

**CHAPTER 145. INTERSTATE POLLUTION
TRANSPORT REDUCTION**

Subch.		Sec.
A.	NO_x BUDGET TRADING PROGRAM	145.1
B.	EMISSIONS OF NO_x FROM STATIONARY INTERNAL COMBUSTION ENGINES	145.111
C.	EMISSIONS OF NO_x FROM CEMENT MANUFACTURING	145.141
D.	CAIR NO_x and SO₂ TRADING PROGRAMS	145.201
E.	CO₂ BUDGET TRADING PROGRAM.....	145.301

Authority

The provisions of this Chapter 145 issued under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)), unless otherwise noted.

Source

The provisions of this Chapter 145 adopted September 22, 2000, effective September 23, 2000, 30 Pa.B. 4899, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 123.121 (relating to NO_x Allowance Program transition); 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements); 25 Pa. Code § 129.204 (relating to emission accountability); 25 Pa. Code § 145.113 (relating to standard requirements); and 25 Pa. Code § 145.143 (relating to standard requirements).

Subchapter A. NO_x BUDGET TRADING PROGRAM

GENERAL PROVISIONS

Sec.	
145.1.	Purpose.
145.2.	Definitions.
145.3.	Measurements, abbreviations and acronyms.
145.4.	Applicability.
145.5.	Retired unit exemption.
145.6.	Standard requirements.
145.7.	Computation of time.
145.8.	Transition to CAIR NO _x trading programs.

NO_x ACCOUNT

145.10.	Authorization and responsibilities of the NO _x authorized account representative.
145.11.	Alternate NO _x authorized account representative.
145.12.	Changing the NO _x authorized account representative and the alternate NO _x authorized account representative; changes in the owners and operators.
145.13.	Account certificate of representation.
145.14.	Objections concerning the NO _x authorized account representative.

COMPLIANCE CERTIFICATION

145.30.	Compliance certification report.
145.31.	Department's action on compliance certifications.

NO_x ALLOWANCE ALLOCATIONS

- 145.40. State Trading Program budget.
- 145.41. Timing requirements for NO_x allowance allocations.
- 145.42. NO_x allowance allocations.
- 145.43. Compliance supplement pool.

**ACCOUNTING PROCESS FOR DEPOSIT USE AND
TRANSFER OF ALLOWANCES**

- 145.50. NO_x Allowance Tracking System accounts.
- 145.51. Establishment of accounts.
- 145.52. NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.
- 145.53. Recordation of NO_x allowance allocations.
- 145.54. Compliance.
- 145.55. Banking.
- 145.56. Account error.
- 145.57. Closing of general accounts.

NO_x ALLOWANCE TRANSFERS

- 145.60. Submission of NO_x allowance transfers.
- 145.61. NO_x transfer recordation.
- 145.62. Notification.

RECORDKEEPING AND REPORTING REQUIREMENTS

- 145.70. General monitoring requirements.
- 145.71. Initial certification and recertification procedures.
- 145.72. Out of control periods.
- 145.73. Notifications.
- 145.74. Recordkeeping and reporting.
- 145.75. Petitions.
- 145.76. Additional requirements to provide heat input data.

OPT-IN PROCESS

- 145.80. Applicability for opt-in sources.
- 145.81. Opt-in source general provisions.
- 145.82. NO_x authorized account representative for opt-in sources.
- 145.83. Applying for a NO_x budget opt-in approval.
- 145.84. Opt-in process.

- 145.85. NO_x budget opt-in application contents.
- 145.86. Opt-in source withdrawal from NO_x Budget Trading Program.
- 145.87. Opt-in source change in regulatory status.
- 145.88. NO_x allowance allocations to opt-in units.

EMISSION REDUCTION CREDIT PROVISIONS

- 145.90. Emission reduction credit provisions.

INTERSTATE POLLUTION TRANSPORT REDUCTION REQUIREMENTS

- 145.100. Applicability to upwind states.

GENERAL PROVISIONS

§ 145.1. Purpose.

This subchapter establishes general provisions and the applicability, allowance, excess emissions, monitoring and opt-in provisions for the NO_x Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

Cross References

This section cited in 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.2. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Account certificate of representation—The completed and signed submission certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the sources and of the NO_x budget units at the sources with regard to matters under the NO_x Budget Trading Program.

Account number—The identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid rain emissions limitation—A limitation on emissions of sulfur dioxide or NO_x under the Acid Rain Program under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651—7651o).

Act—The Air Pollution Control Act (35 P. S. §§ 4001—4015).

Administrator—The Administrator of the EPA or the Administrator's authorized representative.

Allocate or *allocation*—The determination by the Department of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

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.

CAA—The Clean Air Act (42 U.S.C.A. §§ 7401—7642).

CEMS—continuous emission monitoring system—The equipment required under this subchapter and Chapter 139 (relating to sampling and testing) to sample, analyze, measure and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of NO_x emissions, expressed in pounds per hour for NO_x. The following systems are component parts included, consistent with this subchapter and 40 CFR Part 75 (relating to continuous emission monitoring), in a continuous emission monitoring system:

- (i) Flow monitor.
- (ii) NO_x pollutant concentration monitors.
- (iii) Diluent gas monitor (O₂ or CO₂).
- (iv) A continuous moisture monitor.
- (v) A DAHS.

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.

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.

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.

(i) Except as provided in § 145.4(b), § 145.5 or §§ 145.80—145.88 (relating to applicability; and opt-in process), for a unit that is a NO_x budget unit under § 145.4 on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) Except as provided in § 145.4(b), § 145.5 or §§ 145.80—145.88, for a unit that is not a NO_x budget unit under § 145.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under § 145.4 is the unit's date of commencement of commercial operation.

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.

(i) Except as provided in § 145.4(b), § 145.5 or §§ 145.80—145.88, for a unit that is a NO_x budget unit under § 145.4 on the date of commence-

ment of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) Except as provided in § 145.4(b), § 145.5 or §§ 145.80—145.88, for a unit that is not a NO_x budget unit under § 145.4 on the date of commencement of operation, the date the unit becomes a NO_x budget unit under § 145.4 shall be the unit's date of commencement of operation.

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

Compliance account—A NO_x Allowance Tracking System account for a NO_x budget unit under this subchapter, 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 budget emissions limitation.

Compliance certification—A submission to the Department and the Administrator that is required under this subchapter to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this subchapter and that is signed by the NO_x authorized account representative in accordance with this subchapter.

Control period—The period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

DAHS—automated data acquisition and handling system—The component of the CEMS, or other emissions monitoring system approved for use under this subchapter and Chapter 139, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subchapter.

Electricity for sale under firm contract to the electric grid—Electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

Emissions—Air contaminants exhausted from a unit or source into the atmosphere as determined in accordance with this subchapter.

Energy Information Administration—The Energy Information Administration of the United States Department of Energy.

Excess emissions—Any tonnage of NO_x emitted by a NO_x budget unit during a control period that exceeds the NO_x budget emissions limitation for the unit.

Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid or gaseous fuel derived from this material.

Fossil fuel-fired—With regard to a unit, one of the following:

(i) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995.

(ii) For units that commenced operation on or after January 1, 1996, and before January 1, 1997, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1996.

