (1) or more units shall be a NO_x 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(24) of this rule.

(b) A unit described under subsection (a) shall not be a NO_x 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_x 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) Restrict the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions.

(C) Require that the unit's potential NO_x mass emissions shall be calculated as follows:

(i) Select the default NO_x emission rate in 40 CFR 75.19(c)(1)(ii), Table 1b* 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_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(ii) Multiply the default NO_x emission rate under item (i) 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.

(D) 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 operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

(E) 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, 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 subsection (b); 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_x 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 NO_x budget unit that is subject to and complies with a rule promulgated under Section 126 of the CAA shall not be subject to this rule unless the Section 126 requirements no longer apply.

*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 Management, 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_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the source or sources and of the NO_x budget units at the source or sources with regard to matters under the NO_x budget trading program.

(2) "Account number" means the identification number given by the U.S. EPA to each NO_x 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_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(5) "Automated data acquisition and handling system (DAHS)" 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 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_x 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_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x 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, start-up 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_x 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_x budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO_x 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_x allowance tracking system account, established by the U.S. EPA for a NO_x budget unit under section 10 of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone control period for the purpose of meeting the unit's NO_x 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_x budget source's or a NO_x budget unit's compliance or noncompliance with this

rule and that is signed by the NO_x 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_x. 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_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

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

(18) "Excess emissions" means any tonnage of NO_x emitted by a NO_x budget unit during an ozone control period that exceeds the NO_x budget emissions limitation for the unit.

(19) "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.

(20) "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.

(21) "General account" means a NO_x allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

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

(23) "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_x 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.

(24) "Large affected unit" means:

(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 Btus per hour (250 mmBtu/hr) and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(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 Btus per hour (250 mmBtu/hr) and that did not serve

during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(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 Btus per hour (250 mmBtu/hr) 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.

(25) "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.

(26) "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.

(27) "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 (CO₂) concentration, in percent of CO₂.

(ii) The minimum oxygen (O₂) concentration, in percent of O₂.

(28) "Maximum potential NO_x 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 (O₂) concentration in percent of O₂; or

(ii) minimum carbon dioxide (CO₂) concentration in percent of CO₂;

under all operating conditions of the unit except for unit startup, shutdown, and upsets.

(29) "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.

(30) "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*.

(C) An alternative monitoring system.

(31) "Most stringent state or federal NO_x emissions limitation" means, with regard to a NO_x budget opt-in source, the lowest NO_x 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.

(32) "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.

(33) "Non-title V permit" means a federally enforceable permit issued by the department under 326 IAC 2-8.

(34) "NO_x allowance" means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO_x) budget trading program to emit up to one (1) ton of NO_x during the ozone control period of the specified year or of any year thereafter.

(35) "NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the U.S. EPA from a NO_x allowance tracking system compliance account or overdraft account to account for the number of

tons of NO_x emissions from a NO_x budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H*, or for any other allowance surrender obligation under this rule.

(36) “NO_x allowance tracking system” means the system by which the U.S. EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(37) “NO_x allowance tracking system account” means an account in the NO_x allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(38) “NO_x allowance transfer deadline” means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit’s compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit’s NO_x budget emissions limitation for the ozone control period immediately preceding the deadline.

(39) “NO_x allowances held” or “hold NO_x allowances” means the NO_x 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_x allowance tracking system account.

(40) “NO_x authorized account representative” means either of the following:

(A) For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x 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_x allowances held in the general account.

(41) “NO_x budget emissions limitation” means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for an ozone control period under section 10(i) and 10(k) of this rule, adjusted by any deductions of the NO_x allowances for any of the following reasons:

(A) To account for actual utilization under section 9(c) 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_x budget trading program.

(D) For a change in regulatory status, for a NO_x budget opt-in source under section 13(g) through 13(i) of this rule.

(42) “NO_x budget opt-in permit” means a NO_x budget permit covering a NO_x budget opt-in source.

(43) “NO_x budget opt-in source” means a source that includes one (1) or more NO_x budget units:

(A) that has elected to become a NO_x budget source under the NO_x budget trading program; and

(B) whose NO_x budget opt-in permit has been issued and is in effect under section 13 of this rule.

(44) “NO_x 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_x budget trading program requirements applicable to the following:

(i) A NO_x budget source.

(ii) Each NO_x budget unit at the NO_x budget source.

(iii) The owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(45) “NO_x budget source” means a source that includes one (1) or more NO_x budget units.

