Appendix P

Effective State Rules

EFFECTIVE STATE RULES

10 CSR 10-6.300 Conformity of General Federal Actions to State Implementation Plans

PURPOSE: This rule implements section 176(c) of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.) and regulations under 40 CFR part 51 subpart W, with respect to the conformity of general federal actions to the applicable implementation plan. Under those authorities, no department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan. This rule applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is a national ambient air quality standard.

Editor's Note: The following material is incorporated into this rule by reference:

1) 42 ***United States Code*** *7401 and 7472 (Washington D.C.: U.S. Government Printing Office, 1989)*

2) 40 ***Code of Federal Regulatons*** *part 50; part 51, subpart W, Revised as of July 1, 1995; and part 81 (Washington, D.C.: U.S. Government Printing Office, 1995);*

3) 23 ***United States Code*** *(Washington D.C.: U.S. Government Printing Office, 1995);*

4) 49 ***United States Code*** *1601 and 1607 (Washington, D.C.: U.S. Governmental Printing Office, 1995);*

5) 23 ***United States Code 134 (Washington D.C.: U.S. Government Printing Office, 1995);***

6) 40 Code *of Federal Regulations (Washington D.C.: U.S. Government Printing Office, 1995);*

*7) Environmental Protection Agency "****Compilation of Air Pollutant Emission Factors (AP42****)" 5th Edition, Jan. 1995, Office of Air Quality Planning and Standards, Office of Air and Radiation, E.P.A. Research Triangle Park, NC 27711);*

8) ***Guidelines on Air Quality Models*** *(Revised July 1986) (Research Triangle Park, N.C.: U.S. Environmental Protection Agency 1986).*

In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) General.

(A) No department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(B) Under Clean Air Act (CAA) section 176(c) and 40 CFR part 51 subpart W, a federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

(C) Subsection (1)(B) of this rule does not include federal actions where either--

1. A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

2. All of the following conditions are met:

A. Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

B. Sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency's affirmative obligation under section 176(c) of the CAA; and

C. A written determination of conformity under section 176(c) of the CAA has been made by the federal agency responsible for the federal action by March 15, 1994.

(D) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the CAA.

(2) Definitions.

(A) Terms used but not defined in this rule shall have the meaning given them by the CAA and Environmental Protection Agency's (EPA's) regulations, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

(B) Additional definitions specific to this rule are as follows:

1. Affected federal land manager—the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within one hundred kilometers (100 km) of the proposed federal action;

2. Applicable implementation plan—the (portion) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA (federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA;

3. Area wide air quality modeling analysis—an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality;

4. CAA—the Clean Air Act, as amended;

5. Cause or contribute to a new violation—a federal action that—

A. Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

B. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation;

6. Caused by, as used in the terms "direct emissions" and "indirect emissions"—emissions that would not otherwise occur in the absence of the federal action;

7. Criteria pollutant or standard—any pollutant for which there is established a NAAQS at 40 CFR part 50;

8. Direct emissions—those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action;

9. Emergency—a situation where extremely quick action on the part of the federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations;

10. Emissions budgets—those portions of the total allowable emissions defined in an EPA approved revision to the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system must be specific enough to assure meeting the criteria of section 176(c)(1)(B) of the CAA. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan;

11. Emission offsets, for purposes of section (8) of this rule—emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's new source review requirements;

12. Emissions that a federal agency has a continuing program responsibility for—emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility;

13. EPA—the United States Environmental Protection Agency;

14. Federal action—any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the federal permit, license, or approval;

15. Federal agency—for purposes of this rule, a federal department, agency, or instrumentality of the federal government;

16. Increase the frequency or severity of any existing violation of any standard in any area—to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented;

17. Indirect emissions—those emissions of a criteria pollutant or its precursors that—

A. Are caused by the federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

B. The federal agency can practicably control and will maintain control due to a continuing program responsibility of the federal agency, including, but not limited to—

(I) Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(II) Emissions related to the activities of employees of contractors or federal employees;

(III) Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; or

(IV) Emissions related to the use of federal facilities under lease or temporary permit.

18. Local air quality modeling analysis—an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality;

19. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA;

20. Maintenance plan—a revision to the applicable implementation plan, meeting the requirements of section 175A of the CAA;

21. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607;

22. Milestone—has the meaning given in sections 182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved;

23. National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10}), and sulfur dioxide (SO_2);

24. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

25. Nonattainment area (NAA)—any geographic area of the United States which has been designated as nonattainment under section 107 of the CAA and described in 40 CFR part 81;

26. Precursors of a criteria pollutant—

A. For ozone, nitrogen oxides (NO_x) (unless an area is exempted from NO_x requirements under section 182(f) of the CAA), and volatile organic compounds (VOCs); and

B. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the PM_{10} levels;

27. Reasonably foreseeable emissions—projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency;

28. Regionally significant action—a federal action for which the direct and indirect emissions of any pollutant represent ten percent (10%) or more of a nonattainment or maintenance area's emissions inventory for that pollutant;

29. Regional water or wastewater projects—include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area; and

30. Total of direct and indirect emissions—the sum of direct and indirect emissions increases and decreases caused by the federal action; that is, the net emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsections (3)(C), (D), (E), or (F) of this rule are not included in the "total of direct and indirect emissions," except as provided in subsection (3)(J). The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule.

(3) Applicability.

(A) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 10 CSR 10-2.390 and 10 CSR 10-5.480, in lieu of the procedures set forth in this rule.

(B) For federal actions not covered by subsection (3)(A) of this rule, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (3)(B)1. or 2. of this rule.

1. For purposes of subsection (3)(B) of this rule, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC or NO_x)	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100

Marginal and moderate NAAs	
inside an ozone transport region	
VOC	50
NO_x	100
Carbon monoxide	
All NAAs	100
SO_2 or NO_2	
All NAAs	100
PM_{10}	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

2. For purposes of subsection (3)(B) of this rule, the following rates apply in maintenance areas:

	Tons/Year
Ozone (NO_x), SO_2 or NO_2	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside	
an ozone transport region	50
Maintenance areas outside	
an ozone transport region	100
Carbon monoxide	
All maintenance areas	100
PM_{10}	
All maintenance areas	100
Pb	
All maintenance areas	25

(C) The requirements of this rule shall not apply to—

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (3)(B) of this rule;

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

A. Judicial and legislative proceedings;

B. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

C. Rulemaking and policy development and issuance;

D. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

E. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

F. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees;

G. The routine, recurring transportation of material and personnel;

H. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul;

I. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

J. With respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

K. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

L. Planning, studies, and provision of technical assistance;

M. Routine operation of facilities, mobile assets and equipment;

N. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

O. The designation of empowerment zones, enterprise communities, or viticultural areas;

P. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States;

Q. Actions by the Board of Governors of the Federal Reserve System or any federal reserve bank to effect monetary or exchange rate policy;

R. Actions that implement a foreign affairs function of the United States;

S. Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties;

T. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants; and

U. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States;

3. Actions where the emissions are not reasonably foreseeable, such as the following:

A. Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level; and

B. Electric power marketing activities that involve the acquisition, sale and transmission of electric energy; and

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(D) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

1. The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

2. Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (3)(E) of this rule;

3. Research, investigations, studies, demonstrations, or training other than those exempted under paragraph (3)(C)2, of this rule, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the department;

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions); and

5. Direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (3)(D)2. of this rule and which are to be taken more than six (6) months after the commencement of the response to the emergency or disaster under paragraph (3)(D)2. of this rule are exempt from the requirements of this rule only if--

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six (6) months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

2. For actions which are to be taken after those actions covered by paragraph (3)(E)1. of this rule, the federal agency makes a new determination as provided in paragraph (3)(E)1. of this rule.

(F) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (3)(G)1. or 2. and the procedures set forth in subsection (3)(H) of this rule are presumed to conform, except as provided in subsection (3)(J) of this rule.

(G) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (3)(G)1. or 2. of this rule.

1. The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not--

A. Cause or contribute to any new violation of any standard in any area;

B. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

C. Increase the frequency or severity of any existing violation of any standard in any area; or

D. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of—

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan; or

2. The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in subsection (3)(B) of this rule, based, for example, on similar actions taken over recent years.

(H) In addition to meeting the criteria for establishing exemptions set forth in paragraph (3)(G)1. or 2. of this rule, the following procedures must also be complied with to presume that activities will conform:

1. The federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

2. The federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the MPO and provide at least thirty (30) days for the public to comment on the list of proposed activities presumed to conform;

3. The federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency must publish the final list of such activities in the *Federal Register*.

(I) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in subsection (3)(B) of this rule, but represents ten percent (10%) or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of sections (1) and (5) (10) of this rule shall apply for the federal action.

(J) Where an action presumed to be *de minimis* under paragraph (3)(C)1. or 2. of this rule or otherwise presumed to conform under subsection (3)(F) of this rule is a regionally significant action or where an action otherwise presumed to conform under subsection (3)(F) of this rule does not in fact meet one (1) of the criteria in paragraph (3)(G)1. of this rule, that action shall not be considered *de minimis* or presumed to conform and the requirements of sections (1) and (5) (10) of this rule shall apply for the federal action.

(K) The provisions of this rule shall apply in all nonattainment and maintenance areas.

(L) Any measures used to affect or determine applicability of this rule, as determined under this section, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this rule is approved by EPA as a revision to the applicable implementation plan, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(4) Conformity Analysis. Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR part 51 subpart W and this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(5) Reporting Requirements.

(A) A federal agency making a conformity determination under section (8) must provide to the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO a thirty (30)-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(B) A federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO within thirty (30) days after making a final conformity determination under section (8).

(6) Public Participation and Consultation.

(A) Upon request by any person regarding a specific federal action, a federal agency must make available for review its draft conformity determination under section (8) with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(B) A federal agency must make public its draft conformity determination under section (8) by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing thirty (30) days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(C) A federal agency must document its response to all the comments received on its draft conformity determination under section (8) and make the comments and responses available, upon request by any person regarding a specific federal action, within thirty (30) days of the final conformity determination.

(D) A federal agency must make public its final conformity determination under section (8) for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within thirty (30) days of the final conformity determination.

(7) Frequency of Conformity Determinations.

(A) The conformity status of a federal action automatically lapses five (5) years from the date a final conformity determination is reported under section (5), unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(B) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under section (5).

(C) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (3)(B), a new conformity determination is required.

(8) Criteria for Determining Conformity of General Federal Actions.

(A) An action required under section (3) to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in subsection (3)(B), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection (8)(C) of this rule, and meets any of the following requirements:

1. For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;

2. For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no net increase in emissions of that pollutant;

3. For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements—

A. Specified in subsection (8)(B) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or

B. Specified in paragraph (8)(A)5. of this rule and, for local air quality modeling analysis, the requirement of subsection (8)(B) of this rule;

4. For CO or PM_{10}—

A. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection (8)(B) of this rule, based on local air quality modeling analysis; or

B. Where the department determines (in accordance with sections (5) and (6) and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection (8)(B) of this rule, based on areawide modeling, or meet the requirements of paragraph (8)(A)5. of this rule; or

5. For ozone or nitrogen dioxide, and for purposes of subparagraphs (8)(A)3.B. and (8)(A)4.B. of this rule, each portion of the action or the action as a whole meets any of the following requirements:

A. Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in part (I) or where the state makes a commitment as provided in part (II). Any such determination or commitment shall be made in compliance with sections (5) and (6).

(I) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable implementation plan.

(II) The total of direct and indirect emissions from the action (or portion thereof) is determined by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable implementation plan and the department makes a written commitment to EPA which includes the following:

(a) A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(b) Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

(c) A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(d) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(e) Written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under part (8)(A)5.A.(II) of this rule, such a state commitment is automatically deemed a call for an implementation plan revision by EPA under section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within eighteen (18) months or any shorter time within which the state commits to revise the applicable implementation plan;

B. The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 10 CSR 10-2.390 or 10 CSR 10-5.480;

C. The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable implementation plan or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

D. Where EPA has not approved a revision to the relevant implementation plan attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in subsection (9)(D) of this rule) do not increase emissions with respect to the baseline emissions, and--

(I) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during-—

(a) Calendar year 1990;

(b) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81; or

(c) The year of the baseline inventory in the PM_{10} applicable implementation plan; and

(II) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in subsection (9)(D) of this rule) using the historic activity levels (described in part (8)(A)5.D.(I) of this rule) and appropriate emission factors for the future years; or

E. Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (9)(A).

(B) The areawide and local air quality modeling analyses must--

1. Meet the requirements in section (9); and
2. Show that the action does not--

A. Cause or contribute to any new violation of any standard in any area; or

B. Increase the frequency or severity of any existing violation of any standard in any area.

(C) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

(D) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified in compliance with section (10), before the determination of conformity is made.

(9) Procedures for Conformity Determinations of General Federal Actions.

(A) The analyses required under this rule must be based on the latest planning assumptions.

1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations and other federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area.

(B) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA regional administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area must be used for the conformity analysis as specified below:

A. The EPA must publish in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

B. A grace period of three (3) months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three (3) years before the *Federal Register* notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

2. For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(C) The air quality modeling analyses required under this rule must be based on the applicable air quality models, databases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless--

1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

2. Written approval of the EPA regional administrator is obtained for any modification or substitution.

(D) The analyses required under this rule must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

1. The CAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

2. The year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

3. Any year for which the applicable implementation plan specifies an emissions budget.

(10) Mitigation of Air Quality Impacts.

(A) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(B) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with subsection (10)(A) of this rule.

(C) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(D) In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in subsection (10)(A) of this rule.

(E) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with sections (8) and (9) and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of section (5) and the public participation requirements of section (6).

(F) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(G) After this rule is approved by EPA as an implementation plan revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(11) Savings Provision. The federal conformity rules under 40 CFR part 51 subpart W, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this rule is approved by EPA as an implementation plan revision. Following EPA approval of this rule as a revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) state criteria and procedures will govern conformity determinations and the federal conformity regulations contained in 40 CFR part 93 will apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

AUTHORITY: section 643.050, RSMo 1994. Original rule filed Oct. 4, 1994, effective May 28, 1995. Amended: Filed Jan. 30, 1996, effective Sept. 30, 1996.*
**Original authority 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.362 Clean Air Interstate Rule Annual NO_x Trading Program

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The Clean Air Interstate Rule was published on May 12, 2005. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) units, and any source that includes one (1) or more such units shall be a CAIR NO_x source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR NO_x unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR NO_x unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x units—

1. Cogenerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the sections of 40 CFR 96.105 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in sections 40 CFR 96.102 and 96.103 of 40 CFR 96 subpart AA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Unless otherwise noted in this section of the rule, 40 CFR 96.106, 96.107, and 96.108 as well as all of the sections of 40 CFR 96 subparts BB, CC (excluding any reference to 40 CFR 96 subpart EE), DD, FF, GG, and II promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) NO_x Allowances.

1. Timing requirements for CAIR NO_x allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar years in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations listed in Table I of this rule.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year beginning 2015 and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

C. By October 31, 2015 and October 31 of every tenth year following, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year ten (10) years in the future and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

2. NO_x allowance allocations.

A. The state trading program NO_x budget allocated by the director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a calendar year will equal fifty-nine thousand eight hundred seventy-one (59,871) tons for 2009–2014 and forty-nine thousand eight hundred ninety-two (49,892) tons for 2015 and beyond.

B. The following NO_x budget units shall be allocated NO_x allowances for each calendar year in accordance with Table I of paragraph (3)(B)2.B. of this rule.

_Table I

Facility ID	Facility Name	Unit ID	Portion Statewide Pool	NO_x Allocation 2009–2014	NO_x Allocation 2015 and Beyond
2076	ASBURY	1	1.842%	1,097	914
2079	HAWTHORN STATION	5A	5.531%	3,294	2,743
2079	HAWTHORN STATION	6	0.053%	31	26
2079	HAWTHORN STATION	7	0.031%	18	15
2079	HAWTHORN STATION	8	0.027%	16	13
2079	HAWTHORN STATION	9	0.116%	69	58
2080	MONTROSE STATION	1	1.530%	911	759
2080	MONTROSE STATION	2	1.589%	947	788
2080	MONTROSE STATION	3	1.581%	942	784
2081	NORTHEAST #11		0.005%	3	2
2081	NORTHEAST #12		0.004%	2	2
2081	NORTHEAST #13		0.011%	7	6
2081	NORTHEAST #14		0.009%	5	5
2081	NORTHEAST #15		0.008%	4	4
2081	NORTHEAST #16		0.005%	3	2
2081	NORTHEAST #17		0.011%	6	5
2081	NORTHEAST #18		0.007%	4	3
2082	FAIRGROUNDS		0.004%	2	2
2092	RALPH GREEN	3	0.015%	9	8
2094	SIBLEY	1	0.514%	306	255
2094	SIBLEY	2	0.512%	305	254
2094	SIBLEY	3	3.319%	1,977	1,646
2096	AMEREN VIADUCT		0.001%	—	—
2098	LAKE ROAD	6	0.910%	542	452
2098	LAKE ROAD	5	0.009%	5	4
2102	HOWARD BEND		0.002%	1	1
2103	LABADIE	1	4.890%	2,913	2,425
2103	LABADIE	2	5.033%	2,998	2,496
2103	LABADIE	3	5.589%	3,329	2,772
2103	LABADIE	4	5.009%	2,984	2,484
2104	MERAMEC	1	1.225%	730	607
2104	MERAMEC	2	1.134%	676	562
2104	MERAMEC	3	1.966%	1,171	975
2104	MERAMEC	4	2.985%	1,778	1,480
2104	MERAMEC	GT1	0.000%	2	2
2104	MERAMEC	GT2	0.000%	3	2
2107	SIOUX	1	3.891%	2,318	1,930
2107	SIOUX	2	3.832%	2,282	1,900
2122	CHILLICOTHE		0.003%	2	2
2123	COLUMBIA	6	0.068%	41	34
2123	COLUMBIA	7	0.073%	44	36
2123	COLUMBIA	8	0.001%	1	—
2132	BLUE VALLEY POWER	3	0.270%	161	134
2132	BLUE VALLEY POWER	GT1	0.000%	—	—
2161	JAMES RIVER	GT1	0.025%	15	12
2161	JAMES RIVER	GT2	0.015%	9	8
2161	JAMES RIVER	3	0.492%	293	244
2161	JAMES RIVER	4	0.604%	360	300
2161	JAMES RIVER	5	1.031%	614	511
2167	NEW MADRID POWER PLANT	1	4.611%	2,747	2,287
2167	NEW MADRID POWER PLANT	2	5.095%	3,035	2,527
2168	THOMAS HILL ENERGY CENTER	MB1	1.891%	1,126	938
2168	THOMAS HILL ENERGY CENTER	MB2	2.792%	1,663	1,385
2168	THOMAS HILL ENERGY CENTER	MB3	6.793%	4,046	3,369
2169	CHAMOIS POWER PLANT	2	0.530%	315	263
6065	IATAN STATION	1	6.699%	3,990	3,322
6074	GREENWOOD ENERGY CENTER	1	0.021%	12	10
6074	GREENWOOD ENERGY CENTER	2	0.020%	12	10
6074	GREENWOOD ENERGY CENTER	3	0.024%	14	12
6074	GREENWOOD ENERGY CENTER	4	0.025%	15	12
6155	RUSH ISLAND	1	4.838%	2,882	2,399