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

(A) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year.

(B) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 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 that year, on which the unit begins combusting fossil fuel.

General account—A NO_x Allowance Tracking System account, established under this subchapter, that is not a compliance account or an overdraft account.

Generator—A device that produces electricity.

Heat input—The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1 million Btu and multiplied by the fuel feed rate into a combustion device (in mass of fuel/time) as determined in accordance with this subchapter, and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust from other sources.

Heat input rate—The amount of heat input (in mmBtu) divided by unit operating time or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

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 the unit’s total costs, pursuant to a contract for one of the following:

(i) The life of the unit.

(ii) A cumulative term of at least 30 years, including contracts that permit an election for early termination.

(iii) A period equal to or greater than 25 years or 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.

Maximum design heat input—The ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input—An hourly heat input (in mmBtu/hr) used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use 40 CFR Part 75, Appendix D (relating to optional SO₂ emissions data protocol for gas) to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in % CO₂) or the minimum oxygen concentration (in % O₂).

Maximum potential NO_x emission rate—The emission rate of NO_x (in lb/mmBtu) calculated in accordance with 40 CFR Part 75, Appendix F, Section 3 (relating to procedure for NO_x emission rate), using the maximum potential NO_x concentration as defined in 40 CFR Part 75 Appendix A, Section 2 (relating to equipment specifications), and either the maximum O₂ concentration (in % O₂) or the minimum carbon dioxide concentration (in % CO₂).

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.

Monitoring system—A monitoring system that meets the requirements of this subchapter, including a CEMS, an excepted monitoring system or an alternative monitoring system.

Most stringent State or Federal NO_x emissions limitation—With regard to a NO_x budget opt-in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

NO_x allowance—An authorization by the Department under the NO_x Budget Trading Program to emit up to 1 ton of NO_x during the control period of the specified year or of any year thereafter, except as provided under § 145.54(f) (relating to compliance). No provision of the NO_x Budget Trading Program, any permit, or an exemption under § 145.4(b) or § 145.5 and no provision of law will be construed to limit the authority of the Department or the Administrator to terminate or limit the authorization, which does not constitute a property right. For purposes of all sections of this subchapter except §§ 145.41—145.43 and 145.88, NO_x allowance also includes an authorization to emit up to

1 ton of NO_x during the control period of the specified year or of any year thereafter by the Department or the Administrator.

NO_x allowance deduction or deduct NO_x allowances—The permanent withdrawal of NO_x allowances from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for a control period, determined in accordance with this subchapter, or for any other allowance surrender obligation under this subchapter.

NO_x allowances held or hold NO_x allowances—The NO_x allowances recorded or submitted for recordation, in accordance with this subchapter, in a NO_x Allowance Tracking System account.

NO_x Allowance Tracking System—The system for recording allocations, deductions and transfers of NO_x allowances under the NO_x Budget Trading Program.

NO_x Allowance Tracking System account—An account in the NO_x Allowance Tracking System for purposes of recording the allocation, holding, transferring or deducting of NO_x allowances.

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, to meet the unit's NO_x budget emissions limitation for the control period immediately preceding the deadline.

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 this subchapter, 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 this subchapter, to transfer or otherwise dispose of NO_x allowances held in the general account.

NO_x Budget Administrator—The person or agency designated by the Department to administer the NO_x Budget Trading Program. This person may be the Administrator of the EPA.

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 § 145.54(a), (b), (e) and (f) adjusted by any deductions of the NO_x allowances to account for actual heat input under § 145.42(e) (relating to NO_x allowance allocations) for the control period or to account for excess emissions for a prior control period under § 145.54(d) or to account for withdrawal from the NO_x Budget Trading Program, or for a change in regulatory status, for a NO_x budget opt-in source under § 145.86 or

§ 145.87 (relating to opt-in source withdrawal from NO_x Budget Trading Program; and opt-in source change in regulatory status).

NO_x budget opt-in source—A unit that has been elected to become a NO_x budget unit under the NO_x Budget Trading Program and whose NO_x budget opt-in approval has been issued and is in effect under this subchapter.

NO_x budget source—A source that includes one or more NO_x budget units.

NO_x Budget Trading Program—A multistate NO_x air pollution control and emission reduction program established in accordance with this subchapter, as a means of mitigating the interstate transport of ozone and NO_x, an ozone precursor.

NO_x budget unit—A unit that is subject to the NO_x Budget Trading Program emissions limitation under § 145.4 or § 145.80 (relating to application for opt-in sources).

Operating—With regard to a unit under § 145.80 (relating to application for opt-in sources), having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x budget opt-in approval under § 145.83 (relating to applying for NO_x budget opt-in approval). The unit's documented heat input will be determined in accordance with 40 CFR Part 75 (relating to continuous emission monitoring) if the unit was otherwise subject to 40 CFR Part 75 during that 6-month period 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 Part 75 during that 6-month period.

Operator—A person who operates, controls or supervises a NO_x budget unit, a NO_x budget source or unit for which an application for a NO_x budget opt-in approval under § 145.83 is submitted and not denied or withdrawn and shall include, but not be limited to, a holding company, utility system or plant manager of a unit or source.

Opt-in—To elect to become a NO_x budget unit under the NO_x Budget Trading Program through a final, effective NO_x budget opt-in approval under this subchapter.

Overdraft account—The NO_x Allowance Tracking System account established under this subchapter for each NO_x budget source where there are two or more NO_x budget units.

Owner—Any of the following persons:

(i) A holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in approval under § 145.83 is submitted and not denied or withdrawn.

(ii) A holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in approval under § 145.83 is submitted and not denied or withdrawn.

(iii) A purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in approval under § 145.83 is

submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, an owner may not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in approval under § 145.83 is submitted and not denied or withdrawn.

(iv) With respect to any general account, a 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.

Percent monitor data availability—For the purposes of §§ 145.43(a)(1) and 145.84(2) (relating to compliance supplement pool; and opt-in procedures), the total unit operating hours for which quality-assured data were recorded under this subchapter in a control period, divided by the total unit operating hours during the control period, and multiplied by 100%.

Potential electrical output capacity—Thirty-three percent of a unit's maximum design heat input.

Receive or receipt of—When referring to the Department, the Administrator or the NO_x Budget 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 Department or Administrator in the regular course of business.

Recordation, record or recorded—With regard to NO_x allowances, the movement of NO_x allowances from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer or deduction.

Reference method—A direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, Appendix A (relating to specifications and test).

Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance, under § 145.53(c).

Source—A governmental, institutional, commercial or industrial structure, installation, plant, building or facility that emits or has the potential to emit a regulated air pollutant under the Clean Air Act. For purposes of section 502(c) of the Clean Air Act (42 U.S.C.A. § 7661a(c)), a source, including a source with multiple units, shall be considered a single facility.

State—One of the 48 contiguous states and the District of Columbia that adopts a NO_x Budget Trading Program. The term shall have its conventional meaning where the meaning is clear from the context.

State trading program budget—The total number of NO_x 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.