(46) “NO_x budget trading program” means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121*, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(47) “NO_x budget unit” means a unit that is subject to the NO_x budget trading program emissions limitation under section 1(a) or 13(a) of this rule.

(48) “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_x budget permit under section 13(d) of this rule.

(49) “Operator” means any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x 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.

(50) “Opt-in” means to elect to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under section 13 of this rule.

(51) “Overdraft account” means the NO_x allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(52) "Owner" means any of the following persons:

(A) Any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(B) Any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(C) Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 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_x budget unit or the unit for which an application for a NO_x 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_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

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

(54) "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.

(55) "Recordation", "record", or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the U.S. EPA from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(56) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A*.

(57) "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the U.S. EPA, under section 10(e) through 10(g) of this rule.

(58) "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.

(59) "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.

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

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

(62) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO_x 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.

(63) "Trading program budget" means the total number of NO_x tons apportioned to all NO_x budget units, in accordance with the NO_x budget trading program, for use in a given ozone control period.

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

(A) stationary boiler;

(B) combustion turbine; or

(C) combined cycle system.

(65) "Unit load" means the total or gross output of a unit in any ozone control period, or other specified time period, produced by combusting a given heat input of fuel, expressed in terms of either of the following:

(A) The total electrical generation (MW) produced by the unit, including generation for use within the plant.

(B) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

(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) "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_x 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 Management, 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_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of this section and sections 1, 2, 5, 9, 10, and 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_x authorized account representative, authorized in accordance with section 6, 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_x authorized account representative of the source submits a complete NO_x 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_x authorized account representative of the source submits a complete NO_x 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_x authorized account representative shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.
- (6)** A source that includes a unit that is exempt under this section is not eligible to be a NO_x budget opt-in source 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 three (3) years and the records shall be available upon request for an additional two (2) 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_x authorized account representative submits a NO_x budget permit application under subdivision (2) or (3).

(B) The date on which the NO_x authorized account representative is required under subdivision (2) or (3) to submit a NO_x 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 Management, 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 the NO_x authorized account representative of each NO_x budget source shall comply with the following permit requirements:

(1) The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall submit the following:

(A) A complete NO_x 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_x budget permit application in a timely manner and issue or deny a NO_x budget permit.

(2) The owners and operators of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit and operate the unit in compliance with the NO_x budget permit.

(3) The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, nor to have a NO_x budget permit, under section 7 of this rule for the NO_x budget source.

(b) The owners and operators of each NO_x budget source shall comply with the following monitoring requirements:

(1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the monitoring requirements of 40 CFR 75, Subpart H*.

(2) The emissions measurements recorded and reported in accordance with 40 CFR 75, Subpart H* shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subsection (c).

(c) The owners and operators of each NO_x budget source shall comply with the following NO_x requirements:

(1) The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under section 10(i) of this rule, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the ozone control period from the unit, as determined in accordance with 40 CFR 75, Subpart H*, 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_x emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of the Clean Air Act (CAA) and this rule.

(3) A NO_x 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_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with sections 9 through 11 and 13 of this rule.

(5) A NO_x 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_x allowance was allocated.

(6) A NO_x allowance allocated under the NO_x budget trading program is a limited authorization to emit one (1) ton of NO_x in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under section 3 of this rule and no provision of law shall be construed to limit the authority of the U.S. EPA to terminate or limit the authorization.

(7) A NO_x allowance allocated under the NO_x 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_x allowance to or from a NO_x budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without any further review.

(d) The owners and operators of a NO_x budget unit that has excess emissions in any ozone control period shall do the following:

(1) Surrender the NO_x 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_x budget source shall comply with the following record keeping and reporting requirements:

(1) Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on site at the source each of the following documents for a period of 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_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 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_x authorized account representative.

(B) All emissions monitoring information, in accordance with 40 CFR 75, Subpart H*, provided that to the extent that 40 CFR 75, Subpart H* 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_x budget trading program.

(D) Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x budget trading program or to demonstrate compliance with the requirements of the NO_x budget trading program.

(2) The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under section 8, 12, or 13 of this rule.

(f) The owners and operators of each NO_x budget source shall be liable as follows:

(1) Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under 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_x 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_x budget trading program that occurs prior to the date that the revision takes effect.

(4) Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

(5) Any provision of the NO_x budget trading program that applies to a NO_x budget source, including a provision applicable to the NO_x authorized account representative of a NO_x budget source, shall also apply to the owners and operators of the source and of the NO_x budget units at the source.