6155	RUSH ISLAND	2	4.613%	2,748	2,287
6195	SOUTHWEST	1	2.248%	1,339	1,115
6195	SOUTHWEST	CT1A	0.005%	3	2
6195	SOUTHWEST	CT1B	0.005%	3	2
6195	SOUTHWEST	CT2A	0.005%	3	2
6195	SOUTHWEST	CT2B	0.005%	3	2
6223	EMPIRE	3A	0.004%	2	2
6223	EMPIRE	3B	0.004%	2	2
6223	EMPIRE	4A	0.003%	2	2
6223	EMPIRE	4B	0.003%	2	2
6563	EMPIRE—ENERGY CENTER 1		0.036%	21	18
6563	EMPIRE—ENERGY CENTER 2		0.031%	19	16
6650	MEXICO		0.003%	2	2
6651	MOBERLY		0.002%	2	1
6652	MOREAU		0.003%	2	2
6768	SIKESTON	1	2.612%	1,556	1,295
7296	STATE LINE UNIT 1	1	0.131%	78	65
7296	STATE LINE UNIT 1	2-1	0.204%	122	101
7296	STATE LINE UNIT 1	2-2	0.256%	153	127
7604	ST. FRANCIS POWER PL	1	0.155%	92	77
7604	ST. FRANCIS POWER PL	2	0.117%	70	58
7749	ESSEX POWER PLANT	1	0.018%	11	9
7754	NODAWAY POWER PLANT	1	0.019%	11	9
7754	NODAWAY POWER PLANT	2	0.018%	11	9
7848	HOLDEN POWER PLANT	1	0.004%	2	2
7848	HOLDEN POWER PLANT	2	0.006%	4	3
7848	HOLDEN POWER PLANT	3	0.004%	2	2
7903	MCCARTNEY	MGS1A	0.002%	1	1
7903	MCCARTNEY	MGS1B	0.002%	1	1
7903	MCCARTNEY	MGS2A	0.002%	1	1
7903	MCCARTNEY	MGS2B	0.002%	1	1
7964	PENO CREEK ENERGY CTR	CT1A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT1B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT2A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT2B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT3A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT3B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT4A	0.003%	1	1
7964	PENO CREEK ENERGY CTR	CT4B	0.002%	1	1
8567	HIGGINSVILLE		0.006%	3	3
55178	MEP PLEASANT HILL	CT-1	0.166%	99	82
55178	MEP PLEASANT HILL	CT-2	0.153%	91	76
55234	AUDRAIN GENERATING	CT1	0.001%	1	1
55234	AUDRAIN GENERATING	CT2	0.001%	1	—
55234	AUDRAIN GENERATING	CT3	0.001%	1	—
55234	AUDRAIN GENERATING	CT4	0.001%	1	—
55234	AUDRAIN GENERATING	CT5	0.001%	1	1
55234	AUDRAIN GENERATING	CT6	0.000%	—	—
55234	AUDRAIN GENERATING	CT7	0.000%	—	—
55234	AUDRAIN GENERATING	CT8	0.001%	—	—
55447	COLUMBIA ENERGY CTR	CT01	0.001%	1	1
55447	COLUMBIA ENERGY CTR	CT02	0.001%	1	1
55447	COLUMBIA ENERGY CTR	CT03	0.001%	1	—
55447	COLUMBIA ENERGY CTR	CT04	0.001%	—	—
	Energy Efficiency/Renewable Energy set aside			300	300
	Total		100.000%	59,871	49,892

C. Any unit subject to section (1) of this rule other than those listed in Table I of this subsection will not be allocated NO_x budget allowances under this rule.

D. *Reserved.*

E. Any person seeking set-aside allowances for energy efficiency and renewable generation projects shall meet the requirements of subparagraph (3)(B)2.E. of this rule.

(I) The purpose for establishing this set-aside is to allocate allowances to serve as incentives for saving or generating electricity through the implementation of energy efficiency and renewable generation projects as defined in this section.

(a) Each energy efficiency and renewable generation set-aside shall contain the number of NO_x allowances as provided in Table I of this subsection.

(b) Awards of allowances will be available only to eligible energy efficiency or renewable generation projects that—

I. Commence operation after September 1, 2005;

II. Reduce electricity use, generate electricity from renewable resources or provide combined heat and power benefits during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008 through December 31, 2008 or subsequent twelve (12)-month energy efficiency/renewable energy project periods; and

III. In an application submitted by March 1 of each year, include adequate documentation of these energy savings, renewable energy generation or combined heat and power benefits.

(c) Projects will be awarded allowances for the control period following the twelve (12)-month energy efficiency/
renewable energy project period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008 through December 31, 2008 will receive allowances for the 2009 control period.

(d) Eligible projects located in Missouri may qualify for awards from the set-aside for up to seven (7) consecutive control periods. Eligible projects located outside Missouri may qualify for awards for up to five (5) consecutive control periods.

(e) Department actions on applications for awards from the set-aside. The department shall act upon applications as follows:

I. By May 31 of the control period for which NO_x allowances are requested, the department shall take the following actions:

a. For each application, the department shall determine whether the project is eligible and the application is complete and shall notify the applicant of its determination; and

b. For the eligible and complete applications, the department shall calculate the total number of allowances which the projects are qualified to receive, not to exceed the total number of allowances allocated to the set-aside as provided in Table I of this subsection, and shall award said allowances to eligible energy efficiency or renewable generation projects.

II. If the number of allowances awarded is fewer than allowances allocated to the set-aside as provided in Table I of this subsection, the department shall transfer surplus allowances to the accounts of the electric utilities listed in Table I of this subsection on a pro rata basis in the same proportion as allocations to NO_x budget units set forth in Table I of this subsection.

III. If the number of allowances claimed for award is more than allowances allocated to the set-aside as provided in Table I of this subsection, the department shall allocate awards to sponsors of eligible projects as follows:

a. Up to the first one hundred fifty (150) allowances in the set-aside shall be awarded for eligible projects located in Missouri, as follows. Up to the first sixty (60) allowances shall be awarded for eligible energy efficiency projects in the order that the projects first achieved eligible status. The remaining allowances shall be awarded for eligible projects located in Missouri in the order the projects first achieved eligible status, regardless of the type of project; and

b. The remaining allowances in the set-aside shall be awarded for eligible projects on a pro rata basis in proportion to total remaining claims for awards, regardless of project location.

(II) Project eligibility. Allocations from the energy efficiency and renewable generation set-aside may be requested by any entity, including an electric utility listed in Table I of this subsection or its affiliate, that implements and demonstrates eligible projects as defined in this subparagraph.

(a) Eligibility requirements. The department shall establish requirements for project eligibility and shall determine which projects are eligible to receive awards from the set-aside.

(b) Only the following shall be eligible for awards from the set-aside:

I. Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

a. Energy efficiency projects may be directed toward or located within buildings or facilities owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or its affiliate. Eligibility requirements for these projects shall be the same as for any other energy efficiency project.

b. Energy efficiency projects may include demand-side programs that result in reduced or more efficient electricity use;

II. Renewable generation projects, includes electric generation from wind, photovoltaic systems, biogas and hydropower projects. Renewable generation projects do not include nuclear power projects. Eligible biogas

projects include projects to generate electricity from methane gas captured from sanitary landfills, wastewater treatment plants, sewage treatment plants or agricultural livestock waste treatment systems. Eligible hydropower projects are restricted to systems—

a. That are certified by the Low Impact Hydropower Institute;

b. That employ a head of ten feet (10') or less; or

c. Employing a head greater than ten feet (10') that make use of a dam that existed prior to the effective date of this rule;

III. Renewable biomass generation projects include projects in which one (1) or more biomass fuels is fired separately or co-fired with one (1) or more fossil fuels to generate electricity. Biomass includes wood and wood waste, energy crops such as switchgrass and agricultural wastes such as crop and animal waste. Electric generation from combustion of municipal solid waste is not included; and

IV. Combined heat and power (CHP) projects that use integrated technologies, including cogeneration, which convert fuel to electric, thermal, and mechanical energy for on-site or local use. In the case of electricity generation, combined heat and power can include export of power to the local electric utility transmission grid. The thermal energy from combined heat and power systems can be created and used in the form of steam, hot or chilled water for process, space heating or cooling, or other applications. To be eligible, the combined heat and power installation must meet or exceed technology-specific efficiency thresholds that will be established by the department.

(c) Additional eligibility requirements shall include the following:

I. Project information must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

II. Only projects that are not required by federal government regulation and that are not and will not be used to generate compliance or permitting credits otherwise in the state implementation plan (SIP) are eligible to receive allowances from the set-aside;

III. Only electricity generation or savings that are not the basis for an award of CAIR annual NO_x allowance from a set-aside in another state's CAIR annual NO_x rule can be the basis for a claim from the Missouri set-aside;

IV. Only projects that equal at least one (1) ton of NO_x emissions, using conventional arithmetic rounding, are eligible to receive allowances from the set-aside. Multiple projects may be aggregated into a single allowance allocation request to equal one (1) or more tons of NO_x emissions;

V. Only projects that commence operation after September 1, 2005, are eligible to receive allowances from the set-aside;

VI. Sponsors must establish a compliance account or general account in EPA's NO_x Allowance Tracking System (NATS). The application for an award from the set-aside must be submitted to the department by the CAIR authorized account representative or alternate CAIR authorized account representative for the compliance account or general account; and

VII. Location of eligible projects.

a. To be eligible, an energy efficiency project or combined heat and power project must be located within Missouri.

b. To be eligible, a renewable generation project or biomass generation project may be located within or outside of Missouri and must meet the following criteria:

(i) The number of allowances awarded to a renewable generation project or biomass generation project located within or outside of Missouri shall be calculated based on the amount of power the facility delivers to Missouri end-use customers. The sponsor must certify and demonstrate the amount of power from the renewable generation project or biomass generation project that is delivered to Missouri end-use customers; and

(ii) If the renewable generation project or biomass generation project is located outside of Missouri, the project must be sponsored by a Missouri electric generation and transmission cooperative, a Missouri electric distribution utility or the affiliate of a Missouri electric distribution utility. For the purpose of this rule, "affiliate" shall be defined as in 4 CSR 240-20.010.

(d) Pre-application project review. Sponsors of new energy efficiency/renewable energy projects must submit a request for pre-application project review by March 31 of the year prior to the control period for which set-aside awards will be claimed. For example, a project sponsor intending to apply for an award of 2009 control period allowances must request a pre-application project review by March 31, 2008, and may request the review at any time prior to that date. Pre-application project reviews will cover eligibility requirements and proposed measurement and verification procedures. The request for pre-application project review must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

(e) Eligibility for any project may be claimed by only one (1) entity. The department shall determine procedures to be followed if multiple claims of eligibility for the same project are received.

(III) Applications and calculations of awards. To qualify for an award of allowances from the set-aside an applicant must meet the following requirements:

(a) The project must be eligible as provided in part (3)(B)2.E.(II) of this rule;

(b) By March 1 following the twelve (12)-month energy efficiency/renewable energy project period during which the eligible project activities occurred, the department must receive a complete application that meets the following requirements:

I. The application shall be prepared on forms provided by the department and must be submitted by the project's CAIR authorized account representative or alternate CAIR authorized account representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

II. The applicant must demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding allowances to the applicant. Verification may include site visits by agents of the department; and

III. If the applicant intends to reapply in subsequent years, the application must indicate the stream of benefits that is expected in subsequent years;

(c) The department shall determine methods for calculating awards of allowances based upon the following principles:

I. Allowances awarded to end-use electrical energy efficiency projects shall be calculated as the number of MWh of electricity saved during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding. The department shall provide a factor to adjust the calculation of electricity saved to account for transmission and distribution line losses;

II. Allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas and hydropower projects shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

III. Allowances awarded to renewable biomass generation projects shall be calculated based on net NO_x emission reductions, appropriately converted and rounded to tons using conventional arithmetic rounding where—

a. Net NO_x emissions shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the twelve (12)-month energy efficiency/renewable energy project period; and

b. When biomass is co-fired with other fuels, its share of electric generation and NO_x emissions shall be calculated based on its share of the total heat content of all fuels used in the co-firing process; and

IV. Allowances awarded to combined heat and power (CHP) projects shall be calculated based on the difference between actual NO_x emissions from the CHP system and the NO_x emissions that would be emitted by an equivalent business-as-usual (BAU) system. An equivalent BAU system consists of a conventional power plant that produces electricity plus a conventional industrial boiler that produces useful heat (heat used for space, water or industrial process heat). The department shall provide efficiency and NO_x emission rates to be used in calculating NO_x emissions from the equivalent BAU system. In addition, to qualify for an award, a CHP system shall be required to achieve an efficiency threshold. The threshold shall be set by the department and the efficiency of the CHP system shall be calculated based on a method provided by the department; and

(d) The sponsor of a project located in Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional six (6) consecutive control periods by meeting the following requirements. The sponsor of a project located outside of Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional four (4) consecutive control periods by meeting the following requirements:

I. Reapplication must be received by March 1 following the last day of the twelve (12)-month energy efficiency/
renewable energy project period during which the energy efficiency and renewable electric generation activities took place; and

II. The reapplication must be prepared on forms provided by the department and must be submitted by the project's CAIR authorized account representative or alternate CAIR authorized account representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

3. Compliance supplement pool.

A. For any CAIR NO_x unit in the state that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with section (4) of this rule in each calendar year for which early reduction credit is requested;

(II) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x

emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with section (4) of this rule; and

(III) For units subject to the Acid Rain Program that do not have an applicable NO_x emission limit, the Acid Rain Program NO_x emission rate limit that would have applied had the unit been limited by Acid Rain Program NO_x requirements or state emission rate limit shall be utilized to determine the number of potential CAIR NO_x allowances those units may receive.

B. For any CAIR NO_x unit in the state whose compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply; and

(II) In the request under paragraph (3)(B)3. of this rule, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(a) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(b) Obtain under subparagraphs (3)(B)3.A. and C. of this rule, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

C. The permitting authority will review each request under subparagraphs (3)(B)3.A. and B. of this rule submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the calendar year 2009 to CAIR NO_x units in the state and covered by such request as follows:

(I) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subparagraph (3)(B)3.A. or B. of this rule;

(II) If the total amount of CAIR NO_x allowances in all requests (as adjusted under part (3)(B)3.C.(I) of this rule) is not more than nine thousand forty-four (9,044), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under part (3)(B)3.C.(I) of this rule); and

(III) If the total amount of CAIR NO_x allowances in all requests (as adjusted under part (3)(B)3.C.(I) of this rule) is more than nine thousand forty-four (9,044), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests as follows:

(a) The compliance supplement pool shall be divided into two (2) pools of three thousand fifteen (3,015) allowances and six thousand twenty-nine (6,029) allowances each;

(b) Units located in Buchanan, Jackson or Jasper County that combust at least one hundred thousand (100,000) passenger tire equivalents in each of 2007 and 2008 shall be eligible to request CAIR NO_x allowances from the smaller pool;

(c) CAIR NO_x allowances from the smaller pool shall be allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × (3,015/Total adjusted allocations for eligible units)

Where:
"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.
"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.
"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under paragraph (3)(B)1. of this rule by the units identified in subpart (3)(B)3.C.(III)(b) of this rule.

(d) Units that receive CAIR NO_x allowances from the smaller portion of the compliance supplement pool shall not be eligible to receive CAIR NO_x allowances from the remaining portion of the compliance supplement pool; and

(e) Any CAIR NO_x allowances not allocated under subpart (3)(C)3.C. (III)(c) shall be added to the pool of six thousand twenty-nine (6,029) allowances and allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × ((6,029 + Remainder from first allocation)/Total adjusted allocations for eligible units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.
"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.
"Remainder from first allocation" is the amount of CAIR NO_x allowances from the smaller pool not allocated under subparagraph (3)(C)3.C.
"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested for all units under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule by units that were not allocated CAIR NO_x allowances under subparagraph (3)(C)3.C. of this rule; and

4. By November 30, 2009, the permitting authority will determine, and submit to the administrator, the allocations under subparagraphs (3)(B)3.B. and (3)(B)3.C. of this rule; and

5. By January 1, 2010, the administrator will record the allocations under subparagraphs (3)(B)3.B. and (3)(B)3.C. of this rule.

(4) Reporting and Record Keeping. Unless otherwise noted in this section of the rule, all of the sections of 40 CFR 96 subpart HH promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007.*

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale; and

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator; or

3. Units in Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis which are not CAIR NO_x Ozone Season units under paragraphs (1)(A)1., (1)(A)2. and (1)(B) shall be Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) Ozone Season units, and any source that includes one (1) or more such units shall be a CAIR NO_x Ozone Season source if—

A. Electric generating units that serve a generator with a nameplate capacity greater than twenty-five megawatts (25 MW) and—

(I) For non-cogeneration units—

(a) Commenced operation before January 1, 1997, and served a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(b) Commenced operation in 1997 or 1998 and served a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(c) Commenced operation on or after January 1, 1999, and served or serves at any time a generator producing electricity for sale; and

(II) For cogeneration units—

(a) Commenced operation before January 1, 1997, and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(b) Commenced operation in 1997 or 1998 and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(c) Commenced operation on or after January 1, 1999, and failed or fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for any year under the Acid Rain Program; and

B. Non-electric generating boilers, combined cycle systems, and combustion turbines that have a maximum design heat input greater than two hundred fifty (250) million British thermal units per hour (mmBtu/hr) and—

(I) For non-cogeneration units—

(a) Commenced operations before January 1, 1997, and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(b) Commenced operations in 1997 or 1998 and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(c) Commenced operation on or after January 1, 1999, and:

I. At no time served or serves a generator producing electricity for sale; or

II. At any time served or serves a generator with a nameplate capacity of twenty-five (25) MW or less producing electricity for sale, and with the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit; and

(II) For cogeneration units—

(a) Commenced operation before January 1, 1997, and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(b) Commenced operation in 1997 or 1998 and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(c) Commenced operation on or after January 1, 1999, and qualified or qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for each year under the Acid Rain Program.