Submit or serve—To send or transmit a document, information or correspondence to the person specified in accordance with the applicable regulation by one of the following methods:

- (i) In person.
- (ii) By United States Postal Service.
- (iii) By other means of dispatch or transmission and delivery. Except where otherwise expressly provided, 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.

Ton or tonnage—A “short ton” (that is, 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 this subchapter, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal 1 ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit—A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

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

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

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.204 (relating to emission accountability); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.3. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

- Btu*—British thermal unit.
hr—Hour.
Kw—Kilowatt electrical.
Kwh—Kilowatt hour.
lb—Pounds.
mmBtu—Million Btu.
MWe—Megawatt electrical.
Ton—2,000 pounds.

CO_2 —Carbon dioxide.

NO_x —Nitrogen oxides.

O_2 —Oxygen.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.4. Applicability.

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

(1) *Electric generating units.*

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

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

(iii) For units that commenced operation on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

(2) *Nonelectric generating units.*

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than 250 MMBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale under firm contract to the electric grid.

(iii) For units that commenced operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that does one of the following:

(A) At no time serves a generator producing electricity for sale.

(B) At any time serves a generator producing electricity for sale, if the generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit.

(b) *Twenty-five ton exemption.*

(1) Notwithstanding subsection (a), a unit under subsection (a)(1) or (2) that has a Federally enforceable permit that includes a NO_x emission limitation

restricting NO_x emissions during a control period to 25 tons or less and that includes the special provisions in subsection (b)(4) shall be exempt from the requirements of the NO_x Budget Trading Program, except for subsection (a), this paragraph and §§ 145.2, 145.3, 145.7, 145.40—145.43, 145.50—145.57 and 145.60—145.62. The NO_x emission limitation under this paragraph shall restrict NO_x emissions during the control period by limiting unit operating hours or heat input. The restriction on unit operating hours shall be calculated by dividing the permit restriction tonnage by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under 40 CFR 75.19 (relating to optional emissions calculation for low mass emissions units). The restriction on heat input shall be calculated by dividing the permit restriction tonnage by the unit's highest default NO_x emission rate otherwise applicable to the unit under 40 CFR 75.19.

(2) The exemption under paragraph (1) shall become effective under one of the following subparagraphs as follows:

(i) The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under paragraph (1) become final.

(ii) If the NO_x emission limitation and the special provisions in the permit under paragraph (1) become final during a control period and after the first date on which the unit operates during that control period, the exemption shall become effective on May 1 of the control period, provided that the NO_x emission limitation and the special provisions apply to the unit as of the first date of operation. If the NO_x emission limitation and special provisions do not apply to the unit as of the first date of operation, the exemption under paragraph (1) shall become effective on October 1 of the year during which the NO_x emission limitation and the special provisions become final.

(3) The Department will provide notice to the NO_x Budget Administrator of the issuance of the permit and, upon request, a copy of the permit.

(4) Special provisions are as follows:

(i) A unit exempt under paragraph (1) shall comply with the restriction on unit operating hours described in paragraph (1) during the control period each year.

(ii) The Department will allocate NO_x allowances to the unit under §§ 145.41(a)—(c) and 145.42(a)—(c) (relating to timing requirements for NO_x allowance allocations; and NO_x allowance allocations) for each control period for which the unit is allocated NO_x allowances under §§ 145.41(a)—(c) and 145.42(a)—(c) the following shall occur:

(A) The owners and operators of the unit shall specify a general account, in which the NO_x Budget Administrator will record the NO_x allowances.

(B) After the NO_x Budget Administrator records NO_x allowances under §§ 145.41(a)—(c) and 145.42(a)—(c), the NO_x Budget Administrator will deduct, from the general account specified in clause (A), NO_x allowances that are allocated for the same or a prior control period as the NO_x allowances allocated to the unit under §§ 145.41(a)—(c) and 145.42(a)—(c) and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under paragraph (1) is based. The NO_x authorized account representative shall ensure that the general account contains the NO_x allowances necessary for completion of the deduction.

(iii) A unit exempt under subsection (b) shall report hours of unit operation during the control period in each year to the Department by November 1 of that year.

(iv) For 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (1) shall retain records demonstrating that the conditions of the Federally enforceable permit under paragraph (1) were met, including the restriction on unit operating hours. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or administrator. The owners and operators bear the burden of proof that the unit met the restriction on unit operating hours.

(v) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under paragraph (1) 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 these requirements arise, or must be complied with, after the exemption takes effect.

(vi) On the earlier of the following dates, a unit exempt under paragraph (1) shall lose its exemption when one of the following occurs:

(A) The date on which the restriction on unit operating hours described in paragraph (1) is removed from the unit's Federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2003.

(B) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on unit operating hours described in paragraph (1) during any control period starting in 2003.

(vii) A unit that loses its exemption in accordance with subparagraph (vi) shall be subject to this subchapter. For the purpose of allocating allowances under §§ 145.40—145.43 (relating to State trading program budget) and applying monitoring requirements under §§ 145.70—145.76 (relating to recordkeeping and reporting requirements), the unit shall be treated as commencing operation and, if the unit is covered by subsection (a)(1), commencing commercial operation on the date the unit loses its exemption.

(viii) a unit that is exempt under paragraph (1) is not eligible to be a NO_x budget opt-in unit under §§ 145.80—145.88 (relating to opt-in process).

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.8 (relating to transition to CAIR NO_x trading programs); 25 Pa. Code § 145.40 (relating to State Trading Program budget); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); and 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status).

§ 145.5. Retired unit exemption.

(a) *Application.* This section applies to a NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) *Requirements.*

(1) A NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired is exempt from the NO_x Budget Trading Program, except for the provisions of this section, §§ 145.2, 145.3, 145.4, 145.6, 145.7 and 145.40—145.43, 145.50—145.57 and 145.60—145.62.

(2) The exemption under paragraph (1) shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with this subchapter) shall submit a statement to the Department. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with subsection (c).

(3) After receipt of the notice under paragraph (2), the Department will amend any permit issued by the Department covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraph (1) and subsection (c).

(c) *Special provisions.*

(1) A unit exempt under this section may not emit NO_x, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with §§ 145.40—145.43 (relating to NO_x allowance allocations).

(2) A unit exempt under this section may not resume operation unless authorized by the Department. The NO_x authorized account representative of the source shall submit a restart request to the Department for the unit at least 18 months prior to the date on which the unit is to first resume operation. The restart request shall, at a minimum, contain the following:

- (i) Identification of the NO_x budget source, including the plant name and the Office of Regulatory Information Systems or facility code assigned to the source by the energy information administration, if applicable.
 - (ii) Identification of each NO_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under § 145.4 or §§ 145.80—145.88 (relating to opt-in process).
- (3) 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 the requirements arise, or must be complied with, after the exemption takes effect.
- (4) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in source under §§ 145.80—145.88.
- (5) For 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
- (6) Loss of an exemption will be as follows:
- (i) On the earlier of the following dates, a unit exempt under subsection (b) shall lose its exemption:
 - (A) The date on which the NO_x authorized account representative submits a restart application under paragraph (2).
 - (B) The date on which the NO_x authorized account representative is required under paragraph (2) to submit a restart application.
 - (ii) For the purpose of applying monitoring requirements under §§ 145.70—145.76 (relating to recordkeeping and reporting requirements), a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.6. Standard requirements.