(6) Any provision of the NO_x budget trading program that applies to a NO_x budget unit, including a provision applicable to the NO_x authorized account representative of a NO_x budget unit, shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under 40 CFR 75, Subpart H*, the owners and operators and the NO_x authorized account representative of one (1) NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x 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_x authorized account representative of a NO_x budget source or NO_x 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 Management, 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_x 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_x budget trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x budget trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day. (*Air Pollution Control Board; 326 IAC 10-4-5*)

326 IAC 10-4-6 NO_x authorized account representative for NO_x 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_x budget source, including all NO_x budget units at the source, shall have one (1) and only one (1) NO_x authorized account representative, with regard to all matters under the NO_x budget trading program concerning the source or any NO_x budget unit at the source.

(b) The NO_x authorized account representative of the NO_x budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x budget units at the source.

(c) Upon receipt by the U.S. EPA of a complete account certificate of representation under subsection (h), the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) A NO_x budget permit shall not be issued, and a NO_x allowance tracking system account shall not be established for a NO_x budget unit at a source, until the U.S. EPA has received a complete account certificate of representation under subsection (h) for a NO_x authorized account representative of the source and the NO_x budget units at the source.

(e) The following shall apply to a submission made under the NO_x budget trading program:

(1) Each submission under the NO_x budget trading program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge

and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”.

(2) The department shall accept or act on a submission made on behalf of the owner or operators of a NO_x budget source or a NO_x budget unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a NO_x budget source chose to designate an alternate NO_x authorized account representative:

(1) An account certificate of representation may designate one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(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_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(3) Except in this subsection, subsections (a), (g), (h), and section 10(c) through 10(e) of this rule, whenever the term NO_x authorized account representative is used in this rule, the term shall be construed to include the alternate NO_x authorized account representative.

(g) The following shall apply when changing the NO_x authorized account representative, the alternate NO_x authorized account representative or there are changes in the owners and operators:

(1) The NO_x 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_x 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_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(2) The alternate NO_x 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_x 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_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x 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_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, 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_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the 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_x budget source or a NO_x budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit 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_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the department:

(1) Identification of the NO_x budget source and each NO_x budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: “I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of the owners and operators of the NO_x budget source

and of each NO_x budget unit at the source and that each 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_x authorized account representative and any alternate NO_x 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_x 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 department or 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_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the department or the U.S. EPA under the NO_x 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_x authorized account representative, including private legal disputes concerning the proceeds of NO_x 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_x budget source required to have a federally enforceable permit, the permit shall include a NO_x budget permit administered by the department as follows:

(1) For NO_x budget sources required to have a Part 70 operating permit under 326 IAC 2-7, the NO_x 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_x budget sources required to have a FESOP permit, the NO_x 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_x budget permit, including a draft or proposed NO_x budget permit, if applicable, shall contain all applicable NO_x budget trading program requirements and shall be a complete and segregable portion of the permit.

(b) The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the department a complete NO_x budget permit application under subsection (c) as follows:

(1) For NO_x 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_x budget units that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering the NO_x budget units to the department at least eighteen (18) months before May 31, 2004.

(B) For any source, with one (1) or more NO_x budget unit that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x budget unit to the department at least eighteen (18) months before the later of:

(i) May 31, 2004; or

(ii) the date on which the NO_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) for the NO_x budget source covering the NO_x budget units at the source in accordance with 326 IAC 2-7-4(a)(1)(D).

(2) For NO_x 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_x budget units that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x 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_x budget units that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) covering each NO_x 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_x budget unit commences operation.

(C) For permit renewal, the NO_x authorized account representative shall submit a complete NO_x budget permit application under subsection (c) for the NO_x budget source covering the NO_x 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_x budget permit application shall include the following elements concerning the NO_x budget source for which the application is submitted, in a format prescribed by the department:

(1) Identification of the NO_x 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_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under section 1(a) or under section 13 of this rule.

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

(4) For each NO_x budget opt-in unit at the NO_x budget source, the following certification statements by the NO_x authorized account representative:

(A) "I certify that each unit for which this permit application is submitted under 326 IAC 10-3-13 is not a NO_x budget unit under 326 IAC 10-3-2(a) and is not covered by a retired unit exemption under 326 IAC 10-3-3 that is in effect."

(B) If the application is for an initial NO_x budget opt-in permit, "I certify that each unit for which this permit application is submitted under 326 IAC 10-3-13 is currently operating, as that term is defined under 326 IAC 10-3-1(45)."

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each NO_x budget permit, including any draft or proposed NO_x budget permit, if applicable, shall contain, in a format prescribed by the department, all elements required for a complete NO_x budget permit application under subsection (c) as approved or adjusted by the department.