(III) Exemptions. The director shall provide the administrator written notice of the issuance of any permit under section (3) of this rule and, upon request, a copy of the permit. Notwithstanding paragraph (1)(A)3. of this rule, a unit shall not be a CAIR NO_x Ozone Season unit if the unit has a federally enforceable permit that:

(a) Restricts the unit to burning only natural gas or fuel oil;

(b) Restricts the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential mass emissions by the unit's maximum potential hourly NO_x mass emissions;

(c) Requires that the unit's maximum potential NO_x mass emissions be calculated by multiplying the unit's maximum rated hourly heat input by the highest default NO_x emission rate applicable to the unit under 40 CFR 75.19(c), Table LM-2;

(d) Requires that the owner or operator of the unit shall retain at the source that includes the unit, for five (5) years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and

(e) Requires 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 control period to the director by November 1 of each year for which the unit is subject to the federally enforceable permit.

(IV) A CAIR NO_x Ozone Season unit may not qualify for an exemption unless the emissions after the exemption do not exceed the lesser of twenty-five (25) tons or the amount of allocations allocated to them. The owner or operator of a CAIR NO_x Ozone Season unit that is allocated CAIR NO_x Ozone Season allowances under section (3) of this rule, which requests an exemption under part (1)(A)3.B.III. of this rule, will surrender to the administrator the CAIR NO_x Ozone Season allowances for the control period after qualifying and every year after for which the exemption remains in place.

(V) Loss of exemption. If, for any control period, the unit does not comply with the fuel use restriction under subpart (1)(A)3.B.(III)(a) of this rule or the operating hours restriction subpart (1)(A)3.B.(III)(b) and subpart (1)(A)3.B.(III)(c) of this rule, or the fuel use or the operating hour restrictions are removed from the unit's federally enforceable permit or otherwise becomes no longer applicable, the unit shall be a NO_x budget unit, subject to the requirements of this rule. Such unit shall be treated as commencing operation and, for a unit under paragraph (1)(A)3. of this rule, commencing commercial operation on September 30 of the 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.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x Ozone Season units—

1. Cogenerator exemption.

A. Any unit that is a CAIR Ozone Season NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR Ozone Season NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

B. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3)

consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the sections of 40 CFR 96.305 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in sections 40 CFR 96.302 and 96.303 of 40 CFR 96 subpart AAAA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Definitions for key words and phrases used in paragraph (1)(A)3. of this rule may be found in sections 40 CFR 97.2 subpart A promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(C) Cogenerator—(for the purposes of paragraph (1)(A).3. of this rule) A cogeneration facility which:

1. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand (219,000) MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, the administrator will presume that actual operation from 1985 through 1987 is consistent with such purpose. However, if in any three (3) calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand (219,000) MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or

2. For units which commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than two hundred nineteen thousand (219,000) MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three (3) calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than two hundred nineteen thousand (219,000) MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(D) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Unless otherwise noted in this section, 40 CFR 96.306, 96.307, and 96.308 as well as all of the sections of 40 CFR 96 subparts BBBB, CCCC, DDDD, FFFF, GGGG, and IIII promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) CAIR NO_x Ozone Season Allowances.

1. Timing requirements for CAIR NO_x Ozone Season Allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations established in Table I and Table II of this subsection.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control period beginning 2015 and extending through ten (10) control periods consistent with the allocations established in Table I and Table II of this subsection.

C. By October 31, 2015 and October 31 of every tenth year following, the permitting authority will submit to the administrator CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control period ten (10) years in the future and extending through ten (10) control periods consistent with Table I and Table II of this subsection.

2. CAIR NO_x Ozone Season Allowance allocations.

A. The state trading program NO_x budget allocated by the director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a control period will equal twenty-six thousand seven hundred thirty-seven (26,737) tons for 2009-2014 and twenty-two thousand two hundred ninety (22,290) tons for 2015 and beyond.

B. The following CAIR NO_x ozone season units shall be allocated NO_x allowances for each control period in accordance with Table I of subparagraph (3)(B)2.B. of this rule._

Table I

Facility ID	Facility Name	Unit ID	Portion Statewide Pool	NO_x Allocation 2009–2014	NO_x Allocation 2015 and beyond
2076	ASBURY	1	1.85%	493	410
2079	HAWTHORN STATION	5A	5.51%	1,469	1,224
2079	HAWTHORN STATION	6	0.09%	25	21
2079	HAWTHORN STATION	7	0.05%	13	11
2079	HAWTHORN STATION	8	0.04%	11	9
2079	HAWTHORN STATION	9	0.23%	62	51
2080	MONTROSE STATION	1	1.53%	408	340
2080	MONTROSE STATION	2	1.55%	414	345
2080	MONTROSE STATION	3	1.63%	435	363
2081	NORTHEAST #11		0.01%	2	2
2081	NORTHEAST #12		0.01%	2	1
2081	NORTHEAST #13		0.02%	4	3
2081	NORTHEAST #14		0.01%	3	3
2081	NORTHEAST #15		0.01%	3	2
2081	NORTHEAST #16		0.01%	2	2
2081	NORTHEAST #17		0.01%	4	3
2081	NORTHEAST #18		0.01%	3	3
2082	FAIRGROUNDS		0.01%	2	2
2092	RALPH GREEN		0.03%	8	7
2094	SIBLEY	1	0.52%	138	115
2094	SIBLEY	2	0.50%	135	112
2094	SIBLEY	3	3.31%	884	737
2096	AMEREN VIADUCT		0.00%	—	—
2098	LAKE ROAD	6	0.86%	231	192
2098	LAKE ROAD (GAS TURBINE)	5	0.02%	5	4
2102	HOWARD BEND CT		0.00%	1	1
2103	LABADIE	1	4.57%	1,220	1,017
2103	LABADIE	2	4.84%	1,292	1,076
2103	LABADIE	3	5.19%	1,384	1,153
2103	LABADIE	4	4.81%	1,283	1,069
2104	MERAMEC	1	1.25%	333	278
2104	MERAMEC	2	1.14%	305	254
2104	MERAMEC	3	1.98%	529	441
2104	MERAMEC	4	2.89%	770	641
2104	MERAMEC	GT1		—	—
2107	SIOUX	1	3.68%	981	817
2107	SIOUX	2	3.68%	982	818
2122	CHILLICOTHE		0.01%	2	2
2123	COLUMBIA	6	0.09%	24	20
2123	COLUMBIA	7	0.10%	28	23
2123	COLUMBIA	8	0.00%	1	—
2132	BLUE VALLEY POWER	3	0.31%	84	70
2132	BLUE VALLEY POWER	GT1	0.00%	—	—
2161	JAMES RIVER	GT1	0.05%	13	11
2161	JAMES RIVER	GT2	0.03%	9	7
2161	JAMES RIVER	3	0.48%	129	108
2161	JAMES RIVER	4	0.62%	164	137
2161	JAMES RIVER	5	1.07%	285	238
2167	NEW MADRID POWER PLA	1	4.76%	1,271	1,059
2167	NEW MADRID POWER PLA	2	4.94%	1,318	1,098
2168	THOMAS HILL ENERGY C	MB1	1.90%	506	422
2168	THOMAS HILL ENERGY C	MB2	2.73%	729	608
2168	THOMAS HILL ENERGY C	MB3	6.63%	1,769	1,474
2169	CHAMOIS POWER PLANT	2	0.52%	138	115
6065	IATAN STATION	1	7.04%	1,877	1,564
6074	GREENWOOD ENERGY CENT	1	0.04%	10	9
6074	GREENWOOD ENERGY CENT	2	0.04%	10	8
6074	GREENWOOD ENERGY CENT	3	0.04%	12	10
6074	GREENWOOD ENERGY CENT	4	0.04%	11	9
6155	RUSH ISLAND	1	5.05%	1,346	1,122
6155	RUSH ISLAND	2	4.58%	1,221	1,018

6195	SOUTHWEST	1	2.28%	609	507
6195	SOUTHWEST	CT1A	0.01%	3	2
6195	SOUTHWEST	CT1B	0.01%	3	2
6195	SOUTHWEST	CT2A	0.01%	2	2
6195	SOUTHWEST	CT2B	0.01%	2	2
6223	EMPIRE	3A	0.01%	2	2
6223	EMPIRE	3B	0.01%	2	2
6223	EMPIRE	4A	0.01%	2	2
6223	EMPIRE	4B	0.01%	2	2
6563	EMPIRE—ENERGY CENTER 1		0.06%	16	13
6563	EMPIRE—ENERGY CENTER 2		0.04%	9	8
6650	MEXICO		0.00%	1	1
6651	MOBERLY		0.00%	1	1
6652	MOREAU		0.01%	2	1
6768	SIKESTON	1	2.62%	698	582
7296	STATE LINE UNIT 1	1	0.17%	46	38
7296	STATE LINE UNIT 1	2-1	0.32%	85	71
7296	STATE LINE UNIT 1	2-2	0.37%	98	82
7604	ST. FRANCIS POWER PL	1	0.21%	55	46
7604	ST. FRANCIS POWER PL	2	0.18%	49	41
7749	ESSEX POWER PLANT	1	0.03%	9	8
7754	NODAWAY POWER PLANT	1	0.04%	10	8
7754	NODAWAY POWER PLANT	2	0.03%	9	7
7848	HOLDEN POWER PLANT	1	0.01%	2	2
7848	HOLDEN POWER PLANT	2	0.01%	3	3
7848	HOLDEN POWER PLANT	3	0.01%	3	2
7903	MCCARTNEY	MGS1A	0.00%	1	1
7903	MCCARTNEY	MGS1B	0.00%	1	1
7903	MCCARTNEY	MGS2A	0.00%	1	1
7903	MCCARTNEY	MGS2B	0.00%	1	1
7964	PENO CREEK ENERGY CTR	CT1A	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT1B	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT2A	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT2B	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT3A	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT3B	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT4A	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT4B	0.00%	1	1
8567	HIGGINSVILLE		0.01%	3	3
55178	MEP PLEASANT HILL	CT-1	0.28%	75	63
55178	MEP PLEASANT HILL	CT-2	0.25%	67	56
55234	AUDRAIN GENERATING	CT1	0.00%	1	—
55234	AUDRAIN GENERATING	CT2	0.00%	—	—
55234	AUDRAIN GENERATING	CT3	0.00%	—	—
55234	AUDRAIN GENERATING	CT4	0.00%	—	—
55234	AUDRAIN GENERATING	CT5	0.00%	—	—
55234	AUDRAIN GENERATING	CT6	0.00%	—	—
55234	AUDRAIN GENERATING	CT7	0.00%	—	—
55234	AUDRAIN GENERATING	CT8	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT01	0.00%	1	1
55447	COLUMBIA ENERGY CTR	CT02	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT03	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT04	0.00%	—	—
	Total		100.00%	26,678	22,231

C. The following existing non-electric generating unit (EGU) boilers shall be allocated NOx allowances for each control period in accordance with Table II of subparagraph (3)(E)2.C of this rule.

Table II

Non-EGUs Boilers Per Ozone Season	**Unit**		**NO_x Allocation per Unit Tons**
Anheuser Busch	6	14	
Trigen Ashley Street Station Boiler	5	9	
Trigen Ashley Street Station Boiler	6	36	

D. Any unit subject to subsection (1)(B) of this rule, other than those listed in Tables I and II of this subsection, will not be allocated CAIR NO_x Ozone Season Allowances under this rule.

(4) Reporting and Record Keeping. Unless otherwise noted in this section, all of the sections of 40 CFR 96 subpart HHHH promulaged as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007.

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.366 Clean Air Interstate Rule SO_2 Trading Program

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for sulfur dioxide, which was developed to meet the requirements of the Clean Air Interstate Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule:

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) sulfur dioxide (SO_2) units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR SO_2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR SO_2 unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR SO_2 units:

1. Cogenerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the sections of 40 CFR 96.205 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in sections 40 CFR 96.202 and 96.203 of 40 CFR 96 subpart AAA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions. Unless otherwise noted in this section, 40 CFR 96.206, 96.207, and 96.208 as well as all of the sections of 40 CFR 96 subparts BBB, CCC, DDD, FFF, GGG, and III promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(4) Reporting and Record Keeping. Unless otherwise noted in this section, all of the sections of 40 CFR 96 subpart HHH promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007.

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.350 Emission Limitations and Emissions Trading of Oxides of Nitrogen

PURPOSE: The purpose of this rule is to reduce the emissions of nitrogen oxides (NO_x) and establish a NO_x emissions trading program for the state of Missouri. The reductions in NO_x emissions will reduce the transport of ozone and its precursors within the state of Missouri and to other states as required under the Clean Air Act.

(1) Applicability.

(A) This rule applies to any fossil fuel-fired electric generating unit that serves a generator with a nameplate capacity of greater than twenty-five megawatts (25 MW).

(B) Exemptions.

1. Any unit under subsection (1)(A) of this rule which demonstrates, using the emission estimation methods outlined in paragraph (5)(E)1. of this rule, that the unit's mass NO_x emissions are twenty-five (25) tons or less during the control period is exempt from the requirements of this rule.

2. The provisions of section (3) of this rule shall not apply to any emergency standby generators, internal combustion engines and peaking combustion turbine units demonstrated to operate less than four hundred (400) hours per control period averaged over the three (3) most recent years of operation, which have installed and maintained in proper operation a nonresettable engine hour meter.

(C) Loss of Exemption. If the exemption limit in paragraph (1)(B)1. or (1)(B)2. of this rule is exceeded, the exemption shall not apply and the owner or operator must notify the staff director or designee within thirty (30) days. If the owner or operator can demonstrate to the staff director or designee that the exemption limit was exceeded due to emergency operations or uncontrollable circumstances, the exemption in paragraph (1)(B)1. or (1)(B)2. of this rule shall apply.

(D) Compliance with this rule shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Air Conservation Law and rules or any other requirements under local, state or federal law. Specifically, compliance with this rule shall not violate the permit conditions previously established under 10 CSR 10-6.060 or 10 CSR 10-6.065.

(E) Affected sources in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis may demonstrate compliance with the provisions of this rule using compliance with 10 CSR 10-6.360, provided that the emission rate of each unit does not exceed 0.25 or 0.18 pound per million British thermal units (mmBtu), whichever is applicable.

(F) The requirements of sections (3), (4), and (5) of this rule will not apply to the control period beginning in 2009 and any control period thereafter.

(2) Definitions.

(A) Definitions of certain terms in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(B) Account certificate of representation—The completed and signed submission for certifying the designation of a NO_x authorized account representative for an affected unit or a group of identified affected units who is authorized to represent the owners or operators of such unit or units and of the affected units at such source or sources with regard to matters under the NO_x trading program.

(C) Account number—The identification number given to each NO_x trading program account.

(D) Automated data acquisition and handling system—That component of the Continuous Emissions Monitoring System, or other emissions monitoring system approved for use by the department, designed to interpret and convert individual output signals from pollutant concentration monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required in this rule.

(E) Average emission rate—The simple average of the hourly NO_x emission rate as recorded by monitoring systems approved in section (5) of this rule.

(F) Boiler—An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(G) Combined cycle system—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.

(H) Combustion turbine—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.

(I) Common stack—A single flue through which emissions from two or more NO_x units are exhausted.

(J) Compliance account—A NO_x allow-ance tracking system account, established for an affected unit, 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 a control period for the purpose of meeting the unit's NO_x emission limitation.

(K) Continuous emissions monitoring system (CEMS)—The equipment required by this rule to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NO_x emissions, expressed in tons per hour for NO_x.

(L) Control period—The period beginning May 1 of a calendar year and ending on September 30 of the same calendar year.

(M) Cyclone EGU—An electric generating unit (EGU) with a fossil fuel-fired boiler consisting of one or more horizontal cylindrical barrels that utilize tangentially applied air to produce a swirling combustion pattern of coal and air.

(N) Early reduction credit (ERC)—NO_x emission reductions in the years 2000, 2001, 2002 and 2003 that are below the limits specified in subsection (3)(A) of this rule. ERCs will only be available for use during the years of 2004 and 2005. When calculating ERCs or performing calculations involving ERCs, ERCs shall always be rounded down to the nearest ton.

(O) Electric generating unit (EGU)—Any fossil fuel-fired boiler or turbine that serves an electrical generator with the potential to use more than fifty percent (50%) of the usable energy from the boiler or turbine to generate electricity.

(P) Emergency standby generator—A generator operated only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

(Q) Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid or gaseous fuel derived from such material.

(R) Fossil fuel-fired—With regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input.

(S) Generator—A device that produces electricity.

(T) Heat input—The product (expressed as million British thermal units per hour) of the gross calorific value of the fuel (expressed as British thermal units per pound) and the fuel feed rate into a combustion device (expressed as pounds per hour), as measured, recorded and reported to the department by the NO_x authorized account representative and as determined by the director in accordance with this rule and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(U) Nameplate capacity—The maximum electrical generating output (expressed as megawatt) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the National Allowance Data Base (NADB) under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards. For generators not listed in the NADB, the nameplate capacity shall be used.

(V) NO_x allowance—An authorization by the department under the NO_x trading program to emit one (1) ton of NO_x during the control period of the specified year or of any year thereafter.

(W) NO_x allowance tracking system—The system by which the director records allocations, deductions and transfers of NO_x allowances under the NO_x trading program.

(X) NO_x allowance transfer deadline—Close of business on December 31 following the control period or, if December 31 is not a business day, close of business on the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recording in an affected unit's compliance account, or the overdraft account of the installation where the unit is located.

(Y) NO_x authorized account representative—The person who is authorized by the owners or operators of the unit to represent and legally bind each owner and operator in matters pertaining to the NO_x trading program.

(Z) NO_x emissions limitation—For an affected unit, the tonnage equivalent of the NO_x emissions rate available for compliance deduction for the unit and for a control period adjusted by any deductions of such NO_x allowances to account for actual utilization for the control period or to an account for excess emissions for a prior control period or to account for withdrawal from the NO_x trading program or for a change in regulatory status for an affected unit.

(AA) NO_x emission rate—The amount of NO_x emitted by a combustion unit in pounds per million British thermal units of heat input as recorded by monitoring devices approved in section (5) of this rule.

(BB) NO_x opt-in unit—An EGU whose owner or operator has requested to become an affected unit under the NO_x trading program and has been approved by the department.

(CC) NO_x unit—Any fossil fuel-fired stationary boiler, combustion turbine, internal combustion engine or combined cycle system.

(DD) Opt-in—To voluntarily become an affected unit under the NO_x trading program.

(EE) Overdraft account—The NO_x allowance tracking system account established by the director for each NO_x authorized account representative.

(FF) Passenger tire equivalent (PTE)—The weight of waste tires or parts of waste tires equivalent to the average weight of one (1) passenger tire. The average weight of one (1) passenger tire is equal to twenty (20) pounds.

(GG) Peaking combustion unit—A combustion turbine normally reserved for operation during the hours of highest daily, weekly, or seasonal loads.

(HH) Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance.

(II) Tire-derived fuel—The end product of a process that converts whole scrap tires into a specific chipped form capable of being used as fuel.

(JJ) Unit load—The total output of a unit in any control period produced by combusting a given heat input of fuel expressed in terms of the total electrical generation (expressed as megawatt) produced by the unit including generation for use within the plant, and/or in the case of a unit that uses heat input for purposes other than electrical generation, the total steam flow (lb/hr) produced by the unit, including steam for use by the unit.