(a) *Monitoring requirements.*

- (1) The owners and operators and 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 §§ 145.70—145.76 (relating to recordkeeping and recording requirements).

(2) The emissions measurements recorded and reported in accordance with §§ 145.70—145.76 shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subsection (c).

(b) *NO_x requirements.*

(1) The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under § 145.54 (relating to compliance), as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with §§ 145.70—145.76 plus any amount necessary to account for actual heat input under § 145.42(e) (relating to NO_x allowance allocations) for the control period or to account for excess emissions for a prior control period under § 145.54(d) or to account for withdrawal from the NO_x Budget Trading Program, or a change in regulatory status, of a NO_x budget opt-in unit under § 145.86 or § 145.87 (relating to opt-in source withdrawal from NO_x Budget Trading Program; and opt-in source change in regulatory status).

(2) Each ton of NO_x emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this subchapter and the act.

(3) A NO_x budget unit shall be subject to paragraph (1) starting on May 1, 2003, or the date on which the unit commences operation, whichever is later.

(4) NO_x allowances shall be held in, deducted from or transferred among NO_x Allowance Tracking System accounts in accordance with §§ 145.40—145.43, 145.50—145.57, 145.60—145.62 and 145.80—145.88.

(5) A NO_x allowance may not be deducted, to comply with paragraph (1), for a control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated by the Department under the NO_x Budget Trading Program is a limited authorization to emit 1 ton of NO_x in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program or an exemption under § 145.4(b) or § 145.5 (relating to applicability; and retired unit exemption) and no provision of law limit the authority of the United States or the Department to terminate or limit the authorization.

(7) A NO_x allowance allocated by the Department under the NO_x Budget Trading Program does not constitute a property right.

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

(1) Surrender the NO_x allowances required for deduction under § 145.54(d)(1).

(2) Pay any fine, penalty or assessment or comply with any other remedy imposed under § 145.54(d)(3) or the act.

(d) *Recordkeeping and reporting requirements.*

(1) Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall maintain at a central location and provide upon request by the Department or the NO_x Budget Administrator the following documents for 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department 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 § 145.13 (relating to account certificate of representation). The certificate and documents shall be retained beyond the 5-year period until the documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) The emissions monitoring information, in accordance with §§ 145.70—145.76. To the extent that §§ 145.70—145.76 provides for a 3-year period for recordkeeping, the 3-year period applies.

(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 the documents used to complete any submission under the NO_x Budget Trading Program or to demonstrate compliance with 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 §§ 145.30, 145.31, 145.70—145.76 and 145.80—145.88.

(e) *Liability.*

(1) A permit revision may not excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

(2) Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x Budget Trading Program.

(3) Any provision of the NO_x Budget Trading Program that applies to a NO_x budget source (including a provision applicable to the NO_x authorized account representative of a NO_x budget source) shall also apply to the owners and operators of the source and of the NO_x budget units at the source.

(4) Any provision of the NO_x Budget Trading Program that applies to a NO_x budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of the unit. Except with regard to the requirements applicable to units with a common stack under §§ 145.70—145.76 the owners and operators and

the NO_x authorized account representative of one NO_x budget unit is not 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.

(f) *Effect on other authorities.* No provision of the NO_x Budget Trading Program or an exemption under § 145.4(b) or § 145.5 shall be construed as exempting or excluding the owners and operators and 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 regulations promulgated under the CAA or the act.

Cross References

This section cited in 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.7. Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.8. Transition to CAIR NO_x trading programs.

(a) *Allowances.* The final year for NO_x allowance allocations to be made by the Department under §§ 145.41 and 145.42 (relating to timing requirements for NO_x allowance allocations; and NO_x allowance allocations) will be 2008. Allocations in 2009 will be made in accordance with the Federal CAIR Ozone Season Trading Program, 40 CFR Part 97 (relating to Federal NO_x Budget Trading Program and CAIR NO_x and SO₂ Trading Programs). CAIR NO_x Ozone Season allowance allocations for the control period starting May 1, 2010, and for each control period thereafter, will be distributed in accordance with Subchapter D (relating to CAIR NO_x and SO₂ Trading Programs).

(b) *Termination and retirement of allowances.* NO_x allowances already allocated under this subchapter for 2009 or later are terminated and may not be used for compliance with the CAIR NO_x Annual Trading Program or the CAIR NO_x Ozone Season Trading Program, as those terms are defined in 40 CFR 96.102 and 96.302 (relating to definitions). By January 1, 2009, the Department will perma-

nently retire the Commonwealth's non-EGU NO_x Trading Program Budget of 3,619 allowances established in § 145.40 (relating to State Trading Program budget).

(c) *Requirements replaced.* The emission limitations and monitoring requirements established in Subchapter A (relating to NO_x Budget Trading Program) are replaced by the requirements in Subchapter D beginning with the May 1, 2010, control period. If the owner or operator of a NO_x budget unit or CAIR NO_x Ozone Season unit, as defined in 40 CFR 96.302, has failed to demonstrate compliance with § 145.54 (relating to compliance), the provisions in 40 CFR 96.354 (relating to compliance with CAIR NO_x emissions limitation) shall be used to withhold CAIR NO_x Ozone Season allowances, as that term is defined in 40 CFR 96.302, in calendar year 2010 and beyond. If no CAIR NO_x Ozone Season allowances are provided to the unit under § 145.221 (relating to timing requirements for CAIR NO_x Ozone Season allowance allocations), the owner or operator of the unit shall acquire and retire a number of CAIR NO_x Ozone Season allowances as specified in 40 CFR 96.354.

(d) *Non-EGU NO_x Trading Program Budget.* For units subject to the applicability requirements of § 145.4 (relating to applicability), but not subject to the CAIR NO_x Ozone Season Trading Program requirements of Subchapter D, the following requirements apply:

(1) *Statewide limitation.* The sum of NO_x ozone season emissions from all units subject to this subsection may not exceed the Commonwealth's non-EGU NO_x Trading Program budget of 3,619 tons during any ozone season.

(2) *CAIR NO_x Ozone Season allowances.* All units subject to this subsection shall monitor and report NO_x emissions in accordance with 40 CFR Part 96, Subpart HHHH (relating to monitoring and reporting), and establish a CAIR-authorized account representative and general account, in accordance with 40 CFR Part 96, Subparts BBBB and FFFF (relating to CAIR designated representative for CAIR NO_x Ozone Season sources; and CAIR NO_x Ozone Season Allowance Tracking System), incorporated into Subchapter D by reference, for the purposes of ensuring continued compliance with the non-EGU NO_x Trading Program budget limitation of paragraph (1) and of retiring CAIR NO_x Ozone Season allowances.

(3) *CAIR NO_x allowances.* All units subject to this subsection shall establish a CAIR-authorized account representative and general account in accordance with 40 CFR Part 96, Subparts BB and FF (relating to CAIR designated representative for CAIR NO_x sources; and CAIR NO_x allowance tracking system), incorporated into Subchapter D by reference, for the purpose of retiring CAIR NO_x allowances.