(e) Each NO_x 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_x allowance to or from the compliance accounts of the NO_x budget units covered by the permit or the overdraft account of the NO_x budget source covered by the permit.

(f) Notwithstanding IC 13-15-5, the initial NO_x budget permit covering a NO_x budget unit for which a complete NO_x 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_x budget permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a NO_x budget source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a NO_x 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_x budget units at a source are subject to the NO_x budget emissions limitation, the NO_x authorized account representative of the source shall submit to the department and the U.S. EPA by November 30 of that year, a compliance certification report for each source covering all NO_x budget units.

(b) The NO_x authorized account representative shall include in the compliance certification report under subsection (a) the following elements, in a format prescribed by the department, concerning each NO_x budget unit at the source and subject to the NO_x budget emissions limitation for the ozone control period covered by the report:

(1) Identification of each NO_x budget unit.

- (2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under section 10(k) of this rule for the ozone control period.
- (3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with 40 CFR 75, Subpart H*, 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_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x budget units at the source in compliance with the NO_x budget trading program, whether each NO_x budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x budget trading program applicable to the unit, including the following:

- (1) Whether the unit was operated in compliance with the NO_x 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_x emissions to the unit, in accordance with 40 CFR 75, Subpart H*.
- (3) Whether all the NO_x emissions from the unit, or a group of units, including the unit, using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with 40 CFR 75, Subpart H*. 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* 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*, if any, has changed.
- (5) If a change is required to be reported under subdivision (4), the NO_x 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_x 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_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (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 Management, 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_x 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_x emissions apportioned to the NO_x 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_x emissions that are available for allocation as NO_x allowances under this section as follows:

- (1) Forty-five thousand nine hundred fifty-two (45,952) tons for electricity generating units.
- (2) Thirteen thousand eight hundred forty-seven (13,847) tons for large affected units.

(b) The department shall allocate NO_x allowances to NO_x 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 September 30, 2001, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By April 1, 2004, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By April 1, 2007, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, and 2012.

(D) By April 1, 2010, and thereafter April 1 of the year that is three (3) years after the last year of allocations, the department shall submit to the U.S. EPA, the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods three (3), four (4), and five (5) years after the year of the allowance allocation.

(2) If the department fails to submit to the U.S. EPA the NO_x allowance allocations in accordance with this subdivision, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO_x allowances as were allocated for the preceding ozone control period.

(3) By April 1, 2005 and April 1 of each year thereafter, the department shall submit to the U.S. EPA the NO_x allowance allocations remaining in the allocation set-aside for the prior ozone control period, in accordance with subsection (c).

(c) The heat input, in million British thermal units (mmBtu), used for calculating NO_x allowance allocations for each NO_x budget unit under section 1 of this rule shall be as follows:

(1) For a NO_x 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 2000.

(2) For a NO_x 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), five (5) years before the year for which the NO_x 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_x 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_x 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_x budget units that commenced operation before May 1 of the period used to calculate heat input under subsection (c)(1), a total number of NO_x allowances equal to ninety-five percent (95%) in 2004, 2005, and 2006, or ninety-eight percent (98%) thereafter, of the tons of NO_x emissions in the trading program budget apportioned in accordance with the following procedures:

(1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling fifteen-hundredths (0.15) pound per million British thermal units multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO_x allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating unit for an ozone control period under subdivision (1) does not equal ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to electric generating units; and

(B) dividing by the total number of NO_x allowances allocated under subdivision (1), and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected unit in an amount equaling seventeen-hundredths (0.17) pound per million British thermal units multiplied by the heat input determined under subsection (c), rounded to the nearest whole NO_x allowance, as appropriate.

(4) If the initial total number of NO_x allowances allocated to all large affected units for an ozone control period under

subdivision (3) does not equal ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected units, the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (3) so that the total number of NO_x allowances allocated equals ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected units. This adjustment shall be made by:

(A) multiplying each unit's allocation by ninety-five percent (95%) in 2004, 2005, and 2006, and ninety-eight percent (98%) thereafter, of the number of tons of NO_x emissions in the trading program budget apportioned to large affected units; and

(B) dividing by the total number of NO_x allowances allocated under subdivision (3), and rounding to the nearest whole NO_x allowance as appropriate.