(KK) Unit operating day—A calendar day in which a unit combusts any fuel.

(LL) Unit operating hour or hour of unit operation—Any hour or fraction of an hour during which a unit combusts fuel.

(MM) Utilization—The heat input (ex-pressed as million British thermal units per hour) for a unit.

(3) General Provisions.

(A) NO_x Emissions Limitations. Beginning May 1, 2004, the following NO_x emission rates shall apply:

1. EGUs located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Gasconade, Iron, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne, shall limit emissions of NO_x to the more stringent of a rate of 0.25 lbs NO_x/million British thermal units per hour (mmBtu) of heat input during the control period or any applicable permitted NO_x limitation under 10 CSR 10-6.060.

2. EGUs located in the City of St. Louis and the counties of Franklin, Jefferson and St. Louis shall limit emissions of NO_x to the more stringent rate of 0.18 lbs NO_x/mmBtu of heat input during the control period, or any applicable permitted NO_x limitation under 10 CSR 10-6.060. For the purpose of calculating ERCs under subparagraph (3)(B)5.C. of this rule, the regulated NO_x emission rate (NO_xER_r) for units located in these areas shall be 0.25 lbs NO_x/mmBtu.

3. EGUs located in the counties of Buchanan, Jackson, Jasper, or Randolph shall limit emissions of NO_x to the more stringent rate of any applicable permitted NO_x limitation under 10 CSR 10-6.060 or the less stringent of:

A. 0.35 lbs NO_x/mmBtu of heat input during the control period; or

B. 0.68 lbs NO_x/mmBtu of heat input during the control period, provided that the unit is a cyclone EGU and burns tire-derived fuel in a quantity of at least one hundred thousand (100,000) PTEs per year. For installations with multiple cyclone EGUs, compliance with the one hundred thousand (100,000) PTE burned per year may also be based on the average number of PTEs burned per cyclone EGU.

4. EGUs located in any county not identified in paragraph (3)(A)1., (3)(A)2., or (3)(A)3. of this rule shall limit emissions of NO_x to the more stringent of a rate of 0.35 lbs NO_x/mmBtu of heat input during the control period or any applicable permitted NO_x limitation under 10 CSR 10-6.060.

5. In lieu of complying with the applicable emission limitations in paragraph (3)(A)1. through (3)(A)4. of this rule, any affected unit may comply through the NO_x emissions trading program under subsection (3)(B) of this rule.

(B) NO_x Emissions Trading Program.

1. NO_x authorized account representative. The NO_x authorized account representative shall have the responsibilities and meet the requirements identified in this subsection.

A. Each affected unit shall have only one NO_x authorized account representative with respect to all matters under the NO_x trading program. Each affected unit may have only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative.

B. A NO_x authorized account representative may be responsible for multiple units at an installation or within a system of installations with the same owner.

C. The department will act on a valid submission made on behalf of owners or operators of an affected unit only if the submission has been made, signed and certified by the NO_x authorized account representative or the alternate NO_x authorized account representative.

D. Each unit must submit an account certificate of representation no later than January 1, 2004 or December 31 of the year in which the rule becomes applicable for units installed after January 1, 2004.

2. NO_x allowance tracking system.

A. NO_x allowance tracking system accounts. The department will establish one (1) compliance account for each NO_x unit and one (1) overdraft account for each NO_x authorized account representative with one (1) or more NO_x units. Allocations of NO_x allowances pursuant to paragraphs (3)(B)3. or (3)(B)10. of this rule and deductions or transfers of NO_x allowances pursuant to paragraphs (3)(B)3., (3)(B)7., (3)(B)9., or (3)(B)10. of this rule will be recorded in the compliance accounts or overdraft accounts.

B. Establishment of accounts.

(I) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation, the department will establish—

(a) A compliance account for each affected NO_x unit for which the account certificate of representation was submitted; and

(b) An overdraft account for each NO_x authorized account representative for which the account certificate of representation was submitted.

(II) Account identification. The department will assign a unique identifying number to each compliance account and each overdraft account.

C. Recording of NO_x allowance allocations.

(I) The department will record the NO_x allowances for the 2004 control period in the NO_x units' compliance accounts.

(II) Serial numbers for allocated NO_x allowances. The department will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

3. NO_x allowances.

A. Projected NO_x allowances.

(I) By March 1, 2004, the NO_x authorized account representative for each affected unit shall submit to the department a report containing the following:

(a) The projected control period NO_x emission rate for each affected unit;

(b) The average of the three (3) most recent control period heat inputs, unless those three (3) periods are not representative of normal operation; and

(c) A plan identifying the methodology for compliance with subsection (3)(A) of this rule.

(II) The department will review each report and make any amendments within fifteen (15) working days.

(III) The department will develop a summary of projected NO_x allowances on a unit by unit and statewide basis for distribution on or before May 1 of each year using Equation 1 of this rule.

Equation 1:

$$\frac{HIp \times ERp}{2000} = NOxALp$$

where:

HI_p =the projected control period heat input for each NO_x unit;

ER_p =the projected control period emission rate for each NO_x unit; and

NO_xAL_p =the projected NO_x allowance for each NO_x unit rounded down to the nearest ton (in tons).

B. Control period NO_x allowances.

(I) By October 31 following each control period, each NO_x authorized account representative shall submit to the department the actual total control period heat input and actual average emission rate in a compliance report consistent with requirements of section (4) of this rule for each affected NO_x unit.

(II) By November 15 following each control period, the department will issue a notice to each NO_x authorized account representative of the actual NO_x allowances recorded in the unit compliance account for each affected NO_x unit using Equation 2 of this rule.

Equation 2:

$$\frac{HIa \times Err}{2000} = NOxALa$$

where:

HI_a =the actual control period heat input for each NO_x unit;

ER_r =the allowable control period emission rate for each NO_x unit as determined in paragraphs (3)(A)1. through (3)(A)4. of this rule; and

NO_xAL_a =the actual NO_x allowance for each unit for the control period rounded down to the nearest ton (in tons).

4. Compliance. By the end of the NO_x allowance transfer deadline, each NO_x unit shall have sufficient NO_x allowances in their compliance account to allow for the deductions in subparagraph (3)(B)4.B. of this rule.

A. NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x emissions limitation for a control period in a given year only if the NO_x allowances—

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

(II) Are held in the unit's compliance account or the unit's overdraft account as of the NO_x allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) The director will deduct NO_x allowances to cover the unit's NO_x emissions for the control period—

(a) From the compliance account; and

(b) Only if no more NO_x allowances available under subparagraph (3)(B)4.A. of this rule remain in the compliance account, from the overdraft account. In deducting allowances for units from the overdraft account, the director 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.

(II) The director will deduct NO_x allowances until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with part (3)(B)4.B.(III) of this rule, from the unit for the control period for which compliance is being determined; or until no more NO_x allowances available under subparagraph (3)(B)4.A. of this rule remain in the respective account.

(III) For a NO_x unit that is allocated NO_x allowances under part (3)(B)3.B.(II) of this rule for a control period, the department will deduct NO_x allowances under subparagraph (3)(B)4.B. or (3)(B)4.E. of this rule to account for the actual utilization of the unit during the control period. The department will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using Equation 3 of this rule.

Equation 3:

$$\Sigma HI_a \times ER_a = NO_xAL_d$$

where:

HI_a =the actual control period heat input for each NO_x unit;

ER_a =the actual control period emission rate for each NO_x unit; and

NO_xAL_d =the number of NO_x allowances that will be deducted from each NO_x unit's compliance account (rounded down to the nearest allowance).

C. Identification of NO_x allowances by serial number.

(I) The NO_x authorized account representative may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraph (3)(B)4.B., (3)(B)4.D., or (3)(B)4.E. of this rule. Such identification will be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) The staff director will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under part (3)(B)4.C.(I) of this rule, or the overdraft account in the following order:

(a) Those NO_x allowances that were allocated for the control period to the unit under part (3)(B)3.B.(II) of this rule;

(b) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording;

(c) Those NO_x allowances that were allocated for a prior control period to the unit under part (3)(B)3.B.(II) of this rule; and

(d) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording.

D. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with section (4) of this rule—

(I) The NO_x authorized account representative of the units shall identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) Notwithstanding part (3)(B)4.B.(II) of this rule, the director will deduct NO_x allowances for each unit until the number of NO_x allowances deducted equals the unit's identified percentage (under part (3)(B)4.D.(I) of this rule) of the number of tons of NO_x emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual utilization under subparagraph (4)(A)1.G. of this rule for the control period.

E. The director will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (3)(B)4.B. and (3)(B)4.D. of this rule.

5. Banking.

A. NO_x allowances may be banked for future use or transfer into a compliance account or an overdraft account, as follows:

(I) Any NO_x allowance that is held in a compliance account or an overdraft account, will remain in such account until the NO_x allowance is deducted or transferred under paragraphs (3)(B)4., (3)(B)5., (3)(B)6., or (3)(B)7. of this rule.

(II) The director will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account or an overdraft account after the director has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(B)4. of this rule.

B. Each year, starting in 2005, after the director has completed the designation of banked NO_x allowances under part (3)(B)5.A.(II) of this rule and before May 1 of the year, the department will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

(I) The director will determine the total number of banked NO_x allowances held in compliance accounts or overdraft accounts.

(II) If the total number of banked NO_x allowances determined, under part (3)(B)5.B.(I) of this rule, to be held in compliance accounts or overdraft accounts is less than or equal to ten percent (10%) of the sum of the NO_x trading program allocations for the previous control period, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule.

(III) If the total number of banked NO_x allowances determined, under part (3)(B)5.B.(I) of this rule, and held in compliance accounts or overdraft accounts exceeds ten percent (10%) of the sum of the state trading program allocations for the previous control period, any banked allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except as follows:

(a) The director will determine the adjustment factor using Equation 4 of this rule.

Equation 4:

AF = 0.1 ´ åNOxALa
åNOxALb

where:

AF =the adjustment factor;

$\sum NO_xAL_a$ =the sum of the statewide NO_x allowance allocated for the previous control period; and

$\sum NO_xAL_b$ =the sum of the banked NO_x allowances as determined under part (3)(B)5.B.(I) of this rule on January 1 of the current year;

(b) The director will determine the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule using Equation 5 of this rule. Any banked NO_x allowances in excess of the product of Equation 5 may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except that, if such NO_x allowances are used to make a deduction, two (2) such NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under paragraph (3)(B)4. of this rule.

Equation 5:

$$AF \times NO_xAL_b$$

where

AF =the adjustment factor calculated in Equation 4; and

NO_xAL_b =the number of NO_x allowances in a NO_x unit's account;

(IV) Geographic flow control.

(a) Banked NO_x allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded on a one to one (1:1) basis unless otherwise specified in subparts (3)(B)5.B.(IV)(b) and (3)(B)5.B.(IV)(c) of this rule.

(b) Banked NO_x allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraphs (3)(A)3. and (3)(A)4. of this rule are applicable to the control region for which paragraph (3)(A)1. of this rule is applicable on a one and one-half to one (1.5:1) basis.

(c) Banked NO_x allowances made available for use in part (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraphs (3)(A)1., (3)(A)3. and (3)(A)4. of this rule are applicable to the control region for which paragraph (3)(A)2. of this rule is applicable on a one and one-half to one (1.5:1) basis.

C. Early reductions. For any affected NO_x unit that reduces its NO_x emission rate in the 2000, 2001, 2002 or 2003 control period, the owner or operator of the unit may request early reduction credits, and the department will allocate ERCs by January 31 of each year to the unit in accordance with the following requirements.

(I) Each NO_x unit for which the owner or operator requests any ERCs under part (3)(B)5.C.(IV) of this rule shall monitor NO_x emissions in accordance with section (4) of this rule for each control period for which such ERCs are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the control period, and the unit must not have been found to be in violation of any applicable state or federal emissions or emissions-related requirements.

(II) NO_x emission rate and heat input under parts (3)(B)5.C.(III) through (3)(B)5.C.(V) of this rule shall be determined in accordance with section (4) of this rule.

(III) Each NO_x unit for which the owner or operator requests any ERCs under part (3)(B)5.C.(IV) of this rule shall reduce its NO_x emission rate, for each control period for which ERCs are requested, to less than the applicable requirement of subsection (3)(A) of this rule.

(IV) The NO_x authorized account representative of a NO_x unit that meets the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule may submit to the department a request for ERCs for the unit based on NO_x emission rate reductions made by the unit in the control period for 2000, 2001, 2002 or 2003 in accordance with part (3)(B)5.C.(III) of this rule.

(a) In the ERC request, the NO_x authorized account representative may request ERCs for such control period using Equation 6 of this rule.

Equation 6:

$$ERC = HI_a \times (NO_xER_r - NO_xER_a) \div 2000$$

where:

ERC =the ERCs accrued rounded down to the nearest ton of NO_x;

HI_a =the actual control period heat input for each NO_x unit;

NO_xER_r =the regulated NO_x emission rate as identified in paragraphs (3)(A)1. through (3)(A)4. of this rule; and

NO_xER_a =the actual control period emission rate for each NO_x unit.

(b) The ERC 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 are made.

(V) The department will allocate NO_x allowances no later than January 31 to NO_x units meeting the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(B)5.C.(IV)(b) of this rule.

(VI) NO_x allowances recorded under part (3)(B)5.C.(V) of this rule may be deducted for compliance under paragraph (3)(B)3. of this rule for the control periods in 2004 or 2005. Notwithstanding subparagraph (3)(B)5.A. of this rule, the director will deduct as retired any NO_x allowance that is recorded under part (3)(B)5.C.(V) of this rule and is not deducted for compliance in accordance with paragraph (3)(B)3. of this rule for the control period in 2004 or 2005.

(VII) NO_x allowances recorded under part (3)(B)5.C.(V) of this rule are not treated as banked allowances in 2005 for the purposes of subparagraphs (3)(B)5.A. and (3)(B)5.B. of this rule.

(VIII) Compliance set-aside account.

(a) The department will establish a compliance set-aside account, which will contain fifty percent (50%) of the ERCs, rounded down to the nearest ton, that are issued in accordance with part (3)(B)5.C.(II) of this rule.

(b) Fifty percent (50%) of the ERCs, rounded down to the nearest ton, in the compliance set-aside account will be sold to the NO_x authorized account representatives that apply for the ERCs and can demonstrate that the ERCs will be used for compliance by a unit that is in a research, development or trial stage for new air pollution control technology. If less than fifty percent (50%) of the ERCs are needed for these units, the remainder will be sold in accordance with subpart (3)(B)5.C.(VIII)(c) of this rule.

(c) The remaining ERCs in the compliance set-aside account will be sold in the order of request.

(d) NO_x authorized account representatives must request all of the ERCs needed from the compliance set-aside account for the 2004 and 2005 control periods by February 28, 2004. The request for ERCs shall include the following information:

I. The owner and operator;
II. The NO_x authorized account representative;
III. The NO_x unit identification number and name;
IV. The number of ERCs being requested; and
V. The overdraft or compliance account number.

(e) The department shall set the market rate for ERCs by February 1, 2004. Market rate shall not be set at a value below five hundred dollars ($500) per ERC nor in excess of one thousand dollars ($1,000) per ERC, and shall be established based on the following in the order listed:

I. The average rate of exchange of NO_x credits and ERCs in the Missouri NO_x Emissions Trading Program; and

II. The most recent control cost data available.

(f) The department shall notify the successful purchasers of ERCs by April 1, 2004 and payment shall be made by the purchaser to the sellers by April 15, 2004 for ERCs purchased. Once payment has been received by the sellers, they shall notify the department and the appropriate ERCs shall be transferred to the appropriate account by May 1, 2004.

(g) The ERCs will be sold from the compliance set-aside account on a percentage basis. Each purchaser will purchase a portion of each seller's ERCs.

(h) Once the appropriate ERCs are transferred to the purchaser's account, the ERCs are non-transferrable.

(i) Any ERC allowances remaining in the compliance set-aside account after May 1, 2004, will be returned to the unit that generated the ERCs by May 15, 2004.

(IX) All ERCs will be retired on January 31, 2006.

6. Account error. The director may correct any error in any NO_x Allowance Tracking System account. Within ten (10) business days of making such correction, the director will notify the NO_x authorized account representative for the account. The NO_x authorized account representative will then have ten (10) business days to appeal the correction if they feel the correction was made in error.

7. NO_x allowance transfers. The NO_x authorized account representatives seeking the recording of a NO_x allowance transfer shall submit the transfer request to the director. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the director:

A. The numbers identifying both the transferor and transferee accounts;

B. A specification by serial number of each NO_x allowance to be transferred; and

C. The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

8. Department recording.

A. Within five (5) business days of receiving a NO_x allowance transfer, except as provided in subparagraph (3)(B)9.B. of this rule, the department will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that—

(I) The transfer is correctly submitted under paragraph (3)(B)8. of this rule;

(II) The transferor account includes each NO_x allowance identified by serial number in the transfer; and

(III) The transfer meets all other requirements of this paragraph.

B. A NO_x allowance transfer that is submitted for recording following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recording of NO_x allowance allocations of this rule.

C. Where a NO_x allowance transfer submitted for recording fails to meet the requirements of subparagraph (3)(B)7. of this rule, the department will not record such transfer.

9. Notification.

A. Notification of recording. Within five (5) business days of recording of a NO_x allowance transfer under paragraph (3)(B)8. of this rule, the department will notify each NO_x authorized account representative of the transfer in writing.

B. Notification of nonrecording. Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of paragraph (3)(B)7. of this rule, the department will notify in writing the NO_x authorized account representatives of both accounts subject to the transfer of—

(I) A decision not to record the transfer; and

(II) The reasons for such nonrecording.

10. Individual EGU opt-ins. An EGU that is not an affected unit under subsection (1)(A) of this rule that vents all of its emissions to a stack may qualify to become a NO_x opt-in unit under this paragraph of this rule. A NO_x opt-in unit will not be allowed to participate in the NO_x trading program without prior approval.

A. A NO_x opt-in unit shall have a NO_x authorized account representative.

B. Request for initial NO_x opt-in. In order to request to opt-in to the trading program, the NO_x authorized account representative of the unit must submit to the department at any time the following:

(I) The projected NO_x emission rate for each affected unit;

(II) The average of the three (3) most recent years heat input on a monthly basis over the control period for each affected unit; and

(III) A plan detailing the methodology for compliance with paragraph (3)(B)10. of this rule.

C. The department will review the request and respond within ninety (90) days of the date of receipt of the request.

D. Request for opting-in to the NO_x trading program must be received by the department no later than February 1 of the same year as the control period that the NO_x opt-in unit requests to begin participation in the NO_x trading program.

E. The NO_x opt-in units shall establish a baseline heat input and a baseline NO_x emissions rate under the requirements of subsection (5)(G) of this rule. After calculating the baseline heat input and the baseline NO_x emissions rate for the NO_x opt-in unit, the department will notify the NO_x authorized account representative of the unit of the resulting baseline.