(4) *Emissions below Statewide limitation.* If the total ozone season emissions from all units subject to this subsection are less than 3,438 tons of NO_x, the Department's permanent retirement of allowances covers all applicable emissions and no additional account transactions are required by the units covered under this subsection.

(5) *Allowable emissions per unit.* By January 31, 2009, and by January 31 of each year thereafter, the Department will determine the allowable amount of NOx emissions for the next ozone season for each unit subject to this subsection, as follows:

Allowable emission rate X each unit's heat input

Where "Allowable emission rate" =

$$\frac{3,438 \text{ tons of NOx}}{\text{Combined heat input of all units during the most recent ozone season}}$$

(6) *Allowance surrender for excess emissions.* If the combined NOx emissions from all units subject to this subsection exceed 3,438 tons in an ozone season, then a unit whose actual emissions exceed the unit's allowable emissions for that ozone season, as determined under paragraph (5), shall surrender to the Department by April 30 of the year following the ozone season one CAIR NOx Ozone Season allowance and one CAIR NOx allowance for each ton of excess emissions. A unit whose excess emissions are 0.5 ton or greater of the next excess ton shall surrender 1 full ton of CAIR NOx allowances (banked or current) for that excess emission. Units under common ownership may include the allowable and actual emissions from multiple units to determine whether a unit must surrender allowances.

(7) *Surrender procedure.* To surrender allowances under paragraph (6), an owner or operator of a unit shall surrender the required CAIR NOx Ozone Season allowances and CAIR NOx allowances to the Department's designated NOx allowance tracking system account and provide to the Department, in writing, the following:

(i) The serial number of each allowance surrendered.

(ii) The calculations used to determine the quantity of allowances required to be surrendered.

(8) *Failure to surrender allowances.* If an owner or operator fails to comply with paragraph (6), the owner or operator shall by June 30 surrender three CAIR NOx Ozone Season allowances and three CAIR NOx allowances of the current or later year vintage for each ton of excess emissions as calculated under paragraph (6).

(9) *Liability not affected.* The surrender of CAIR NOx ozone season allowances and CAIR NOx allowances under paragraph (6) does not affect the liability of the owner or operator of the unit for any fine, penalty or assessment, or an obligation to comply with any other remedy for the same violation, under the CAA or the act.

(i) For purposes of determining the number of days of violation, if a facility has excess emissions for the period May 1 through September 30, each day in that period (153 days) constitutes a day in violation unless the owner or operator of the unit demonstrates that a lesser number of days should be considered.

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

(10) *Allowance retirement.* The Department will permanently retire to the Department's CAIR NO_x retirement account the allowances surrendered under paragraphs (6)—(9).

(11) *Actual emissions below allowable emissions.* If a facility's allowable emissions exceed the facility's actual emissions for an ozone season, the owner or operator may deduct the difference or any portion of the difference from the actual emissions of units under the facility's common control that are subject to §§ 129.201—129.203 (relating to boilers; stationary combustion turbines; and stationary internal combustion engines).

(12) *Corrections.* One hundred and eighty-one tons of allowable NO_x emissions are available to the Department annually for accounting corrections.

Authority

The provisions of this § 145.8 adopted under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 145.8 adopted April 11, 2008, effective April 12, 2008, 38 Pa.B. 1705.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); and 25 Pa. Code § 129.202 (relating to stationary combustion turbines).

NO_x ACCOUNT

§ 145.10. Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under § 145.11 (relating to alternate NO_x authorized account representative), each NO_x budget source, including all NO_x budget units at the source, shall have only one 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 Department and the NO_x Budget Administrator of a complete account certificate of representation under § 145.13 (relating to account certificate of representation), the NO_x authorized account representative of the source shall represent and, by his representations, actions, inactions or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and the owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the Department, the Administrator or a court regarding the source or unit.

(d) A NO_x Allowance Tracking System account will not be established for a NO_x budget unit at a source, until the Department and the NO_x Budget Adminis-

trator have received a complete account certificate of representation under § 145.13 for a NO_x authorized account representative of the source and the NO_x budget units at the source.

(e) Document submission requirements are as follows:

(1) Each submission under the NO_x Budget Trading Program shall be submitted, signed and certified by the NO_x authorized account representative for each NO_x budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the NO_x authorized account representative:

“I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(2) The Department and NO_x Budget 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 paragraph (1).

Cross References

This section cited in 25 Pa. Code § 145.11 (relating to alternate NO_x authorized account representative); 25 Pa. Code § 145.74 (relating to recordkeeping and reporting); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.11. Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate only one 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 Department and NO_x Budget Administrator of a complete account certificate of representation under § 145.13 (relating to account certificate of representation), 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 this section and §§ 145.10(a), 145.12, 145.13 and 145.51, whenever the term “NO_x authorized account representative” is used in this subchapter, the term shall include the alternate NO_x authorized account representative.

Cross References

This section cited in 25 Pa. Code § 145.10 (relating to authorization and responsibilities of the NO_x authorized account representative); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.12. 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 Department and the NO_x Budget Administrator of a superseding complete account certificate of representation under § 145.13 (relating to account certificate of representation). Notwithstanding a change, the representations, actions, inactions and submissions by the previous NO_x authorized account representative prior to the time and date when the Department and the NO_x Budget 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 Department and the NO_x Budget Administrator of a superseding complete account certificate of representation under § 145.13. Notwithstanding a change, the representations, actions, inactions and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Department and the NO_x Budget 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.*

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

(2) Within 30 days following any change in the owners and operators of a NO_x budget source or a NO_x budget unit, including the addition of a new

owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Cross References

This section cited in 25 Pa. Code § 145.11 (relating to alternate NO_x authorized account representative); 25 Pa. Code § 145.14 (relating to objections concerning the NO_x authorized account representative); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.13. 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 NO_x Budget Administrator:

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

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

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

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative:

“I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the Administrator or a court regarding the source or unit.”

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

(b) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation may not be submitted to the Department or Administrator. The Department and Administrator are not under any obligation to review or evaluate the sufficiency of these documents, if submitted.

Cross References

This section cited in 25 Pa. Code § 145.10 (relating to authorization and responsibilities of the NO_x authorized account representative); 25 Pa. Code § 145.11 (relating to alternate NO_x authorized account representative); 25 Pa. Code § 145.12 (relating to changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators); 25 Pa. Code § 145.14 (relating to objections concerning the NO_x authorized account representative); 25 Pa. Code § 145.51 (relating to establishment of accounts); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.14. Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under § 145.13 (relating to account certificate of representation) has been submitted and received, the Department and the NO_x Budget Administrator will rely on the account certificate of representation unless a superseding complete account certificate of representation under § 145.13 is received by the Department and the NO_x Budget Administrator.

(b) Except as provided in § 145.12(a) or (b) (relating to changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators), an objection or other communication submitted to the Department or Administrator concerning the authorization, or any representation, action, inaction or submission of the NO_x authorized account representative will not affect any representation, action, inaction or submission of the NO_x authorized account representative or the finality of a decision or order by the Department or Administrator under the NO_x Budget Trading Program.