(5) For NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subsection (c), the department shall allocate NO_x allowances in accordance with the following procedures:

(A) The department shall establish one (1) allocation set-aside for each ozone control period. Each allocation set-aside shall be allocated NO_x allowances equal to five percent (5%) in 2004, 2005, and 2006, and two percent (2%) thereafter, of the tons of NO_x emissions in the trading program budget under subsection (a), rounded to the nearest whole NO_x allowance, as appropriate.

(B) The NO_x authorized account representative of a NO_x budget unit under this subdivision may submit to the department a request, in writing or in a format specified by the department, to be allocated NO_x allowances for no more than five (5) consecutive ozone control periods under subsection (b), starting with the ozone control period during which the NO_x budget unit commenced, or is projected to commence, operation and ending with the ozone control period preceding the ozone control period for which it shall receive an allocation under subdivision (1) or (3). The NO_x allowance allocation request must be submitted prior to May 1 of the first ozone control period for which the NO_x allowance allocation is requested and after the date on which the department issues a permit to construct the NO_x budget unit.

(C) In a NO_x allowance allocation request under this subdivision, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(i) For an electricity generating unit:

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

(BB) multiplied by the NO_x budget unit's maximum design heat input, in million British thermal units per hour; and

(CC) 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.

(ii) For a large affected unit:

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

(BB) multiplied by the NO_x budget unit's maximum design heat input, in million British thermal units per hour; and

(CC) 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.

(D) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request in the order that the request is received or the construction permit is issued by the department as follows:

(i) Upon receipt of the NO_x 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 clause (C)(i) and, for large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of clause (C)(ii).

(ii) If the allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under item (i), the department shall allocate the amount of the NO_x allowances requested, as adjusted under item (i), to the NO_x budget unit.

(iii) If the allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under item (i), the department shall deny in part the request and allocate only the remaining number of NO_x allowances in the allocation set-aside to the NO_x budget unit.

(iv) Once an allocation set-aside for an ozone control period has been depleted of all NO_x allowances, the department shall deny, and shall not allocate any NO_x allowances pursuant to, any NO_x allowance allocation request under which

NO_x allowances have not already been allocated for the ozone control period.

Within sixty (60) days of receipt of a NO_x allowance allocation request, the department shall take appropriate action under clause (D) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances, if any, allocated for the ozone control period to the NO_x budget unit.

(e) For a NO_x budget unit that is allocated NO_x allowances under subsection (d)(5) for an ozone control period, the U.S. EPA will deduct NO_x 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_x allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO_x allowance, as appropriate, provided that the number of NO_x allowances to be deducted shall be zero (0) if the number calculated is less than zero (0):

(1) NO_x allowances deducted for actual utilization for electricity generating units = (Unit's NO_x 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_x allowances deducted for actual utilization for large affected units = (Unit's NO_x 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:

“Unit's NO_x allowances allocated for ozone control period” is the number of NO_x allowances allocated to the unit for the ozone control period under subdivision (5); and

“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.

(f) 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_x allowances remain in the allocation set-aside for the ozone control period. The department shall allocate any remaining NO_x allowances to the NO_x budget units using the following formula and rounding to the nearest whole NO_x allowance as appropriate. A unit's share of NO_x allowances remaining in allocation set-aside = Total NO_x allowances remaining in allocation set-aside × (Unit's NO_x allowance allocation ÷ trading program budget excluding allocation set-aside) where:

(1) Total NO_x allowances remaining in allocation set-aside is the total number of NO_x allowances remaining in the allocation set-aside for the ozone control period to which the allocation set-aside applies.

(2) Unit's NO_x allowance allocation is the number of NO_x allowances allocated under subsection (d)(1) or (d)(2) to the unit for the ozone control period to which the allocation set-aside applies.

(3) The trading program budget excluding allocation set-aside is the trading program budget under subsection (a) for the ozone control period to which the allocation set-aside applies multiplied by ninety-five percent (95%) if the ozone control period is in 2004, 2005, or 2006 and ninety-eight percent (98%) if the ozone control period is in any year thereafter, rounded to the nearest whole NO_x allowance as appropriate.

*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 Management, 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_x 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_x allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:

(1) Allocations of NO_x allowances pursuant to section 9 or 13(j) of this rule.

(2) Deductions or transfers of NO_x allowances pursuant to one (1) of the following:

(A) Section 8(d), 8(e), 11, or 13 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:

- (1) A compliance account for each NO_x 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_x 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_x authorized account representative and any alternate NO_x 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_x authorized account representative, organization name, and type of organization.

(C) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account.