F. The established baseline shall be the regulated NO_x emission rate for the opt-in unit. The NO_x opt-in unit shall meet the same schedule as all NO_x units with respect to all deadlines and schedules. The allowances issued to the opt-in unit under this paragraph shall be calculated using Equation 7 of this rule.

Equation 7:

$$\frac{HIopt \times ERopt}{2000} = NOxALopt$$

where:

HI_{opt} =the actual control period heat input for the NO_x opt-in unit;

ER_{opt} =the baseline emission rate for the NO_x opt-in unit as determined under subsection (5)(F) of this rule; and

NO_xAL_{opt} =the actual NO_x allowances for the opt-in unit for the control period (in tons).

G. If at any time before the approval of a NO_x opt-in unit, the department determines that the unit does not qualify as a NO_x opt-in unit under this paragraph, the department will issue a denial of the NO_x opt-in request for the unit.

H. Withdrawal of NO_x opt-in request. A NO_x authorized account representative of a unit may withdraw its request to opt-in at any time prior to the approval for the NO_x opt-in unit. Once the request for a NO_x opt-in unit is withdrawn, a NO_x authorized account representative seeking to reapply must submit a new request for a NO_x opt-in unit under this subsection.

I. Effective date. The effective date of the initial NO_x opt-in shall be May 1 of the first control period starting after the approval of the NO_x opt-in unit by the department. The unit shall be a NO_x opt-in unit and an affected NO_x unit as of the effective date of the approval and be subject to the requirements of this rule.

J. Change in regulatory status. When a NO_x opt-in unit becomes an affected unit, the NO_x authorized account representative shall notify the department in writing of such change in the NO_x opt-in unit's regulatory status within thirty (30) days of such change.

K. Withdrawal from NO_x trading program. A NO_x opt-in unit may withdraw from the NO_x trading program if it meets the following requirements:

(I) To withdraw from the NO_x trading program, the NO_x authorized account representative of a NO_x opt-in unit 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.

(II) Before a NO_x opt-in unit may withdraw from the NO_x trading program, the following conditions must be met.

(a) For the 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.

(b) If the NO_x opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the department will deduct from the NO_x opt-in unit's compliance account, or the overdraft account of the affected unit where the affected unit is located, the full amount required for the control period.

(III) A NO_x opt-in unit that withdraws from the NO_x trading program shall comply with all requirements under the NO_x trading program concerning all years for which such NO_x opt-in unit was a NO_x opt-in unit, even if such requirements must be complied with after the withdrawal takes effect.

(IV) Notification procedures shall be as follows:

(a) After the requirements for withdrawal under this paragraph have been met, the department will issue a notification to the NO_x authorized account representative of the NO_x opt-in unit of the acceptance of the withdrawal of the NO_x opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(b) If the requirements for withdrawal under this paragraph have not been met, the department will issue a notification to the NO_x authorized account representative of the NO_x opt-in unit that the NO_x opt-in unit's request to withdraw is denied. If the NO_x opt-in unit's request to withdraw is denied, the NO_x opt-in unit shall remain subject to the requirements for a NO_x opt-in unit.

(V) A NO_x opt-in unit shall continue to be a NO_x opt-in unit until the effective date of the withdrawal.

(VI) Once a NO_x opt-in unit withdraws from the NO_x trading program, the NO_x authorized account representative may not submit another application for the NO_x opt-in unit prior to the date that is four (4) years after the date on which the withdrawal became effective.

11. Output based emissions trading of NO_x. *(Reserved)*

(4) Reporting and Record Keeping.

(A) Reporting.

1. A compliance certification report for each affected unit subject to section (3) of this rule shall be submitted to the department by October 31 following each control period. The report shall include:

A. The owner and operator;

B. The NO_x authorized account representative;

C. NO_x unit name, compliance and overdraft account numbers;

D. NO_x emission rate limitation (lb/mmBtu);

E. Actual NO_x emission rate (lb/mmBtu) for the control period;

F. Actual heat input (mmBtu) for the control period. The unit's total heat input for the control period in each year will be determined in accordance with section (5) of this rule; and

G. Actual NO_x mass emissions (tons) for the control period.

2. Reporting shall be based on the test methods identified in section (5) of this rule. Any unit with valid continuous emission montoring system (CEMS) data for the control period must use that data to determine compliance with the provisions of this rule. The owner or operator for each affected unit which performs non-CEMS testing to demonstrate compliance of a unit subject to section (3) of this rule shall submit:

A. A control period report identifying monthly fuel usage and monthly total heat input by December 31 of the same year as the control period; and

B. A written report of all stack tests completed after controls are effective to the department within sixty (60) days after completion of sample and data collection.

(B) Record Keeping.

1. Each owner or operator of an affected unit subject to section (3) of this rule shall maintain records of the following:

A. Total fuel consumed during the control period;

B. The total heat input for each emissions unit during the control period;

C. Reports of all stack testing conducted to meet the requirements of this rule;

D. All other data collected by a CEMS necessary to convert the monitoring data to the units of the applicable emission limitation;

E. All performance evaluations conducted in the past year;

F. All monitoring device calibration checks;

G. All monitoring system, monitoring device and performance testing measurements;

H. Records of adjustments and maintenance performed on monitoring systems and devices; and

I. A log identifying each period during which the CEMS or alternate procedure was inoperative, except for zero and span checks, and the nature of the repairs and adjustments performed to make the system operative.

2. All records must be kept on-site for a period of five (5) years and made available to the department upon request.

3. Each owner or operator of any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. of this rule or the low hours of operation exemption in paragraph (1)(B)2. of this rule, shall maintain records of the total operating hours during which fuel is consumed for each emission unit during the control period. In the event that another record keeping schedule has been previously approved for the EGU and is included as an operating permit condition, the EGU may use that schedule to comply with this requirement.

(5) Test Methods and Monitoring. For units subject to this rule, the following requirements shall apply:

(A) Compliance shall be measured during the control period;

(B) All valid data shall be used for calculating NO_x emissions rates;

(C) Coal-Fired Units. Any coal-affected unit subject to this rule shall install, certify, operate, maintain, and quality assure a NO_x and diluent CEMS pursuant to the requirements in 40 CFR part 75;

(D) Non-Exempt Peaking Units. Any gas- or oil-fired peaking unit that is subject to the emission limitation or trading aspects of this rule shall:

1. Install, certify, operate, maintain, and quality assure a NO_x and diluent CEMS; or

2. Install, certify, operate, and quality assure fuel-metering equipment pursuant to 40 CFR part 75, Appendix D and shall establish a NO_x-to-load curve pursuant to 40 CFR part 75, Appendix E;

(E) Exempt Units.

1. The following hierarchy of methods may be used to determine if a unit qualifies for the low-emitter exemption in paragraph (1)(B)1. of this rule. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method should be used in its place:

A. CEMS as specified in 10 CSR 10-6.110;

B. Stack tests as specified in 10 CSR 10-6.110;

C. Material/mass balance;

D. AP-42 (Environmental Protection Agency (EPA) Compilation of Emission Factors) or FIRE (Factor Information and Retrieval System) (as updated);

E. Other EPA documents as specified in 10 CSR 10-6.110;

F. Sound engineering calculations; or

G. Facilities shall obtain department pre-approval of emission estimation methods other than those listed in subparagraphs (5)(E)1.A. through (5)(E)1.F. of this rule before using such method to estimate emissions. In the event that such method has previously been approved for the EGU and included as an operating permit condition, the EGU may use that method to comply with this requirement.

2. Any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. or the low hours of operation exemption in paragraph (1)(B)2. shall install and operate a non-resettable hour meter or determine the hours of operation for each emission unit during the control period. In the event that another monitoring method has previously been approved for the EGU and included as an operating permit condition, the EGU may use that method to comply with this requirement.

(F) Opt-In Units. Any unit that opts into the trading program, pursuant to paragraph (3)(B)10., shall be monitored consistent with the provisions of subsections (5)(D) and (5)(E) above. For the purpose of establishing the baseline allowance allocation, an opt-in unit shall install, certify, operate, maintain, and quality assure the monitoring device(s) and collect data for at least one (1) control season prior to submission of an opt-in application.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 15, 2000, effective Sept. 30, 2000. Amended: Filed Dec. 4, 2002, effective Aug. 30, 2003. Amended: Filed Oct. 2, 2006, effective May 30, 2007.*

*Original authority: 203.050, RSMo 1965, amended 1972, transferred to 643.050, RSMo 1986, amended 1992, 1993, 1995.

10 CSR 10-6.360 Control of NO_x Emissions From Electric Generating Units and Non-Electric Generating Boilers

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. The rule establishes an emission budget for large electric generating units and non-electric generating boilers. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x State Implementation Plan (SIP) Call dated April 21, 2004.

(1) Applicability.

(A) This rulemaking shall apply throughout Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis.

(B) The following units shall be NO_x budget units, and any source that includes one (1) or more such units shall be a NO_x budget source, subject to the requirements of this rule:

1. Electric generating units that serve a generator with a nameplate capacity greater than twenty-five megawatts (25 MW) and—

A. For non-cogeneration units—

(I) Commenced operation before January 1, 1997, and served a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(II) Commenced operation in 1997 or 1998 and served a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(III) Commenced operation on or after January 1, 1999, and served or serves at any time a generator producing electricity for sale; and

B. For cogeneration units—

(I) Commenced operation before January 1, 1997, and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(II) Commenced operation in 1997 or 1998 and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(III) Commenced operation on or after January 1, 1999, and failed or fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for any year under the Acid Rain Program; and

2. Non-electric generating boilers, combined cycle systems, and combustion turbines that have a maximum design heat input greater than two hundred fifty (250) million British thermal units per hour (mmBtu/hr) and—

A. For non-cogeneration units—

(I) Commenced operations before January 1, 1997, and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(II) Commenced operations in 1997 or 1998 and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(III) Commenced operation on or after January 1, 1999, and:

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

(b) At any time served or serves a generator with a nameplate capacity of twenty-five (25) MW or less producing electricity for sale, and with the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit; and

B. For cogeneration units—

(I) Commenced operation before January 1, 1997, and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(II) Commenced operation in 1997 or 1998 and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(III) Commenced operation on or after January 1, 1999, and qualified or qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for each year under the Acid Rain Program.

(C) Exemptions. The director shall provide the administrator written notice of the issuance of any permit under subsection (3)(C) of this rule and, upon request, a copy of the permit. Notwithstanding subsection (1)(A) of this rule, a unit shall not be a NO_x budget unit if the unit has a federally enforceable permit that:

1. Restricts the unit to burning only natural gas or fuel oil;

2. Restricts the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential mass emissions by the unit's maximum potential hourly NO_x mass emissions;

3. Requires that the unit's maximum potential NO_x mass emissions be calculated by multiplying the unit's maximum rated hourly heat input by the highest default NO_x emission rate applicable to the unit under 40 CFR 75.19(c), Table LM-2;

4. Requires that the owner or operator of the unit shall retain at the source that includes the unit, for five (5) years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and

5. Requires 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 control period to the director by November 1 of each year for which the unit is subject to the federally enforceable permit.

(D) Loss of Exemption. If, for any control period, the unit does not comply with the fuel use restriction under paragraph (1)(C)1. of this rule or the operating hours restriction under paragraphs (1)(C)2. and 3. of this rule, or the fuel use or the operating hour restrictions are removed from the unit's federally enforceable permit or otherwise becomes no longer applicable, the unit shall be a NO_x budget unit, subject to the requirements of this rule. Such unit shall be treated as commencing operation and, for a unit under paragraph (1)(B)1. of this rule, commencing commercial operation on September 30 of the 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.

(E) Retired Unit Exemption. This subsection applies to any NO_x budget unit that is permanently retired.

1. Standard provisions.

A. Any NO_x budget unit that is permanently retired shall be exempt from the NO_x budget trading program, except for the provision of subsection (1)(E), sections (1) and (2), subsections (3)(E), (3)(F) and (3)(G) of this rule.

B. The exemption under subparagraph (1)(E)1.A. of this rule 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 shall submit a statement to the director. A copy of the statement shall be submitted to the administrator. The statement shall state that the unit is permanently retired and will comply with the requirements of paragraph (1)(E)2. of this rule.

C. After receipt of the notice under subparagraph (1)(E)1.B. of this rule, the director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraph (1)(E)1.A. and paragraph (1)(E)2. of this rule.

2. Special provisions.

A. A unit exempt under this subsection shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

B. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

C. *Reserved*

D. For a period of five (5) years from the date the records are created, the owners and operators of a unit exempt under this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 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 director or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

E. A unit exempt under subsection (1)(E) of this rule and located at a source that is required, except for this exemption, would be required to have a Title V or a non-Title V operating permit, shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application for the unit not less than eighteen (18) months prior to the later of May 1, 2007 or the date on which the unit is to first resume operation.

3. Loss of exemption. For the purpose of applying monitoring requirements under section (4) of this rule, a unit that loses its exemption under subsection (1)(E) of this rule shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation. On the earlier of the following dates, a unit exempt under subsection (1)(E) of this rule shall lose its exemption:

A. The date on which the NO_x authorized account representative submits a NO_x budget permit application under subparagraph (1)(E)2.E. of this rule; or

B. The date on which the NO_x authorized account representative is required under subparagraph (1)(E)2.E. of this rule to submit a NO_x budget permit application.

(F) Compliance with this rule shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Air Conservation Law and rules or any other requirements under local, state or federal law. Specifically, compliance with this rule shall not violate the permit conditions previously established under 10 CSR 10-6.060 or 10 CSR 10-6.065.

(G) Computation of Time.

1. Unless otherwise stated, any time period scheduled under the NO_x budget trading program to begin on the occurrence of an act or event, shall begin on the day the act or event occurs.

2. Unless otherwise stated, any time period scheduled under the NO_x budget trading program to begin before the occurrence of an act or event, shall be computed so that the period ends the day before the act or event occurs.

3. Unless otherwise stated, if the final day of any time period under the NO_x budget trading program falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(H) The requirements of sections (3), (4) and (5) of this rule will not apply to the control period beginning in 2009 and any control period therafter.

(2) Definitions.

(A) Account certificate of representation—The completed and signed submission required by subsection (3)(B) 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 such source or sources and of the NO_x budget units at such source or sources with regard to matters under the NO_x budget trading program.

(B) Account number—The identification number given by the administrator to each NO_x allowance tracking system account.

(C) Acid rain emissions limitation—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.

(D) Administrator—The administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

(E) Affiliate—Any person including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

(F) Allocate or allocation—The determination by the director or the administrator of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(G) Automated data acquisition and handling system (DAHS)—That component of the continuous emissions monitoring system (CEMS), or other emissions monitoring system approved for use under section (4) of this rule, 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 in this rule.

(H) Boiler—An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(I) CAA—The Clean Air Act, 42 U.S.C. 7401, as amended by Pub. L. No. 101-595 (November 15, 1990).

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

(K) Combustion turbine—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.

(L) Commence commercial operation—With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in subsection (1)(E) 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, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsections (1)(E) or (3)(H) 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.

(M) Commence operation—To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subsection (1)(E) 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, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsection (1)(E) of this rule or subsection (3)(H) 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.

(N) Common stack—A single flue through which emissions from two (2) or more units are exhausted.

(O) Compliance account—NO_x allowance tracking system account, established by the administrator for a NO_x budget unit under subsection (3)(F) 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 a control period for the purpose of meeting the unit's NO_x emissions limitation.

(P) Compliance certification—A submission to the director or the administrator, that is required under subsection (3)(D) of this rule to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this part and that is signed by the NO_x authorized account representative in accordance with subsection (3)(B) of this rule.

(Q) Continuous emissions monitoring system (CEMS)—The equipment required under section (4) of this rule 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 nitrogen oxides. The following systems are component parts included, consistent with 40 CFR 75, in a continuous emissions monitoring system:

1. Flow monitor;
2. Nitrogen oxides pollutant concentration monitors;
3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by section (4) of this rule;
4. A continuous moisture monitor when such monitoring is required by section (4) of this rule; and
5. An automated data acquisition and handling system.

(R) Control period—The period beginning May 1 of a calendar year and ending on September 30 of the same calendar year.

(S) Emissions—Air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with section (4) of this rule.

(T) Energy Information Administration—The Energy Information Administration of the United States Department of Energy.

(U) Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(V) Fossil fuel-fired—With regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel—

1. Actually combusted comprises more than fifty percent (50%) of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

2. 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 such year, on which the unit begins combusting fossil fuel.

(W) General account—A NO_x allowance tracking system account, established under subsection (3)(F) of this rule, that is not a compliance account or an overdraft account.

(X) Generator—A device that produces electricity.

(Y) Heat input—The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with section (4) of this rule, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(Z) Life-of-the-unit, firm power contractual arrangement—A unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract—

1. For the life of the unit;

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

3. 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.

(AA) Maximum design heat input—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.

(BB) Maximum potential hourly heat input—An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

(CC) Maximum potential NO_x emission rate—The NO_x emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start-up, shutdown, and upsets.

(DD) Maximum rated hourly heat input—A unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(EE) Monitoring system—Any monitoring system that meets the requirements of section (4) of this rule, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(FF) Nameplate capacity—The maximum electrical generating output (in MW) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(GG) Non-Title V permit—A federally enforceable permit administered by the director pursuant to the CAA and regulatory authority under the CAA, other than Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(HH) NO_x allowance—An authorization by the department or the administrator under the NO_x budget trading program to emit up to one (1) ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(II) NO_x allowance deduction or deduct NO_x allowances—The permanent withdrawal of NO_x allowances by the administrator from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of emissions from a NO_x budget unit for a control period, determined in accordance with section (4) of this rule, or for any other NO_x allowance surrender obligation under this part.

(JJ) NO_x allowances held or hold NO_x allowances—The NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with subsections (3)(F) and (G) of this rule, in a NO_x allowance tracking system account.

(KK) NO_x allowance tracking system—The system by which the administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(LL) NO_x allowance tracking system account—An account in the NO_x allowance tracking system established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(MM) NO_x allowance transfer deadline—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 control period immediately preceding such deadline.

(NN) NO_x authorized account representative—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 subsection (3)(B) of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program or, for a general account, the natural person who is authorized, in accordance with subsection (3)(F) of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(OO) NO_x budget emissions limitation—For a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under subparagraph (3)(F)5.A. or B. of this rule for the control period or to account for excess emissions for a prior control period under subparagraph (3)(F)5.D. of this rule or to account for withdrawal from the NO_x budget program.

(PP) NO_x budget permit—The legally binding and federally enforceable written document, or portion of such document, issued by the director, including any permit revisions, specifying the NO_x budget trading program requirements applicable to a NO_x budget source, to each NO_x budget unit at the NO_x budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(QQ) NO_x budget source—A source that includes one (1) or more NO_x budget units.