(c) The Department and the Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of a NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Cross References

This section cited in 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

COMPLIANCE CERTIFICATION**§ 145.30. Compliance certification report.**

(a) *Applicability and deadline.* For each control period in which one or more NO_x budget units at a source are subject to the NO_x budget emissions limitation, the NO_x authorized account representative of the source shall submit to the Department and the NO_x Budget Administrator by November 30 of that year, a compliance certification report for the source covering all of the units.

(b) *Contents of report.* The NO_x authorized account representative shall include in the compliance certification report under subsection (a) the following

elements, in a format prescribed by the Department, concerning each unit at the source and subject to the NO_x budget emissions limitation for the control period covered by the report:

(1) Identification of each NO_x budget unit.

(2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under § 145.54 (relating to compliance) for the control period.

(3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements), the percentage of allowances that is to be deducted from each unit's compliance account under § 145.54(e).

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

(c) *Compliance certification.* In the compliance certification report under subsection (a), the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the NO_x Budget Trading Program applicable to the unit, including the following:

(1) Whether the unit was operated in compliance with the NO_x budget emissions limitation.

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains the information necessary to attribute NO_x emissions to the unit, in accordance with §§ 145.70—145.76.

(3) Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with §§ 145.70—145.76. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made.

(4) Whether the facts that form the basis for certification under §§ 145.70—145.76 of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under §§ 145.70—145.76, if any, has changed.

(5) If a change is required to be reported under paragraph (4), 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.

Cross References

This section cited in 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.86 (relating to opt-in source withdrawal from NO_x Budget Trading Program).

§ 145.31. Department's action on compliance certifications.

(a) The Department 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) NO_x allowances may be deducted from or transferred to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a).

Cross References

This section cited in 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.55 (relating to banking); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

NO_x ALLOWANCE ALLOCATIONS

§ 145.40. State Trading Program budget.

(a) In accordance with §§ 145.41 and 145.42 (relating to timing requirements for NO_x allowance allocations; and NO_x allowance allocations), the Department will allocate to NO_x budget units under § 145.4(a) (relating to applicability), for each control period specified in § 145.41, a total number of NO_x allowances less the sum of the NO_x emission limitations (in tons) for each unit exempt under § 145.4(b) that is not allocated allowances under § 145.42(b) or (c) for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under § 145.42(d)(5)(ii)(B). The Pennsylvania NO_x Trading Program Budget is as follows:

(1) The NO_x budget for electric generating units under this subchapter is 47,224 tons per season.

(2) The NO_x budget for nonelectric generating units under this subchapter is 3,619 tons per season.

(b) The NO_x budget may be adjusted as provided in § 145.90 (relating to emission reduction credit provisions).

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.8 (relating to transition to CAIR NO_x trading programs); 25 Pa. Code § 145.42 (relating to NO_x allowances allocations); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.41. Timing requirements for NO_x allowance allocations.

(a) The Department will submit to the NO_x Allowance Tracking System the NO_x allowance allocations, in accordance with § 145.42 (relating to NO_x allowance allocations), for the control periods in 2003—2007.

(b) By April 1, 2005, the Department will publish the NO_x allowance allocations in the *Pennsylvania Bulletin*, in accordance with § 145.42(a)—(c), for the control periods 2008—2012.

(c) By April 1, 2010, by April 1 of 2015, and thereafter by April 1 of the year that is 5 years after the last year for which NO_x allowances allocations are determined, the Department will publish the NO_x allowance allocations in the *Pennsylvania Bulletin*, in accordance with § 145.42(a)—(c), for the control periods in the years that are 3, 4, 5, 6 and 7 years after the applicable deadline under this subsection.

(d) By April 1, 2003, and April 1 of each year thereafter, the Department will publish the NO_x allowance allocations in the *Pennsylvania Bulletin*, in accordance with § 145.42(d), for the control period in the year of the applicable deadline under this subsection.

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.40 (relating to State Trading Program budget); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.42. NO_x allowance allocations.

(a) Unit heat input shall be calculated as follows:

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x budget unit under § 145.4 (relating to applicability) will be as follows:

(i) For a NO_x allowance allocation under § 145.41(a) (relating to timing requirement for NO_x allowance allocations).

(A) For a unit under § 145.4(a)(1), the average of the two highest amounts of the unit's heat input for the control periods in 1995—1998.

(B) For a unit under § 145.4(a)(2), the control period in 1995 or, if the Administrator determines that reasonably reliable data are available for control periods in 1996—1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995—1998.

(ii) For a NO_x allowance allocation under § 145.41(b), the unit's average heat input for the control periods in 2002—2004.

(iii) For a NO_x allowance allocation under § 145.41(c), the unit's average heat input for the control period in the years that are 4, 5, 6, 7 and 8 years before the first year for which the allocation is being calculated.

(2) The unit's heat input for the control period in each year specified under paragraph (1) will be determined in accordance with 40 CFR Part 75 (relating to continuous emission monitoring). Notwithstanding the first sentence of this paragraph (2), the following apply:

(i) For a NO_x allowance allocation under § 145.41(a), the heat input will be determined using the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the control period.

(ii) For a NO_x allowance allocation under § 145.41(b) or (c) for a unit exempt under § 145.4(b), the heat input shall be treated as zero if the unit is exempt under § 145.4(b) during the control period.

(b) For each group of five control periods specified in §§ 145.41(a)—(c), the Department will allocate to all NO_x budget units in a given state under § 145.4(a)(1) that commenced operation before May 1, 1997, for allocations under § 145.41(a), May 1, 2003, for allocations under § 145.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 145.41(c) is being calculated, a total number of NO_x allowances equal to 95% of the portion of the State's trading program budget under § 145.40 (relating to State Trading Program budget) covering these units. The Department will allocate in accordance with the following procedures:

(1) The Department will allocate NO_x allowances to each NO_x budget unit under § 145.4(a)(1) for each control period in an amount equaling 0.15

lb/mmBtu multiplied by the heat input determined under subsection (a), divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x budget units under § 145.4(a)(1) in the state for a control period under subsection (b)(1) does not equal 95% of the portion of the State's trading program budget under § 145.40 covering these units, the Department will adjust the total number of NO_x allowances allocated to all these NO_x budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95% of the portion of the State's trading program budget. This adjustment will be made by multiplying each unit's allocation by 95% of the portion of the State's trading program budget; dividing by the total number of NO_x allowances allocated under paragraph (1) for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(c) For each group of five control periods specified in § 145.41(a)—(c), the Department will allocate to all NO_x budget units in a given state under § 145.4(a)(2) that commenced operation before May 1, 1997, for allocations under § 145.41(a), May 1, 2003, for allocations under § 145.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 145.41(c) is being calculated, a total number of NO_x allowances equal to 95% of the portion of the State's trading program budget under § 145.40 covering these units. The Department will allocate in accordance with the following procedures:

(1) The Department will allocate NO_x allowances to each NO_x budget unit under § 145.4(a)(2) for each control period in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subsection (a), divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x budget units under § 145.4(a)(2) in the state for a control period under subsection (c)(1) does not equal 95% of the portion of the State's Trading Program Budget under § 145.40 covering these units, the Administrator will adjust the total number of NO_x allowances allocated to all these NO_x budget units for the control period under paragraph (1) so that the total number of NO_x allowances allocated equals 95% of the portion of the State's Trading Program Budget under § 145.40 covering these units. This adjustment will be made by multiplying each unit's allocation by 95% of the portion of the State's Trading Program budget under § 145.40 covering these units; dividing by the total number of NO_x allowances allocated under paragraph (1) for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(d) For each control period specified in § 145.41(d), the Department will allocate NO_x allowances to NO_x budget units in a given State under § 145.4(a) (except for units exempt under § 145.4(b)) that commence operation, or are pro-

jected to commence operation, on or after May 1, 1997 (for control periods under § 145.41(a)); May 1, 2003 (for control periods under § 145.41(b)); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the control period (for control periods under § 145.41(c)). The Department may also use this set-aside to address allocation revisions to units under subsections (a)—(c). For each ton of NO_x deducted under § 129.205 (relating to zero emission renewable energy production credit), the Department will retire one NO_x allowance from the allowances in the set-aside for the subsequent control period. The Department will make the allocations under this subsection in accordance with the following procedures:

(1) The Department will establish one allocation set-aside for each control period for each state. Each allocation set-aside will be allocated NO_x allowances equal to 5% of the tons of NO_x emission in the state's Trading Program Budget under § 145.40, rounded to the nearest whole number of NO_x allowances as appropriate.

(2) The NO_x authorized account representative of a NO_x budget unit specified in this section may submit to the Department a request, in a format specified by the Department, to be allocated NO_x allowances for the control period. The NO_x allowance allocation request must be received by the Department on or after the date on which the State permitting authority issues a permit to construct the unit and by January 1 before the control period for which NO_x allowances are requested.

(3) In a NO_x allowance allocation request under paragraph (2), the NO_x authorized account representative for a NO_x budget unit under § 145.4(a)(1) may request for the control period NO_x allowances in an amount that does not exceed the lesser of the following:

(i) 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(ii) The unit's most stringent State or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(4) In a NO_x allowance allocation request under paragraph (2), the NO_x authorized account representative for a NO_x budget unit under § 145.4(a)(2) may request for a control period NO_x allowances in an amount that does not exceed the lesser of the following:

(i) 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(ii) The unit's most stringent state or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(5) The Department will review each NO_x allowance allocation request submitted in accordance with paragraph (2) and will allocate NO_x allowances pursuant to the request as follows:

(i) Upon receipt of the NO_x allowance allocation request, the Department will make any necessary adjustments to the request to ensure that the requirements of paragraphs (2)—(4) are met.

(ii) The Department will determine the following amounts:

(A) The sum of the NO_x allowances requested (as adjusted under subparagraph (i)) in all NO_x allowance allocation requests under paragraph (2) for the control period.

(B) For units exempt under § 145.4(b) in the state that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for control periods under § 145.41(a)); May 1, 2003 (for control periods under § 145.41(b)); and May 1 of the year 5 years before beginning of the group of 5 years that includes the control period (for control periods under § 145.41(c)), the sum of the NO_x emission limitations (in tons of NO_x) on which each unit's exemption under § 145.4(b) is based.

(iii) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under subparagraph (ii)(B) is not less than the amount determined under subparagraph (ii)(A), the Department will allocate the amount of the NO_x allowances requested (as adjusted under subparagraph (i)) to the NO_x budget unit for which the allocation request was submitted.

(iv) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under subparagraph (ii)(B) is less than the amount determined under subparagraph (ii)(A), the Department will allocate, to the NO_x budget unit for which the allocation request was submitted, the amount of NO_x allowances requested (as adjusted under subparagraph (i)) multiplied by the number of NO_x allowances in the allocation set-aside for the control period less the amount determined under subparagraph (ii)(B), divided by the amount determined under subparagraph (ii)(A), and rounded to the nearest whole number of NO_x allowances as appropriate.

(e) Beginning in the 2008 control period, a NO_x budget unit identified in subsection (d) may, upon request to the Department, receive allocations calculated under subsections (b) and (c). For the Department to grant the request, the NO_x budget unit shall have at least one complete control period of heat input data measured as specified in §§ 145.70—145.75 (relating to recordkeeping and reporting requirements). If heat input data is available from more than one control period but less than the number of control periods specified in subsection (a)(1)(ii) or (iii), the data will be averaged based on the number of available control periods.

(f) The NO_x Budget Administrator will take the following action for sources that are allocated NO_x allowances under subsection (d):

(1) The NO_x Budget Administrator will deduct NO_x allowances under § 145.54(b), (e) or (f) (relating to compliance) to account for the actual heat input of the unit during the control period. The NO_x Budget Administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of NO_x allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual heat input for a unit under § 145.4(a)(1) = unit's NO_x allowances allocated for control period – (unit's actual control period heat input × unit's emission rate × 2,000 lb/ton).

NO_x allowances deducted for actual heat input for a unit under § 145.4(a)(2) = unit's NO_x allowances allocated for control period – (unit's actual control period heat input × unit's emission rate × 2,000 lb/ton)

where:

“unit's NO_x allowances allocated for control period” is the number of NO_x allowances allocated to the unit for the control period under subsection (d).

“unit's actual control period heat input” is the heat input (in mmBtu) of the unit during the control period.

“unit's emission rate” is the emission rate in lb/mmBtu for the unit as determined under paragraphs (3) and (4).

(2) The NO_x Budget Administrator will transfer any NO_x allowances deducted under subsection (c)(1) to the allocation set-aside for the control period for which they were allocated.

(g) After making the deductions for compliance under § 145.54(b), (e) or (f) for a control period, the NO_x Budget Administrator will determine whether any NO_x allowances remain in the allocation set-aside for the control period. The NO_x Budget Administrator will allocate these NO_x allowances to the NO_x budget units in the state using the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

unit's share of NO_x allowances remaining in allocation set-aside =
total NO_x allowances remaining in allocation set-aside × (unit's NO_x
allowance allocation ÷ State's Trading Program Budget excluding
allocation set-aside)

where:

“total NO_x allowances remaining in allocation set-aside” is the total number of NO_x allowances remaining in the allocation set-aside for the control period.

“unit's NO_x allowance allocation” is the number of NO_x allowances allocated under subsection (b) or (c) to the unit for the control period to which the allocation set-aside applies.

“State's Trading Program budget excluding allocation set-aside” is the State's Trading Program budget under § 145.40 for the control period to which the allocation set-aside applies multiplied by 95%, rounded to the nearest whole number of NO_x allowances as appropriate.

(h) If the Department determines that NO_x allowances were allocated under subsection (b), (c) or (d) for a control period and the recipient of the allocation is not actually a NO_x budget unit under § 145.4(a), the Department will notify the NO_x authorized account representative and then will act in accordance with the following procedures:

(1) The NO_x Budget Administrator will not record these NO_x allowances for the control period in an account under § 145.53 (relating to recordation of NO_x allowance allocations).

(i) If the NO_x Budget Administrator already recorded these NO_x allowances for the control period in an account under § 145.53 and if the NO_x Budget Administrator makes this determination before making all deductions under § 145.54 (except deductions under § 145.54(d)(2)) for the control period, the NO_x Budget Administrator will deduct from the account NO_x allowances equal in number to and allocated for the same or a prior control period as the NO_x allowances allocated to the recipient for the control period. The NO_x authorized account representative shall ensure that the account contains the NO_x allowances necessary for completion of the deduction. If the account does not contain the necessary NO_x allowances, the NO_x Budget 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 the account.