(D) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of 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_x authorized account representative and any alternate NO_x 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_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and the person. Any person having an ownership interest with respect to NO_x allowances shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the 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_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(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_x authorized account representative, alternate NO_x authorized account representative, or persons having an ownership interest with respect to NO_x allowances in the general account:

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

(i) One (1) and only one (1) NO_x authorized account representative.

(ii) One (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative.

The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(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_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(C) The NO_x 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_x 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_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(D) The alternate NO_x 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_x 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_x 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_x allowances in the general account is not included in the list of persons having an ownership interest with respect to the NO_x 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_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the 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_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(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 (4), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the U.S. EPA under the NO_x 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_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(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_x 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_x allowances in the account, shall be made only by the NO_x authorized account representative for the account. The U.S. EPA will assign a unique identifying number to each NO_x authorized account representative.

(g) The U.S. EPA will record the NO_x allowances for 2004 in the NO_x 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_x allowances allocated under section 13(j)(1) of this rule for each NO_x budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA will record NO_x allowances, as allocated to the unit under section 9 or 13(j)(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_x 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_x allowances to and recording them in an account, the U.S. EPA will assign each NO_x allowance a unique identification number that shall include digits identifying the year for which the NO_x allowance is allocated.

(j) The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for an ozone control period in a given year only if the NO_x 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_x allowance transfer deadline for that ozone control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO_x 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_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for an ozone control period, the U.S. EPA will deduct NO_x allowances available under subsection (j) to cover the unit's NO_x 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_x 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_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA will deduct NO_x allowances under subdivision (1) until:

- (A) the number of NO_x allowances deducted for the ozone control period equals the number of tons of NO_x 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_x 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_x allowances available under subsection (j) remain in the respective account.

(3) The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under 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_x 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_x 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_x allowances that were allocated for the ozone control period to the unit under section 9 or 13 of this rule.
- (B) Those NO_x 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_x allowances that were allocated for a prior ozone control period to the unit under section 9 or 13 of this rule.
- (D) Those NO_x 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 subsection (k)(1) and (k)(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_x 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_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x 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_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under 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_x 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_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x 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_x allowances for each unit, in accordance with subdivision (1), until the number of NO_x allowances deducted equals either of the following:

(i) The unit's identified percentage of the number of tons of NO_x 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 correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA will notify the NO_x authorized account representative for the account.

(m) The NO_x 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_x allowance tracking system and by correctly submitting for recordation under section 11(a) of this rule, an allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x 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_x allowances, the U.S. EPA may notify the NO_x authorized account representative for the account that the account shall be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) day period unless before the end of the twenty (20) day period the U.S. EPA receives a correctly submitted transfer of NO_x allowances into the account under section 11(a) of this rule or a statement submitted by the NO_x 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 Management, 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_x 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_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the NO_x 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_x allowance to be transferred.
- (3) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

(b) Within five (5) business days of receiving a NO_x allowance transfer, the U.S. EPA will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided the following:

- (1) The transfer is correctly submitted under subsection (a).
- (2) The transferor account includes each NO_x allowance identified by serial number in the transfer.
- (3) The transfer meets all other requirements of this section.

A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for an ozone control period prior to, or the same as, the ozone control period to which the NO_x allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO_x allowance allocations in section 10(h) of this rule.

(c) Where a NO_x 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_x allowance transfers:

- (1) Within five (5) business days of recordation of a NO_x allowance transfer under subsection (b), the U.S. EPA will notify each party to the transfer. Notice shall be given to the NO_x authorized account representatives of both the transferor and transferee accounts.
- (2) Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the NO_x 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_x allowance transfer for recordation following notification of nonrecordation. (*Air Pollution Control Board; 326 IAC 10-4-11*)

326 IAC 10-4-12 NO_x 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_x authorized account representative of a NO_x 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_x budget unit, NO_x 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_x budget unit and a unit for which an application for a NO_x 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_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR 75.72* and 40 CFR 75.76*.
- (2) Install all monitoring systems for monitoring heat input, if required under subsection (q) for developing NO_x 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_x budget units for which the owner or operator intends to apply for early reduction credits under section 14(c) of this rule must comply with the requirements of this section by May 1, 2001.

(2) Except for NO_x budget units under subdivision (1), NO_x budget units that commence operation before January 1, 2004, must comply with the requirements of this section by May 1, 2004.

(3) NO_x budget units that commence operation on or after January 1, 2004, 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 1, 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_x budget units that commence operation on or after January 1, 2004, 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_x 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_x 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_x budget unit that misses the certification deadline under subsection (c)(1):

(1) is not eligible to apply for early reduction credits under section 14 of this rule; and

(2) becomes subject to the certification deadline under subsection (c)(2).