(RR) NO_x budget trading program—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.

(SS) NO_x budget unit—A unit that is subject to the NO_x budget trading program emissions limitation under section (1) or paragraph (3)(H)1. of this rule.

(TT) Operating—With regard to a unit under part (3)(C)3.D.(II) and paragraph (3)(H)1. 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 subparagraph (3)(H)4.A. of this rule.

(UU) Operator—Any person who operates, controls, or supervises a NO_x budget unit, or a NO_x budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(VV) Overdraft account—The NO_x allowance tracking system account, established by the administrator under subsection (3)(F) of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(WW) Owner—Any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x budget unit;
2. Any holder of a leasehold interest in a NO_x budget unit;
3. Any purchaser of power from a NO_x budget unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit; or
4. 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.

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

(YY) Recordation, record, or recorded—With regard to NO_x allowances, the movement of NO_x allowances by the administrator from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(ZZ) Reference method—Any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR 60.

(AAA) Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the administrator, under subparagraph (3)(F)4.C. of this rule.

(BBB) Source—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."

(CCC) State—One (1) of the forty-eight (48) contiguous states and the District of Columbia specified in 40 CFR 51.121, or any non-federal authority in or including such states or the District of Columbia (including local agencies, and statewide agencies) or any eligible Indian tribe in an area of such state or the District of Columbia, that adopts a NO_x budget trading program pursuant to 40 CFR 51.121. To the extent a state incorporates by reference the provisions of this part, the term "state" shall mean the incorporating state. The term "state" shall have its conventional meaning where such meaning is clear from the context.

(DDD) State trading program NO_x budget—The total number of tons apportioned to all NO_x budget units in a given state, in accordance with the NO_x budget trading program, for use in a given control period.

(EEE) Submit or serve—To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation—

1. In person;
2. By United States Postal Service; or
3. 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.

(FFF) Title V operating permit—A permit issued under Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(GGG) Title V operating permit regulations—The regulations that the administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(HHH) Ton or tonnage—Any "short ton" (i.e., two thousand (2,000) pounds). For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with section (4) of this rule, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(III) Unit—a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(JJJ) Unit load—The total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MW) produced by the unit, including generation for use within the plant; or
2. 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.

(KKK) Unit operating day—A calendar day in which a unit combusts any fuel.

(LLL) Unit operating hour or hour of unit operation—Any hour or fraction of an hour during which a unit combusts fuel.

(MMM) Utilization—The heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will 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 will be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(NNN) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Standard Requirements.

1. Permit requirements.

A. The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall:

(I) Submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule in accordance with the deadlines specified in subparagraphs (3)(C)2.B. and C. of this rule; and

(II) Submit in a timely manner any supplemental information that the director determines is necessary in order to review a NO_x budget permit application and issue or deny a NO_x budget permit.

B. The owners and operators of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit issued by the director and operate the unit in compliance with such NO_x budget permit.

C. The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, and to have a NO_x budget permit, under subsection (3)(C) of this rule for such NO_x budget source.

2. Monitoring requirements.

A. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the monitoring requirements of section (4) of this rule.

B. The emissions measurements recorded and reported in accordance with section (4) of this rule shall be used to determine compliance by the unit with the NO_x budget emissions limitation under paragraph (3)(A)3. of this rule.

3. Nitrogen oxides requirements.

A. The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under paragraph (3)(F)5. 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 emissions for the control period from the unit, as determined in accordance with section (4) of this rule.

B. Each ton of nitrogen oxides emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable state law.

C. A NO_x budget unit shall be subject to the requirements under subparagraph (3)(A)3.A. of this rule starting on the later of May 1, 2007 or the date on which the unit commences operation.

D. NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with subsections (3)(E), (F), (G), and (H) of this rule.

E. A NO_x allowance shall not be deducted, in order to comply with the requirements under subparagraph (3)(A)3.A. of this rule, for a control period in a year prior to the year for which the NO_x allowance was allocated.

F. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program is a limited authorization to emit one (1) ton of nitrogen oxides in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under subsection (1)(E) of this rule and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization.

G. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program does not constitute a property right.

H. Upon recordation by the administrator under subsections (3)(F), (G), or (H) 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.

4. Excess emissions requirements. The owners and operators of a NO_x budget unit that has excess emissions in any control period shall:

A. Surrender the NO_x allowances required for deduction under part (3)(F)5.D.(I) of this rule; and

B. Pay any fine, penalty, or assessment or comply with any other remedy imposed under part (3)(F)5.D.(III) of this rule.

5. Record keeping and reporting requirements.

A. Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on-site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the director or the administrator.

(I) 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 paragraph (3)(B)4.; provided that the certificate and documents shall be retained on-site at the source beyond such five (5)-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(II) All emissions monitoring information, in accordance with section (4) of this rule; provided that to the extent that section (4) of this rule provides for a three (3)-year period for record keeping, the three (3)-year period shall apply.

(III) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x budget trading program.

(IV) 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.

B. The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under subsections (3)(D), (3)(H), or section (4) of this rule.

6. Liability.

A. Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under subsection (1)(E) of this rule shall be subject to enforcement pursuant to applicable state or federal law.

B. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.

C. No permit revision shall excuse any violation of the requirements of the NO_x budget trading program that occurs prior to the date that the revision takes effect.

D. Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

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

F. Any provision of the NO_x budget trading program that applies to a NO_x budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under section (4) of this rule, the owners and operators and the NO_x authorized account representative of one NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

7. Effect on other authorities. No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x budget permit, or an exemption under subsection (1)(E) 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.

(B) NO_x Authorized Account Representative for NO_x Budget Sources.

1. Responsibilities of the NO_x authorized account representative.

A. Except as provided under paragraph (3)(B)2. of this rule, 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 administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, 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, not withstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the director, the administrator, or a court regarding the source or unit.

D. No NO_x budget permit shall be issued, and no NO_x allowance tracking system account shall be established for a NO_x budget unit at a source, until the administrator has received a complete account certificate of representation under paragraph (3)(B)4. of this rule for a NO_x authorized account representative of the source and the NO_x budget units at the source.

E. NO_x budget trading program submissions.

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

(II) The director and the administrator will accept or act on a submission made on behalf of owner or operators of a NO_x budget source or a NO_x budget unit only if the submission has been made, signed, and certified in accordance with part (3)(B)1.E.(I) of this rule.

2. Alternate NO_x authorized account representative.

A. 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.

B. Upon receipt by the administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, 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.

C. Except in paragraphs (3)(B)2. through 4., (3)(F)2. and subparagraph (3)(B)1.A. of this rule, whenever the term "NO_x authorized account representative" is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

3. Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators.

A. Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under paragraph (3)(B)4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

B. Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under paragraph (3)(B)4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

C. Changes in the owners and operators.

(I) In the event a new owner or operator of a NO_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the director or the administrator, as if the new owner or operator were included in such list.

(II) Within thirty (30) days following any change in the owners or 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.

4. Account certificate of representation.

A. A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the administrator:

(I) 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.

(II) 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.

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

(IV) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the director, the administrator, or a court regarding the source or unit."

(V) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

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

5. Objections concerning the NO_x authorized account representative.

A. Once a complete account certificate of representation under paragraph (3)(B)4. of this rule has been submitted and received, the director and the administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under paragraph (3)(B)4. of this rule is received by the administrator.

B. Except as provided in subparagraph (3)(B)3.A. or B. of this rule, no objection or other communication submitted to the director or the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the director or the administrator under the NO_x budget trading program.

C. Neither the director nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(C) NO_x Budget Permits.

1. General NO_x budget trading program permit requirements.

A. For each NO_x budget source required to have a federally enforceable permit, such permit shall include a NO_x budget permit administered by the director.

(I) For NO_x budget sources required to have a Title V operating permit, the NO_x budget portion of the Title V permit shall be administered in accordance with the director's Title V operating permits regulations promulgated under 40 CFR 70 or 71, except as provided otherwise by subsection (3)(C) or (H) of this rule.

(II) For NO_x budget sources required to have a non-Title V permit, the NO_x budget portion of the non-Title V permit shall be administered in accordance with the director's regulations promulgated to administer non-Title V permits, except as provided otherwise by subsection (3)(C) or (H) of this rule.

B. 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 under subparagraph (3)(C)1.A. of this rule.

2. Submission of NO_x budget permit applications.

A. The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule by the applicable deadline in subparagraph (3)(C)3.B. of this rule.

B. Application time.

(I) For NO_x budget sources required to have a Title V operating permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

(II) For NO_x budget sources required to have a non-Title V permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

C. Duty to reapply.

(I) For a NO_x budget source required to have a Title V operating permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's Title V operating permits regulations addressing operating permit renewal.

(II) For a NO_x budget source required to have a non-Title V permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's non-Title V permits regulations addressing permit renewal.

3. Information requirements for NO_x budget permit applications. A complete NO_x budget permit application shall include the following elements concerning the NO_x budget source for which the application is submitted, in a format prescribed by the director:

A. 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;

B. 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) of this rule or under subsection (3)(H) of this rule; and

C. The standard requirements under subsection (3)(A) of this rule.

4. NO_x budget permit contents.

A. Each NO_x budget permit (including any draft or proposed NO_x budget permit, if applicable) will contain, in a format prescribed by the director, all elements required for a complete NO_x budget permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

B. 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 administrator under subsections (3)(F), (G), or (H) 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.

5. Effective date of initial NO_x budget permit. 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 subparagraph (3)(C)2.B.of this rule shall become effective by the later of:

A. May 1, 2007;

B. May 1 of the year in which the NO_x budget unit commences operation, if the unit commences operation on or before May 1 of that year;

C. The date on which the NO_x budget unit commences operation, if the unit commences operation during a control period; or

D. May 1 of the year following the year in which the NO_x budget unit commences operation, if the unit commences operation on or after October 1 of the year.

6. NO_x budget permit revisions.

A. For a NO_x budget source with a Title V operating permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's Title V operating permits regulations addressing permit revisions.

B. For a NO_x budget source with a non-Title V permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's non-Title V permits regulations addressing permit revisions.

(D) Compliance Certification.

1. Compliance certification report.

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

B. The NO_x authorized account representative shall include in the compliance certification report under subparagraph (3)(D)1.A. of this rule the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO_x budget emissions limitation for the control period covered by the report:

(I) Identification of each NO_x budget unit;

(II) 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 paragraph (3)(F)5. of this rule for the control period;

(III) At the NO_x authorized account representative's option, for units sharing a common stack and having emissions that are not monitored separately or apportioned in accordance with section (4) of this rule, the percentage of NO_x allowances that is to be deducted from each unit's compliance account under subparagraph (3)(F)5.E. of this rule; and

(IV) The compliance certification under subparagraph (3)(D)1.C. of this rule.

C. In the compliance certification report under subparagraph (3)(D)1.A. of this rule, 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:

(I) Whether the unit was operated in compliance with the NO_x budget emissions limitation;

(II) 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 emissions to the unit, in accordance with section (4) of this rule;

(III) Whether all the 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 section (4) of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(IV) Whether the facts that form the basis for certification under section (4) of this rule of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under section (4) of this rule, if any, has changed; and

(V) If a change is required to be reported under part (3)(D)1.C.(IV) of this rule, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

2. Director's and administrator's action on compliance certifications.

A. The director or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x budget trading program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subparagraph (3)(D)2.A. of this rule.

(E) NO_x Allowance Allocations.

1. The state trading program NO_x budget allocated by the director under paragraphs (3)(E)2. and (3)(E)3. of this rule for a control period will equal the total number of tons of emissions apportioned to the NO_x budget units in Missouri for the control period, as determined by the applicable, approved state implementation plan.

2. The following NO_x budget units shall be allocated NO_x allowances for each control period in accordance with Table I of paragraph (3)(E)2.

_Table I

NO_x Budget Unit	**Unit**	**Percentage of 1995 Heat Input**	**NO_x Allowances by Unit**
Associated Electric Cooperative—	1	8.49	1126

New Madrid			
Associated Electric Cooperative—New Madrid	2	8.91	1182
Ameren—Howard Bend	1	0.02	3
Ameren—Labadie	1	8.64	1146
Ameren—Labadie	2	9.52	1263
Ameren—Labadie	3	10.92	1449
Ameren—Labadie	4	10.09	1339
Ameren—Meramec	1	0.86	114
Ameren—Meramec	2	0.66	88
Ameren—Meramec	3	1.14	152
Ameren—Meramec	4	2.11	280
Ameren—Meramec	5	0.04	5
Ameren—Rush Island	1	10.59	1405
Ameren—Rush Island	2	10.52	1395
Ameren—Sioux	1	6.10	809
Ameren—Sioux	2	5.47	726
Ameren—Viaduct	1	0.03	4
City of Sikeston	1	5.88	780
Energy efficiency and renewable generation projects set-aside			134

3. The following existing non-EGU boilers shall be allocated NOx allowances for each control period in accordance with Table II of paragraph (3)(E)3.

Table II

Non-EGUs Boilers	**Unit**	**NO_x Limitation per Unit Tons Per Ozone Season**
Anheuser Busch	6	14
Trigen Ashley Street Station Boiler	5	9
Trigen Ashley Street Station Boiler	6	36

4. Any unit subject to subsection (1)(B) other than those listed in Tables I and II of this subsection will not be allocated NO_x budget allowances under this rule.

5. *Reserved*

6. Any person seeking set aside NO_x allowances for energy efficiency and renewable generation projects shall meet the requirements of paragraph (3)(E)6. of this rule.

A. The purpose for establishing these set-asides is to allocate NO_x allowances to serve as incentives for saving or generating electricity through the implementation of energy efficiency and renewable generation projects as defined in this section.

(I) Each energy efficiency and renewable generation set-aside shall contain the number of NO_x allowances as provided in Table I of this subsection.

(II) Awards of NO_x allowances will be available only to eligible energy efficiency or renewable generation projects that—

(a) Commence operation after September 1, 2005;

(b) Reduce electricity use, generate electricity from renewable resources or provide combined heat and power benefits during the period of May 1 through September 30, 2006, or subsequent control periods; and

(c) In an application submitted by November 30 of each year, include adequate documentation of these energy savings, renewable energy generation or combined heat and power benefits.

(III) Projects will be awarded NO_x allowances denominated for the control period following the control period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the 2006 control period will receive NO_x allowances denominated for the 2007 control period.

(IV) Projects may qualify for awards from the set-aside for up to five (5) consecutive control periods.

(V) Department actions on applications for awards from the set-aside. The department shall act upon applications as follows:

(a) By March 1 preceding the control period for which NO_x allowances are requested, the department shall take the following actions:

I. For each application, the department shall determine whether the project is eligible and the application is complete and shall notify the applicant of its determination.

II. For the eligible and complete applications, the department shall calculate the total number of NO_x allowances which the projects are qualified to receive, not to exceed the total number of NO_x allowances allocated to the set-aside as provided in Table I of this subsection, and shall award said NO_x allowances to eligible energy efficiency or renewable generation projects.

(b) If the number of NO_x allowances awarded is fewer than NO_x allowances allocated to the set-aside as provided in Table I of this subsection, the department shall transfer surplus NO_x allowances to the accounts of the electric utilities listed in Table I of this subsection on a pro rata basis in the same proportion as allocations to NO_x budget units set forth in Table I of this subsection.

(c) If the number of NO_x allowances claimed for award is more than NO_x allowances allocated to the set-aside as provided in Table I of this subsection, the department shall determine awards based on each applicant's position in an eligible projects queue that will be established by the department.

B. Project eligibility. Allocations from the energy efficiency and renewable generation set-aside may be requested by any entity, including an electric utility listed in Table I of this subsection or its affiliate, that implements and demonstrates eligible projects as defined in this subparagraph.

(I) Eligibility requirements. The department shall establish requirements for project eligibility and shall determine which projects are eligible to receive awards from the set-aside.

(II) Only the following shall be eligible for awards from the set-aside:

(a) Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary modification of maintenance and operating procedures in a building or facility or the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

I. Energy efficiency projects may be directed toward or located within buildings or facilities owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or its affiliate. Eligibility requirements for these projects shall be the same as for any other energy efficiency project.

II. Energy efficiency projects may include demand side programs that result in reduced or more efficient electricity use;

(b) Renewable generation projects, including electric generation from wind, photovoltaic systems, biogas, geothermal and hydropower projects. Renewable generation projects do not include nuclear power projects. Eligible biogas projects include projects to generate electricity from methane gas captured from sanitary landfills, wastewater treatment plants, sewage treatment plants or agricultural livestock waste treatment systems. Eligible hydropower projects are restricted to systems—

I. That are certified by the Low Impact Hydropower Institute;

II. That employ a head of ten feet (10') or less; or

III. Employing a head greater than ten feet (10') that make use of a dam that existed prior to the effective date of this rule;

(c) Renewable biomass generation projects including projects in which one (1) or more biomass fuels is fired separately or co-fired with one (1) or more fossil fuels to generate electricity. Biomass includes wood and wood waste, energy crops such as switchgrass and agricultural wastes such as crop and animal waste. Electric generation from combustion of municipal solid waste is not included; and

(d) Combined heat and power projects that use integrated technologies, including cogeneration, which convert fuel to electric, thermal, and mechanical energy for on-site or local use. In the case of electricity generation combined heat and power can include export of power to the local electric utility transmission grid. The thermal energy from combined heat and power systems can be created and used in the form of steam, hot or chilled water for process, space heating or cooling, or other applications. To be eligible, the combined heat and power installation must meet or exceed technology-specific efficiency thresholds that will be established by the department.

(III) Additional eligibility requirements shall include the following:

(a) NO_x authorized account representative must be designated for the project on forms provided by the department;

(b) Only projects that are not required by federal government regulation and that are not and will not be used to generate compliance or permitting credits otherwise in the SIP are eligible to receive NO_x allowances from the set-aside;

(c) Only projects that equal at least one (1) ton of NO_x emissions, using conventional arithmetic rounding, are eligible to receive NO_x allowances from the set-aside. Multiple projects may be aggregated into a single NO_x allowance allocation request to equal one (1) or more tons of NO_x emissions;

(d) Only projects that commence operation after September 1, 2005 are eligible to receive NO_x allowances from the set-aside;

(e) Location of the project:

I. Renewable generation projects and renewable biomass generation projects, as defined in subpart (3)(E)6.B.(II)(C) of this rule located anywhere in the state of Missouri are eligible if the generation facility meets all other eligibility requirements and—

a. The facility is owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or an affiliate and generates electricity that is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region; or

b. The facility supplies power through a power purchase contract to an electric utility listed in Table I of this subsection or an affiliate and the power purchased is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region.

II. Energy efficiency projects and combined heat and power projects, as defined in subpart (3)(E)6.B.(II)(d) of this rule, must be located in the area described in subsection (1)(A) of this rule to be eligible to receive NO_x allowances from the set-aside.