(e) The owner or operator of a NO_x budget under subsection (c)(3) or (c)(4) must determine, record and report NO_x mass, heat input, if required for purposes of allocations, and any other values required to determine NO_x mass, for example NO_x emission rate and heat input or NO_x 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_x budget unit or a non-NO_x 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_x budget unit or a non-NO_x 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_x 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_x budget unit or a non-NO_x 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_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule and 40 CFR 75* except as provided for in 40 CFR 75.74*.

(4) No owner or operator of a NO_x budget unit or a non-NO_x 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_x 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_x 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_x emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.17*, the NO_x authorized account representative shall resubmit the petition to the U.S. EPA under subsection (p)(1) to determine if the approval applies under the NO_x budget trading program.

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

(h) The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, 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_x 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_x 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_x 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_x 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_x 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_x 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_x 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_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the 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 clause (E) 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)* and the following:

(A) For units monitoring or intending to monitor for NO_x 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_x emission rate; and
- (ii) the maximum potential hourly heat input of the unit.

(B) For units monitoring or intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor:

- (i) the maximum potential concentration of NO_x; and
- (ii) the maximum potential flow rate of the unit under 40 CFR 75, Appendix A, Section 2.1*.

(2) The NO_x 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_x 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):
- (A) that 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;
 - (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) that 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) that 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_x 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_x trading program. The NO_x 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_x authorized account representative for a NO_x 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_x 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_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under 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_x 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_x 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_x 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_x budget unit chooses to meet the annual reporting requirements of this section, the NO_x 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; or

(ii) the units commencing operation prior to May 31, 2004, 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 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_x budget unit is not subject to an acid rain emission limitation, then the NO_x authorized account representative shall do either the following:

(i) Meet all of the requirements of 40 CFR 75* related to monitoring and reporting NO_x 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_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(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_x 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_x 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_x budget unit, or group of units using a common stack.

(D) The NO_x 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_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions.

(iii) For a unit that is reporting on an ozone control period basis under this subsection, the NO_x emission rate and NO_x 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_x emissions.

(p) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the 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 subdivision (1), 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_x authorized account representative of a NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section.

(A) The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the 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_x 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_x mass emissions:

(1) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x 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_x mass emissions using a NO_x 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 10(n) 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 Management, 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_x budget opt-in source under this section if the unit meets the following requirements:

- (1)** Is not a NO_x 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_x budget unit, is covered by a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO_x budget opt-in source.

(b) Except otherwise as provided in this rule, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying sections 1 through 12 of this rule.

(c) A unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

(d) In order to apply for an initial NO_x budget opt-in permit, the NO_x 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_x 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_x authorized account representative has been previously designated for the unit.

The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under section 7(c) of this rule to renew the NO_x 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_x budget opt-in permit for a unit for which an initial application for a NO_x 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_x 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_x 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_x 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_x budget unit prior to issuance of a NO_x 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_x emissions rate shall be calculated as the unit's total NO_x 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_x emissions rate for the unit under subdivision (3), the department shall serve a draft NO_x budget opt-in permit on the NO_x authorized account representative of the unit.
- (5)** Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x 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_x budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.
- (6)** If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO_x 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_x budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO_x budget opt-in source under subsection (a), the department shall issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with section 7(a) of this rule.

(8) A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under subsection (d) at any time prior to the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under subsection (d).

(9) The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of the initial NO_x budget opt-in permit by the department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

(f) The following shall apply to the content of a NO_x budget opt-in permit:

(1) Each NO_x budget opt-in permit, including any draft or proposed NO_x budget opt-in permit, if applicable, shall contain all elements required for a complete NO_x budget opt-in permit application under section 7(c) of this rule as approved or adjusted by the department.

(2) Each NO_x 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 sections 10 and 11 of this rule and this section, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO_x budget trading program:

(1) The NO_x authorized account representative of a NO_x 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_x budget opt-in source covered by a request under subdivision (1) may withdraw from the NO_x budget trading program and the NO_x 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_x 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_x 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_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x 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 subdivision (1) and this subdivision are met, the U.S. EPA will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO_x allowances allocated to that source under subsection (j) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO_x 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_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(3) A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which the NO_x budget opt-in source was a NO_x 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_x allowances required, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x 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_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x 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_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under subdivision (1). A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

(7) If the department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative

may submit another request to withdraw in accordance with subdivisions (1) and (2). Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x 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_x budget opt-in permit became effective.

(h) When a NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the NO_x authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO_x 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_x budget opt-in source:

(1) When the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the department shall revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x 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_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as follows:

(A) Any NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO_x budget opt-in permit was effective.

(B) If the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the NO_x allowances allocated to the NO_x budget unit, as a NO_x 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_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(4) For every ozone control period during which the NO_x budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO_x budget unit under subdivision (1) shall be treated, solely for the purposes of NO_x 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_x budget permit revision under subdivision (1) and shall be allocated NO_x allowances under section 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the following number of NO_x allowances shall be allocated to the NO_x budget unit. The number of NO_x allowances otherwise allocated to the NO_x 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_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subsection (d), the U.S. EPA will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior ozone control period as any NO_x allowances allocated to the NO_x budget opt-in source under subsection (i) for any ozone control period after the last ozone control period for which the NO_x budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x budget opt-in source's compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO_x budget opt-in source's compliance account. If any NO_x 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_x 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_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(i) The department shall allocate NO_x allowances to a NO_x budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO_x budget opt-in permit is effective, the department shall allocate NO_x allowances to the NO_x 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_x budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO_x allowances to the NO_x 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_x budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source shall be allocated NO_x allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO_x allowance allocations shall be the lesser of the following:

(i) The NO_x budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO_x 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_x allocations are being calculated.

(B) The department shall allocate NO_x allowances to the NO_x 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_x budget opt-in source's baseline NO_x emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3).

(ii) The most stringent state or federal NO_x emissions limitation applicable to the NO_x 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 Management, 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_x 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_x 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_x 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_x 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_x allowance, any NO_x 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.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO_x allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO_x 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_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x 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_x allowance may be deducted for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO_x 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_x 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_x allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO_x 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_x allowances are used to make a deduction, two (2) NO_x allowances must be deducted for each deduction of one (1) NO_x 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 Management, 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_x 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_x allocations from the compliance supplement pool to NO_x budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue up to eighty-five percent (85%) of the compliance supplement pool to NO_x budget units that are electricity generating units and up to ten percent (10%) of the compliance supplement pool to NO_x budget units that are large affected units that implement emissions reductions beyond all applicable requirements during the ozone season in years prior to the year 2004 according to the following provisions:

(A) The department shall complete the issuance process by no later than May 31, 2004.

(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 between September 30, 2000, and May 31, 2004.

(D) Each NO_x budget unit for which the owner or operator requests any early reduction credits under this section shall monitor NO_x emissions in accordance with 40 CFR 75, Subpart H* starting in the 2000 ozone control period 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 2000 ozone control period, and the unit must be in compliance with any applicable state or federal emissions or emissions-related requirements.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H*.

(F) The NO_x authorized account representative of a NO_x 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_x emission rate reductions made by the unit in the ozone control period for 2001 through 2003. The request shall include the following:

(i) In the early reduction credit request, the NO_x 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 most stringent NO_x emission limit required by Indiana's state implementation plan (SIP) or be otherwise required by the Clean Air Act (CAA).

(BB) The unit's NO_x emission rate for the ozone control period, 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_x emission rate reductions on which the request is based are made or the later date approved by the department.

(G) The department shall allocate NO_x allowances, to NO_x budget units meeting the requirements of this subdivision and

covered by early reduction requests meeting the requirements of clause (F)(ii), 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_x allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for 2001 through 2003, as adjusted under item (i), the department shall allocate to each NO_x 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_x allowances less than the number of early reduction credits in all accepted early reduction credit requests for 2001 through 2003, as adjusted under item (i), the department shall allocate NO_x allowances to each NO_x budget unit covered by the accepted requests according to the following 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_x 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 2001 through 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 2001 and 2002 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO_x allowances from the compliance supplement pool is the number of NO_x allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By May 31, 2004, the department shall submit to the U.S. EPA the allocations of NO_x 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_x 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_x 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_x 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 the trading program.

(2) The department may issue up to five percent (5%) of the compliance supplement pool to NO_x 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_x budget unit under subdivision (C).

(c) The total number of NO_x allowances available from the compliance supplement pool shall not exceed nineteen thousand

nine hundred fifteen (19,915) tons of NO_x. Any NO_x 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 Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-4-15)**

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 7, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on 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 preliminary 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 by calling (800) 451-6027 (in Indiana), press 0, and ask for Roger Letterman, Rules Development Section, Office of Air Management, (or extension 2-8342) or dial (317) 232-8342. 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. Speech and hearing impaired callers may 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 Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.