(IV) Pre-application eligibility review. Project sponsors may request a pre-application eligibility review preceding project activities that will serve as the basis for an application for awards from the set-aside. The review will cover eligibility requirements that can be determined prior to receipt of a complete application for awards. The request for early eligibility review must be submitted on forms provided by the department.

(V) Eligibility for any project may be claimed by only one (1) entity. The department shall determine procedures to be followed if multiple claims of eligibility for the same project are received.

C. Applications and calculations of awards. To qualify for an award of NO_x allowances from the set-aside an applicant must meet the following requirements:

(I) The project must be eligible as provided in paragraph (3)(E)6. of this rule;

(II) A complete application must be received by the last business day of November following the period of May 1 through September 30 during which the eligible project activities occurred. The application shall—

(a) Be prepared on forms provided by the department and must be submitted by the project's NO_x authorized account representative;

(b) Be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

I. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding NO_x allowances to the applicant; and

II. Verification may include site visits by agents of the department;

(c) Demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department; and

(d) If the applicant intends to reapply in subsequent years, the application must indicate the stream of benefits that is expected in subsequent years;

(III) The department shall determine methods for calculating awards of NO_x allowances based upon the following principles:

(a) NO_x allowances awarded to end-use electrical energy efficiency projects shall be calculated as the number of megawatt hours (MWh) of electricity saved during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding. The department shall provide a factor to adjust the calculation of electricity saved to account for transmission and distribution line losses;

(b) NO_x allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas, geothermal and hydropower projects shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

(c) NO_x allowances awarded to renewable biomass generation projects shall be calculated based on net NO_x emission reductions, appropriately converted and rounded to tons using conventional arithmetic rounding where—

I. Net NO_x emissions shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the control period; and

II. When biomass is co-fired with other fuels, its share of electric generation and NO_x emissions shall be calculated based on its share of the total heat content of all fuels used in the co-firing process; and

(d) The department shall determine methods for calculating NO_x allowances for combined heat and power projects; and

(IV) A project's NO_x authorized account representative may reapply for set-aside awards for up to five (5) consecutive control periods by meeting the following requirements:

(a) Reapplication must be received by the last business day of November following the last day of the control period during which the energy efficiency and renewable electric generation activities took place;

(b) The reapplication must be prepared on forms provided by the department and must be submitted by the project's NO_x authorized account representative; and

(c) The application must be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

(F) NO_x Allowance Tracking System.

1. NO_x allowance tracking system accounts.

A. Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (3)(F)2.A. of this rule, the administrator will establish one (1) compliance account for each NO_x budget unit and one (1) overdraft account for each source with one (1) or more NO_x budget units. Allocations of NO_x allowances pursuant to subsection (3)(E) or paragraph (3)(H)9. of this rule and deductions or transfers of NO_x allowances pursuant to paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule will be recorded in the compliance accounts or overdraft accounts in accordance with subsection (3)(F) of this rule.

B. Nature and function of general accounts. Consistent with subparagraph (3)(F)2.B. of this rule, the administrator will establish, upon request, a general account for any person. Transfers of NO_x allowances pursuant to subsection (3)(G) of this rule will be recorded in the general account in accordance with subsection (3)(F) of this rule.

2. Establishment of accounts.

A. Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the administrator will establish—

(I) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted; and

(II) 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.

B. General accounts.

(I) Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(a) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(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 NO_x 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 alternate NO_x authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account.";

(e) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed; and

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

(II) Upon receipt by the administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule:

(a) The administrator 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 such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the administrator or a court regarding the general account;

(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 such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."; and

(d) The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subpart (3)(F)2.B.(II)(c) of this rule.

(III) NO_x authorized account representative for general accounts.

(a) An application for a general account may designate one (1) and only one (1) NO_x authorized account representative and 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 administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule, 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.

(IV) Changes in account representatives for general accounts; changes in owners and operators.

(a) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(b) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(c) Changes in the owners and operators.

I. In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

II. 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.

(V) Objections concerning the NO_x authorized account representative for a general account.

(a) Once a complete application for a general account under part (3)(F)2.B.(I) of this rule has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule is received by the administrator.

(b) Except as provided in part (3)(F)2.B.(IV) of this rule, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the administrator under the NO_x budget trading program.

(c) The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

C. Account identification. The administrator will assign a unique identifying number to each account established under subparagraphs (3)(F)2.A. or B. of this rule.

3. Responsibilities of NO_x authorized account representative.

A. Following the establishment of a NO_x allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

B. NO_x authorized account representative identification. The administrator will assign a unique identifying number to each NO_x authorized account representative.

4. Recordation of NO_x allowance allocations.

A. The administrator will record the NO_x allowances for 2007 and 2008 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under subsection (3)(E) of this rule.

B. Each year, after the administrator has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to paragraph (3)(F)5. of this rule, the administrator will record NO_x allowances, as allocated to the unit under subsection (3)(E) of this rule or under part (3)(H)9.A.(II) of this rule, in the compliance account for the year after the last year for which NO_x allowances were previously allocated to the compliance account. Each year, the administrator will also record NO_x allowances, as allocated under subsection (3)(E) of this rule, in the allocation set-aside for the year after the last year for which NO_x allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to and recording them in an account, the administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

5. Compliance.

A. NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for a control period in a given year only if the NO_x allowances—

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

(II) 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 control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under paragraph (3)(G)1. of this rule by the NO_x allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) Following the recordation, in accordance with paragraph (3)(G)2. 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 a control period, the administrator will deduct NO_x allowances available under subparagraph (3)(F)5.A. of this rule to cover the unit's emissions (as determined in accordance with section (4) of this rule) for the control period—

(a) From the compliance account; and

(b) Only if no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the compliance account, from the overdraft account. In deducting NO_x allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(II) The administrator will deduct NO_x allowances first under subpart (3)(F)5.B.(I)(a) of this rule and then under subpart (3)(F)5.B.(I)(b) of this rule—

(a) Until the number of NO_x allowances deducted for the control period equals the number of tons of emissions, determined in accordance with section (4) of this rule, from the unit for the control period for which compliance is being determined; or

(b) Until no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the respective account.

C. Identification of NO_x allowances.

(I) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraph (3)(F)5.B., D., or E. of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule.

(II) First-in, first-out. The administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under part (3)(F)5.C.(I) of this rule, 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 control period to the unit under subsection (3)(E) or (H) of this rule;

(b) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation; (c) Those NO_x allowances that were allocated for a prior control period to the unit under subsection (3)(E) or (H) of this rule; and

(d) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation.

D. Deductions for excess emissions.

(I) After making the deductions for compliance under subparagraph (3)(F)5.B. of this rule, the administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(II) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(III) Any NO_x allowance deduction required under subparagraph (3)(F)5.D. of this rule 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 will 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 a control period, each day in the 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; and

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

E. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with section (4) of this rule—

(I) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule; and

(II) Notwithstanding subpart (3)(F)5.B.(II)(a) of this rule, the administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under part (3)(F)5.E.(I) of this rule) of the number of tons of emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

F. The administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraph (3)(F)5.B., D., or E. of this rule.

6. Banking.

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:

(I) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule.

(II) The administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(F)5. of this rule and that was allocated for that control period or a control period in a prior year.

B. Each year starting in 2008, after the administrator has completed the designation of banked NO_x allowances under part (3)(F)6.A.(II) of this rule and before May 1 of the year, the administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

(I) The administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(II) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, 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 state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule.

(III) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except as follows:

(a) The administrator will determine the following ratio: 0.10 multiplied by the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located and divided by the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts.

(b) The administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except that, if such NO_x allowances are used to make a deduction, two (2) such NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under paragraph (3)(F)5. of this rule.

C. Any NO_x budget unit may reduce its NO_x emission rate in the 2002 through the 2006 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NO_x allowances in 2007 to the unit in accordance with the following requirements:

(I) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall monitor emissions in accordance with section (4) of this rule starting prior to the first control period for which ERCs are requested and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the applicable control period, and the unit must be in compliance with any applicable state or federal emissions or emissions-related requirements;

(II) NO_x emission rate and heat input under part (3)(F)6.C.(III) through (V) of this rule shall be determined in accordance with section (4) of this rule;

(III) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to:

(a) Less than 0.25 lb/mmBtu in the years 2002 and 2003;

(b) Less than 0.25 lb/mmBtu in the years 2004 and 2005 for sources located in an area listed in subsection (1)(A) other than the City of St. Louis and the counties of Franklin, Jefferson, and St. Louis; or

(c) Less than 0.18 lb/mmBtu in the years 2004 through 2006 for sources located in the City of St. Louis and the counties of Franklin, Jefferson, and St. Louis.

(d) The calculation of early reduction credits in any year from 2002 through 2006 must be below any applicable limitation, which is more stringent than the requirements of subparts (a) through (c) of this part.

(IV) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of part (3)(F)6.C.(I) and (III) of this rule may submit to the director a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2002 or 2006 in accordance with part (3)(F)6.C.(III) of this rule.

(a) In the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the applicable NO_x emission rate in part (3)(F)6.C.(III) of this rule and the unit's NO_x emission rate rounded to the nearest ton.

(b) The early reduction credit request must be submitted, in a format specified by the director, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the permitting authority;

(V) The director will allocate NO_x allowances, to NO_x budget units meeting the requirements of part (3)(F)6.C.(I) and (III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(F)6.C.(IV)(b) of this rule, in accordance with the following procedures:

(a) Upon receipt of each early reduction credit request, the director will accept the request only if the requirements of parts (3)(F)6.C.(I), (III), and subpart (3)(F)6.C.(IV)(b) of this rule are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of parts (3)(F)6.C.(II) and (IV) of this rule;

(b) The director will allocate not more than five thousand six hundred thirty (5,630) ERCs over the period from 2002 through 2006, as follows:

I. The director will allocate not more than one half (1/2) of the total ERCs in the years 2002 and 2003;

II. The director will allocate not more than one half (1/2) of the total ERCs in the years 2004 and 2005; and

III. The director will allocate any remaining allowances during the year 2006;

(c) If the number of ERC allowances requested for a reduction achieved in a given control period from 2002 through 2006 is less than the number of ERCs to be distributed in accordance with the requirements of part (b) of this subparagraph, the director will allocate to each budget EGU one (1) allowance for each accepted ERC requested; and

(d) If the number of ERC allowances requested for a reduction achieved in a given control period from 2002 through 2006 is greater than the number of ERCs to be distributed in accordance with the requirements of part (b) of this subparagraph, the director will allocate to each budget EGU allowances for accepted requests on a pro rata basis;

(VI) The director will submit to the administrator the allocations of NO_x allowances determined under part (3)(F)6.C.(V) of this rule by the dates listed in subparts (a) and (b) of this part. The administrator will record such allocations to the extent that they are consistent with the requirements of parts (3)(F)6.C.(I) through (V) of this rule:

(a) For the years 2002 and 2003, the director will submit NO_x allowances on or before April 1, 2006;

(b) For the years 2004 through 2006, the director will submit NO_x allowances on or before April 1, 2007;

(VII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule may be deducted for compliance under paragraph (3)(F)5. of this rule for the control periods in 2007 or 2008. Notwithstanding subparagraph (3)(F)6.A. of this rule, the administrator will deduct as retired any NO_x allowance that is recorded under part (3)(F)6.C.(VI) of this rule and is not deducted for compliance in accordance with paragraph (3)(F)5. of this rule for the control period in 2007 or 2008; and

(VIII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule are not treated as banked NO_x allowances in 2007, and are treated as banked allowances in 2008, for the purposes of subparagraphs (3)(A)3., (3)(A)4. and (3)(A)5. of this rule.

7. Account error. The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making such correction, the administrator will notify the NO_x authorized account representative for the account.

8. Closing of general accounts.

A. The NO_x authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under paragraph (3)(G)1. of this rule a NO_x allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20)-day period unless before the end of the twenty (20)-day period the administrator receives a correctly submitted transfer of NO_x allowances into the account under paragraph (3)(G)1. of this rule or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

(G) NO_x Allowance Transfers.

1. Submission of NO_x allowance transfers. The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the administrator:

A. The numbers identifying both the transferor and transferee accounts;

B. A specification by serial number of each NO_x allowance to be transferred; and

C. The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

2. EPA recordation.

A. Within five (5) business days of receiving a NO_x allowance transfer, except as provided in subparagraph (3)(G)2.B. of this rule, the administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that—

(I) The transfer is correctly submitted under paragraph (3)(G)1. of this rule;

(II) The transferor account includes each NO_x allowance identified by serial number in the transfer; and

(III) The transfer meets all other requirements of this rule.

B. 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 a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in subparagraph (3)(F)4.B. of this rule.

C. Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the administrator will not record such transfer.

3. Notification.

A. Notification of recordation. Within five (5) business days of recordation of a NO_x allowance transfer under paragraph (3)(G)2. of this rule, the administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.

B. Notification of non-recordation. Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of—

(I) A decision not to record the transfer; and

(II) The reasons for such non-recordation.

C. Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

(H) *Reserved*

(4) Reporting and Record Keeping.

(A) General Requirements. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in subpart H of 40 CFR part 75. For purposes of complying with such requirements, the definitions in section (2) of this rule and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR 75 shall be replaced by the terms "NO_x budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in section (2) of this rule.

1. Requirements for installation, certification, and data accounting. The owner or operator of each NO_x budget unit must meet the following requirements:

A. Install all monitoring systems required under section (4) for monitoring mass. This includes all systems required to monitor NO_x emission rate, concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 75.76;

B. Install all monitoring systems for monitoring heat input, if required under subsection (4)(G) of this rule for developing NO_x allowance allocations;

C. Successfully complete all certification tests required under subsection (4)(B) of this rule and meet all other provisions of this rule and 40 CFR 75 applicable to the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule; and

D. Record, and report data from the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule.

2. Compliance dates. The owner or operator must meet the requirements of subparagraphs (4)(A)1.A. through C. of this rule on or before the following dates and must record and report data on and after the following dates:

A. NO_x budget units for which the owner or operator intends to apply for early reduction credits under subparagraph (3)(F)6.C. of this rule must comply with the requirements of section (4) of this rule by May 1, 2006;

B. Except for NO_x budget units under subparagraphs (4)(A)2.A. of this rule, NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, must comply with the requirements of section (4) of this rule by May 1, 2006;

C. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on an annual basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) May 1, 2006; or

(II) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation;

D. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on a control season basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation;

(II) However, if the applicable deadline under part (4)(A)2.D.(I) of this rule does not occur during a control period, May 1, immediately following the date determined in accordance with part (4)(A)2.D.(I) of this rule;

E. For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraphs (4)(A)2.A., B., or C. or subsection (3)(H) of this rule:

(I) Ninety (90) days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(II) However, if the unit reports on a control season basis under paragraph (4)(E)4. of this rule and the applicable deadline under part (4)(A)2.E.(I) of this rule does not occur during the control period, May 1 immediately following the applicable deadline in part (4)(A)2.E.(I) of this rule.

3. Reporting data prior to initial certification.

A. The owner or operator of a NO_x budget unit that misses the certification deadline under subparagraph (4)(A)2.A. of this rule is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subparagraph (4)(A)2.B. of this rule.

B. The owner or operator of a NO_x budget unit under subparagraph (4)(A)2.C. or D. of this rule must determine, record and report mass, heat input (if required for purposes of allocations) and any other values required to determine mass (e.g. NO_x emission rate and heat input or 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.

4. Prohibitions.

A. 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 (4)(F) of this rule.

B. 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, emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

C. 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 continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording 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 section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

D. 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 continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under section (4) of this rule, except under any one (1) of the following circumstances:

(I) During the period that the unit is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect;

(II) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of section (4) and 40 CFR 75, by the director for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(III) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subparagraph (4)(B)2.B. of this rule.

(B) Initial Certification and Recertification Procedures.

1. The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

A. If, prior to January 1, 2005, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_x authorized account representative shall resubmit the petition to the administrator under paragraph (4)(F)1. of this rule to determine if the approval applies under the NO_x budget trading program.

B. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (4)(B)2. of this rule.

2. The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, 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 paragraph (4)(B)3. of this rule and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the requirements of paragraph (4)(B)4. of this rule. 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 concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

A. Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which 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 paragraph (4)(A)2. of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

B. Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the administrator or the director determines significantly affects the ability of the system to accurately measure or record mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR 75, 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 administrator or the director determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which 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.

C. Certification approval process for initial certifications and recertification.

(I) Notification of certification. The NO_x authorized account representative shall submit to the appropriate EPA regional office and the permitting authority a written notice of the dates of certification in accordance with subsection (4)(D) of this rule.

(II) Certification application. The NO_x authorized account representative shall submit to the director a certification application for each monitoring system required under subpart H of 40 CFR 75. A complete certification application shall include the information specified in subpart H of 40 CFR 75.

(III) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined 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 not to exceed one hundred twenty (120) days after receipt by the director of the complete certification application for the monitoring system or component thereof under part (4)(B)2.C.(II) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the director.

(IV) Certification application formal approval process. The director will issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under part (4)(B)2.C.(II) of this rule. In the event the permitting authority does not issue such a notice within such one hundred twenty (120)-day period, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application will be deemed certified for use under the NO_x budget trading program.
(a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the director will issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(b) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under part (4)(B)2.C.(II) of this rule has been received by the director. If the certification application is not complete, then the director will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the director may issue a notice of disapproval under subpart (4)(B)2.C.(IV)(c) of this rule.

(c) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under subpart (4)(B)2.C.(IV)(b) of this rule has been met, the director will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in part (4)(B)2.C.(V) of this rule for each monitoring system or component thereof which is disapproved for initial certification.

(d) Audit decertification. The director may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (4)(C)2. of this rule.

(V) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under subpart (4)(B)2.C.(IV)(c) of this rule or a notice of disapproval of certification status under subpart (4)(B)2.C.(IV)(d) of this rule, then—

(a) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data 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):

I. For units using 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, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

II. For units intending to monitor for mass emissions using a pollutant concentration monitor and a flow monitor, the maximum potential concentration of and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR 75;

(b) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with parts (4)(B)2.C.(I) and (II) of this rule; and

(c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the director's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

3. Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 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 subsection (4)(B) of this rule, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x budget trading program, as of the following dates:

A. For units that are reporting on an annual basis under paragraph (4)(E)4. of this rule—

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, 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 the director review; or

(II) For a unit that commenced operation after its compliance deadline under paragraph (4)(B)2. of this rule, 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 director review; or

B. For units that are reporting on a control period basis under part (4)(E)2.C.(II) of this rule:

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted 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 director review;

(II) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted 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 director review; or

(III) For a unit that commences operation after its compliance deadline under paragraph (4)(B)2. of this rule, 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 director's review; or

(IV) For a unit that has not operated after its compliance deadline under paragraph (4)(B)2. of this rule, 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 director's review.

4. Certification/recertification procedures for alternative monitoring systems. 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 administrator and, if applicable, the director under subpart E of 40 CFR 75 shall apply for certification to the permitting authority prior to use of the system under the trading program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (4)(B)2. of this rule. 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 subparagraph (4)(B)2.C. of this rule and 40 CFR 75.20(f).

(C) Out of Control Periods.

1. Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of 40 CFR 75, data shall be substituted using the applicable procedures in subpart D, Appendix D, or Appendix E of 40 CFR 75.

2. Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsection (4)(B) of this rule 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 director will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsection (4)(B) of this rule for each disapproved system.

(D) Notifications. The NO_x authorized account representative for a NO_x budget unit shall submit written notice to the permitting authority and the administrator 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 director.

(E) Record Keeping and Reporting.

1. General provisions.

A. The NO_x authorized account representative shall comply with all record keeping and reporting requirements in this section and with the requirements of subparagraph (3)(B)1.E. of this rule.

B. If the NO_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR 75 and which includes data and information required under section (4) of this rule or subpart H of 40 CFR 75 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. Monitoring plans.

A. The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR 75.

B. The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.

3. Certification applications. The NO_x authorized account representative shall submit an application to the permitting authority within forty-five (45) days after completing all initial certification or recertification tests required under subsection (4)(B) of this rule including the information required under subpart H of 40 CFR 75.

4. Quarterly reports. 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 section (4) of this rule, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(I) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(II) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1, 2006, the partial calendar quarter from May 1, 2006 through June 30, 2006. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2006; or

(III) For a unit that commences operation after May 1, 2006, 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 either:

(I) Meet all of the requirements of 40 CFR 75 related to monitoring and reporting mass emissions during the entire year and meet the reporting deadlines specified in subparagraph (4)(E)4.A. of this rule; or

(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:

(a) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(b) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calendar quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule, or if the certification tests are not completed by May 1, 2006, the partial calendar quarter from May 1, 2006 through June 30, 2006. 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, 2006;

(c) For units that commence operation after May 1, 2006 during the 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;

(d) For units that commence operation after May 1, 2006 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 part (4)(B)2.C.(III) of this rule 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; or

(e) For units that commence operation after May 1, 2006 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 part (4)(B)2.C.(III) of this rule 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 administrator 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 subpart H of 40 CFR 75 and 40 CFR 75.64.

(I) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR 75.

(II) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack).

D. Compliance certification. The NO_x authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

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

(II) For a unit with add-on 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 emissions; and

(III) For a unit that is reporting on a control period basis under paragraph (4)(E)4. of this rule, the NO_x emission rate and concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only values from a control period and do not systematically underestimate emissions.

(F) Petitions.

1. The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of section (4) of this rule.

A. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the extent that the petition is approved by the administrator, in consultation with the permitting authority.

B. Notwithstanding subparagraph (4)(F)1.A. of this rule, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by paragraph (4)(F)2. of this rule.

2. The NO_x authorized account representative of a NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to any requirement of section (4) of this rule.

A. The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a concentration CEMS used under 40 CFR 75.71(a)(2).

B. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the extent the petition under paragraph (4)(F)2. of this rule is approved by both the permitting authority and the administrator.

(G) Additional Requirements to Provide Heat Input Data for Allocations Purposes.

1. The owner or operator of a unit that elects to monitor and report mass emissions using a 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 located in a state developing source allocations based upon heat input.

2. The owner or operator of a unit that monitors and reports mass emissions using a 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 paragraph (3)(F)6. of this rule.

(H) Record Keeping and Reporting Maintenance.

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 from the date the document is created. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the director or the administrator.

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 paragraph (3)(B)4.; provided that the certificate and documents shall be retained on-site at the source beyond such five (5)-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

B. All emissions monitoring information, in accordance with section (4) of this rule; provided that to the extent that section (4) of this rule provides for a three (3)-year period for record keeping, the three (3)-year period shall apply.

C. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_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 subsections (3)(D), (3)(H), or section (4) of this rule.

(5) Test Methods. (Not Applicable)

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005, effective Oct. 30, 2005. Amended: Filed Oct. 2, 2006, effective May 30, 2007.*

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.380 Control of NO_x Emissions From Portland Cement Kilns

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. The rule establishes NO_x control equipment and NO_x emission levels for cement kilns. The evidence supporting the need for this proposed rulemaking per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x *State Implementation Plan (SIP) Call dated April 21, 2004.*

(1) Applicability. This rule applies to any cement kiln located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis that—

(A) Is a long dry kiln with an actual process rate of at least twelve tons of clinker produced per hour (12 TPH);

(B) Is a long wet kiln with an actual process rate of at least ten (10) TPH;

(C) Is a preheater kiln with an actual process rate of at least sixteen (16) TPH; or

(D) Is a precalciner or preheater/precalciner kiln with an actual process rate of at least twenty-two (22) TPH.

(2) Definitions.

(A) Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(B) Long-dry kiln—A kiln fourteen feet (14') or larger in diameter, four hundred feet (400') or greater in length, which employs no preheating of the feed and the inlet feed to the kiln is dry.

(C) Long-wet kiln—A kiln fourteen feet (14') or larger in diameter, four hundred feet (400') or greater in length, which employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(D) Low-NO_x burners—A type of cement kiln burner (a device that functions as an injector of fuel and combustion air into kiln to produce a flame that burns as close as possible to the center line of the kiln) that has a series of channels or orifices that 1) allow for the adjustment of the volume, velocity, pressure, and/or direction of the air carrying the fuel, known as primary air, into the kiln, and 2) impart high momentum and turbulence to the fuel stream to facilitate mixing of the fuel and secondary air.

(E) Mid-kiln firing—Secondary firing in kiln systems by injecting fuel at an intermediate point in the kiln system using a specially designed fuel injection mechanism for the purpose of decreasing NO_x emissions through—

1. The burning of part of the fuel at a lower temperature; and
2. The creation of reducing conditions at the point of initial combustion.

(F) Portland cement—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.

(G) Portland cement kiln—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.

(H) Preheater/precalciner kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers and that utilizes a second burner to provide heat for calcination of material prior to the material entering the rotary kiln which forms clinker.

(I) Preheater kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion, which forms clinker.

(J) Recoverable fuel—Fuels that have been permitted for use for energy recovery under 10 CSR 10-6.065.

(K) Renewable fuel—Renewable energy resources that include but are not limited to solar (photovoltaic), wind, and biomass. Biomass includes but is not limited to: agricultural crops and crop waste, untreated wood and wood wastes, livestock waste, wastepaper, and organic municipal solid waste.

(L) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Beginning May 1, 2007 an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the period starting May 1 and ending September 30 of each year, unless the kiln installs and operates with one (1) of the following:

1. Low-NO_x burners;
2. Mid-kiln firing;
3. An alternative control technology that is approved by the staff director, and incorporated in the federally approved SIP, and is proven to achieve emission reductions of thirty percent (30%) or greater;
4. An emission rate of:

A. For long-wet kilns—6.8 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

B For long-dry kilns—6.0 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

C. For preheater kilns—4.1 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

D. For preheater/precalciner kilns—2.7 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year; or

5. The findings of a case-by-case study committed to and conducted by the owner or operator and approved by the staff director, and incorporated into the federally approved SIP, taking into account energy, environmental, and economic impacts and other costs to determine an emission limitation that is achievable for the installation through application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of NO_x.

(B) To meet the requirements of paragraph (3)(A)3. or (3)(A)5. of this rule, the owner or operator may take into account as a portion of the required NO_x reductions, physical and quantifiable measures to increase energy efficiency, reduce energy demand, or increase use of renewable or recoverable fuels.

(C) Excess Emissions During Start-Up, Shutdown, or Malfunction. If the owner or operator provides notice of excess emissions pursuant to state rule 10 CSR 10-6.050(3)(B), the director will determine whether the excess emissions are attributable to start-up, shutdown or malfunction conditions, pursuant to rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to such conditions, and if such excess emissions cause a kiln to exceed the applicable emission limits in this rule, the director will determine whether enforcement action is warranted, as provided in rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to a start-up, shutdown, or malfunction condition and does not warrant enforcement action, those emissions would not be included in the calculation of ozone season NO_x emissions.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator of a kiln subject to this rule shall comply with the following requirements:

1. By May 1, 2007, the owner or operator shall submit to the staff director the identification number and type of each unit subject to this rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with this rule;

2. The owner or operator shall submit to the staff director by October 31 of each year, beginning in the year 2007, an annual report documenting for that unit:

A. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln during the period from May 1 through September 30;

B. The results of any performance testing; and

C. Cement kiln clinker production, in tons, from May 1 through September 30; and

3. If the owner or operator elects to comply with paragraph (3)(A)3. or (3)(A)5. of this rule, the owner or operator will supply, starting April 2008, the staff director with a report as specified in the compliance plan.

(B) Record Keeping Requirements.

1. Any owner or operator of a unit subject to this rule shall produce and maintain records, which shall include, but are not limited to the results of any initial performance test, the results of any subsequent performance tests, the date, time and duration of any start-up, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment, as applicable.

2. If an owner or operator elects to use subsection (3)(B) of this rule as part of the compliance plan, the owner or operator must retain records as agreed to in the approved compliance plan.

3. Daily cement kiln clinker production in tons per day.

4. Any applicable monitoring data.

5. All records required to be produced or maintained shall be retained on-site for a minimum of five (5) years and made available upon request.

(C) Monitoring Requirements.

1. An owner or operator complying with paragraph (3)(A)1. or (3)(A)2. of this rule shall maintain and operate the device according to the manufacturer's specifications as approved by the permitting agency. The monitoring shall:

A. Include parameters indicated in the manufacturer's specifications and recommendations for the low-NO_x burner or mid-kiln firing system as approved by the permitting agency; and

B. Identify the specific operation conditions to be monitored and correlation between the operating conditions and NO_x emission rate.

2. An owner or operator complying with paragraph (3)(A)3., (3)(A)4., or (3)(A)5. of this rule shall complete an initial performance test by May 1, 2007 and subsequent performance tests, on an annual basis, consistent with the requirements of section (5) of this rule.

3. An owner or operator may comply with the requirements in paragraph (4)(C)1. through the use of an alternative compliance method approved by the staff director and incorporated in the federally approved SIP.

4. Any deviation from the operating conditions or specifications, which result in an increase in NO_x emissions, established in this paragraph constitute a violation of this rule, unless the owner or operator demonstrates to the satisfaction of the director that the deviation did not result in an increase in NO_x emissions.

(5) Test Methods. NO_x emission level testing shall use one (1) of the following methods as specified by 40 CFR part 60 Appendix A—Reference Methods:

(A) Method 7—Determination of Nitrogen Oxide Emissions from Stationary Sources;

(B) Method 7A—Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method;

(C) Method 7C—Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline-Permanganate/Colorimetric Method;

(D) Method 7D—Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline-Permanganate/Ion Chromatographic Method; or

(E) Method 7E—Determination of Nitrogen Oxide Emissions from Stationary Sources (Instrumental Analyzer Procedure).

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005, effective Oct. 30, 2005.*

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*

10 CSR 10-6.390 Control of NO_x Emissions From Large Stationary Internal Combustion Engines

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. This rule establishes emission levels for large stationary internal combustion engines. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x State Implementation Plan (SIP) Call dated April 21, 2004.

(1) Applicability. This rule applies to any large stationary internal combustion engine located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington, and Wayne counties and the City of St. Louis greater than one thousand three hundred (1,300) horsepower that—

(A) Emitted greater than one (1) ton per day of NO_x on average during the period from May 1 through September 30 of 1995, 1996, or 1997; or

(B) Begins operation after September 30, 1997.

(C) Any stationary internal combustion engine that meets the definition of emergency standby engine in subsection (2)(C) of this rule is exempt from this rule.

(2) Definitions.

(A) Diesel engine—A compression ignited (CI) two- or four-stroke engine in which liquid fuel is injected into the combustion chamber and ignited when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(B) Dual fuel engine—Compression ignited stationary internal combustion engine that is capable of burning liquid fuel and gaseous fuel simultaneously.

(C) Emergency standby engine—An internal combustion engine used only when normal electrical power or natural gas service is interrupted, or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been either reached or exceeded.

(D) Engine rating—The output of an engine as determined by the engine manufacturer and listed on the nameplate of the unit, regardless of any derating.

(E) Higher heating value (HHV)—The total heat liberated per mass of fuel burned in British thermal units (Btu) per pound, when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015-85 for solid fuels; ASTM D240-87 or ASTM D2382-88 for liquid hydrocarbon fuels; or ASTM D1826-88 or ASTM D1945-81 in conjunction with ASTM D3588-89 for gaseous fuels. These methods are all incorporated by reference as specified at 40 CFR 52.3002.

(F) Lean-burn engine—Any two- or four-stroke spark ignited (SI) engine with greater than four percent (4%) oxygen in the engine exhaust.

(G) Maintenance operation—Normal routine maintenance on any stationary internal combustion engine subject to this rule or the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

(H) Output—The shaft work output from any engine plus the energy reclaimed by any useful heat recovery system.

(I) Peak load—The maximum instantaneous operating load.

(J) Permitted capacity factor—The annual permitted fuel use divided by the manufacturers specified maximum fuel consumption times eight thousand seven hundred sixty (8,760) hours per year.

(K) Rich-burn engine—A two- or four-stroke SI engine where the oxygen content in the exhaust stream before any dilution is one percent (1%) or less measured on a dry basis.

(L) Stationary internal combustion engine—Internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one (1) location to another and remains at a single site at a building, structure, facility, or installation for more than twelve (12) consecutive months. Any engine or engines that replace an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period. Nonroad engines and engines used solely for competition are not stationary internal combustion engines.

(M) Stoichiometric air/fuel ratio—The air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

(N) Unit—Any diesel, lean-burn, or rich-burn stationary internal combustion engine as defined in this section.

(O) Utilization rate—The amount of an engine's capacity reported in horsepower-hours that is utilized.

(P) Definitions of certain terms used in this rule, other than those specified in this rule, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) An owner or operator of a large stationary internal combustion engine meeting the applicability of paragraph (1)(A)1. of this rule shall calculate the allowable NO_x emission rate for each applicable engine using:

$$ER = (NO_{x\ act}/UR) \times 1.102 \times 10^{-6} \times 0.1$$

where,

ER = the allowable emission rate for each engine in grams per horsepower-hour;

$NO_{x\ act}$ = the highest actual NO_x emissions, reported in tons per control period, for the period from May 1 through September 30 for one of the years 1995, 1996, or 1997 based on the best available emission information for each engine; and

UR = the utilization rate in horse-power-hours during the same period as $NO_{x\ act}$

(B) An owner or operator of a large stationary internal combustion engine meeting the applicability of paragraph (1)(A)2. of this rule shall not operate an engine to exceed the permitted emission rate or the following emission rate, whichever is more stringent:

1. For rich-burn SI engines 3.0 grams per horsepower-hour; or
2. For lean-burn SI engines 3.0 grams per horsepower-hour;

(C) An owner or operator of a large stationary internal combustion engine may choose to establish a facility-wide NO_x emissions cap in lieu of compliance with subsection (3)(A) of this rule. If the owner or operator elects to comply with the requirements of subsection (3)(A), the owner or operator shall submit a commitment in writing no later than May 1, 2005, to the director stating the intent to comply with that subsection. If the owner or operator commits to comply with this subsection rather than subsection (3)(A) of this rule, the owner or operator shall submit the following to the director:

1. The facility-wide NO_x emissions from the year of data that would be used in paragraph (3)(A)1. of this rule on a unit-by-unit basis;
2. The number of tons of NO_x emission reductions that would be required in paragraph (3)(A)1. of this rule on a unit-by-unit basis;
3. A detailed inventory of all engines being used to comply with the NO_x emission cap including the:
   A. Uncontrolled emission rate of all engines at the facility;
   B. Controlled emission rate for all engines being controlled under the NO_x emissions cap;
   C. Capacity of each engine at the facility; and
   D. Utilization rate of each engine at the facility; and
4. The controlled NO_x emissions from the facility during the control period, May 1 through September 30.

(D) To meet the requirements of subsection (3)(A) or (3)(B) of this rule, the owner or operator may take into account as a portion of the required NO_x reductions, physical and quantifiable measures to increase energy efficiency, reduce energy demand, or increase use of renewable fuels.

(E) Monitoring Requirements.

1. Any owner or operator meeting the applicability of section (1) of this rule shall not operate such equipment unless it is equipped with one of the following:

A. A continuous emissions monitoring system (CEMS), which meets the applicable requirements of 40 CFR part 60, subpart A, Appendix B, and complies with the quality assurance procedures specified in 40 CFR part 60, Appendix F. The CEMS shall be used to demonstrate compliance with the applicable emission limit; or

B. A calculational and record keeping procedure based upon actual NO_x emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and record keeping procedure must be approved by the director and EPA and incorporated into the SIP in writing prior to implementation.

2. The CEMS or approved alternate monitoring procedure shall be operated and maintained in accordance with an on-site CEMS or alternate monitoring plan approved by the director.

(F) Excess Emissions During Start-Up, Shutdown, or Malfunction. If the owner or operator provides notice of excess emissions pursuant to state rule 10 CSR 10-6.050(3)(B), the director will determine whether the excess emissions are attributable to start-up, shutdown or malfunction conditions, pursuant to rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to such conditions, and if such excess emissions cause a kiln to exceed the applicable emission limits in this rule, the director will determine whether enforcement action is warranted, as provided in rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to a start-up, shutdown, or malfunction condition and does not warrant enforcement action, those emissions would not be included in the calculation of ozone season NO_x emissions.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator subject to this rule shall comply with the following requirements:

1. The owner or operator shall submit to the director the identification number and type of each unit subject to this rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with this rule before May 1, 2007;

2. The owner or operator shall submit an annual report documenting for each controlled unit the total NO_x emissions from May 1 through September 30 of each year to the director by November 1 of that year, beginning in 2007; and

3. The owner or operator of a unit subject to this rule and operating a CEMS shall submit an excess emissions monitoring systems performance report, in accordance with the requirements of 40 CFR 60.7(c) and 60.13.

(B) Record Keeping Requirements. Any owner or operator of a unit subject to this rule shall maintain all records necessary to demonstrate compliance with this rule for a period of five (5) years at the plant at which the subject unit is located. The records shall be made available to the director upon request. The owner or operator shall maintain records of the following information for each day of the control period the unit is operated:

1. The identification number of each unit and the name and address of the plant where the unit is located for each unit subject to the requirements of this rule;

2. The calendar date of record;

3. The number of hours the unit is operated during each day including start-ups, shutdowns, malfunctions, and the type and duration of maintenance and repair;

4. The date and results of each emissions inspection;

5. A summary of any emissions corrective maintenance taken;

6. The results of all compliance tests; and

7. If a unit is equipped with a CEMS—

A. The identification of time periods 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

B. The identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005, effective Oct. 30, 2005.*

**Original authority: 643.050, RSMo 1965, amended 1972, 1992, 1993, 1995.*