(ii) If the NO_x Budget Administrator already recorded the NO_x allowances for the control period in an account under § 145.53 and if the NO_x Budget Administrator makes this determination after making all deductions under § 145.54 (except deductions under § 145.54(d)(2)) for the control

period, then the NO_x Budget Administrator will apply subparagraph (i) to any subsequent control period for which NO_x allowances were allocated to the recipient.

(2) The NO_x Budget Administrator will transfer the NO_x allowances that are not recorded, or that are deducted, under paragraph (1) to an allocation set-aside for the state in which the source is located.

(i) The Department will publish for comment a list of the allocations in the *Pennsylvania Bulletin*.

Source

The provisions of this § 145.42 amended December 10, 2004, effective December 11, 2004, 34 Pa.B. 6509. Immediately preceding text appears at serial pages (269045) to (269051).

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.8 (relating to transition to CAIR NO_x trading programs); 25 Pa. Code § 145.40 (relating to State Trading Program budget); 25 Pa. Code § 145.41 (relating to timing requirements for NO_x allowance allocations); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); and 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status).

§ 145.43. Compliance supplement pool.

(a) For any NO_x budget unit that reduces its NO_x emission rate in the 2001 or 2002 control period, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) Each NO_x budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with paragraph (4) shall monitor and report NO_x emissions in accordance with this subchapter starting in the 2000 control period and for each control period for which the early reduction credits are requested. The unit's percent monitor data availability may not be less than 90% during the 2000 control period, and the unit shall be in compliance with applicable state or Federal NO_x emission control requirements during 2000—2002.

(2) NO_x emission rate and heat input under paragraphs (3) and (4) shall be determined in accordance with this subchapter.

(3) Each NO_x budget unit for which the owners and operators intend to request, or request, any early reduction credits under paragraph (4) shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80% the unit's NO_x emission rate in the 2000 control period.

(4) The NO_x authorized account representative of an NO_x budget unit that meets the requirements of paragraphs (1) and (3) may submit to the Department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001 or 2002.

(i) In the early reduction credit request, the NO_x authorized account representative may request early reduction credits for the control period in an amount equal to the unit's heat input for the control period multiplied by the

difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

(ii) The early reduction credit request shall be submitted, in a format specified by the Department, by February 1, 2003. Requests submitted after February 1, 2003, will not be accepted.

(b) For any NO_x budget unit that is subject to the requirements of §§ 123.101—123.120 (relating to NO_x allowance requirements), the owners and operators may request early reduction credits in accordance with the following requirements:

(1) The NO_x authorized account representative of the unit may submit to the Department a request for early reduction credits in an amount equal to the amount of banked allowances under §§ 123.101—123.120 that were allocated for the control period in 2001 or 2002 and are held by the unit, in accordance §§ 123.101—123.120, as of the date of submission of the request. During the entire control period in 2001 or 2002 for which the allowances were allocated, the unit shall have monitored and reported NO_x emissions in accordance the Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).

(2) The early reduction credit request under paragraph (1) shall be submitted, in a format specified by the Department, by February 1, 2003. Requests submitted after February 1, 2003, will not be accepted.

(3) The NO_x authorized account representative of the unit may not submit a request for early reduction credits under paragraph (1) for banked allowances under the Ozone Transport Commission NO_x Budget Program that were allocated for any control period during which the unit made NO_x emission reductions for which he submits a request for early reduction credits under subsection (a) for the unit.

(c) For a NO_x budget unit that is subject to the requirements of §§ 123.101—123.120 that installs selective catalytic reduction or selective noncatalytic reduction to reduce NO_x emissions after May 1999, the owners and operators may request control equipment early reduction credits in accordance with the following requirements:

(1) Each NO_x budget unit for which the owners and operators intend to request, or request early reduction credits in accordance with this subsection shall monitor and report NO_x emissions in accordance with this chapter.

(2) The unit shall be in compliance with applicable State or Federal NO_x control requirements.

(3) NO_x emission rate and heat input under this subsection shall be determined in accordance with this subchapter.

(4) Each NO_x budget unit shall reduce its NO_x emissions, for each control period for which early reduction credits are requested, to less than the allowances for the unit established in Chapter 123, Appendix E.

- (5) The early reduction credit request shall be submitted, in a format specified by the Department, by February 1, 2003. Requests submitted after February 1, 2003, will not be accepted.
- (d) For a NO_x budget unit that installs and operates innovative control technology, the owners and operators may request innovative technology early reduction credits in accordance with the following requirements:
- (1) For purposes of this subsection, innovative control technology is any technology that reduces the emissions of multiple air contaminants, including, at a minimum, NO_x, SO₂ and mercury, through the application of technology or technology improvements not previously applied to NO_x budget units in an amount greater than any applicable state or Federal requirement.
 - (2) The unit shall be in compliance with any applicable State or Federal NO_x control requirements.
 - (3) NO_x emission rate and heat input under this subsection shall be determined in accordance with this subchapter.
 - (4) The owners and operators of each NO_x budget unit shall submit a proposal for the development, design and testing of innovative control technology including milestones for completing each phase of the proposal along with a proposal and justification for the number of innovative early reduction credits requested based on the overall air quality benefits of the innovative technology.
 - (5) The innovative technology proposal shall be completed by and the early reduction credits used by November 30, 2004.
 - (6) Failure to complete any phase of the proposal by the milestone date established under this section shall result in a loss of allowances in an amount equal to the amount of the innovative early reduction credits granted to the NO_x budget unit.
 - (7) The early reduction credit request shall be submitted, in a format specified by the Department, by February 1, 2003. Requests submitted after February 1, 2003, will not be accepted.
- (e) The Department will review each early reduction credit request submitted in accordance with subsections (a)—(d) and will allocate NO_x allowances to NO_x budget units in a given state and covered by the request as follows:
- (1) Upon receipt of each early reduction credit request, the Department will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of subsections (a)—(d).
 - (2) After February 1, 2003, the Department will publish in the *Pennsylvania Bulletin* a statement of the total number of early reduction credits requested by NO_x budget units in the State.
 - (3) Pennsylvania's compliance supplement pool is 15,763 NO_x allowances.
 - (i) 1,576 NO_x allowances are available for the control equipment early reduction credits established under subsection (c).

(ii) 1,576 NO_x allowances are available for the innovative technology early reduction credits established under subsection (d).

(iii) 12,611 NO_x allowances are available for the early reduction credits established under subsections (a) and (b).

(iv) Unused early reduction credits established under subparagraphs (i) and (ii) shall be available for the early reduction credits established under subsections (a) and (b).

(v) The compliance supplement pool for upwind states is listed in § 145.100(b) (relating to applicability to upwind states).

(4) If the compliance supplement pool for each of the categories of early reduction credits established in paragraph (3) has a number of NO_x allowances not less than the amount of early reduction credits in all early reduction credit requests received under subsections (a)—(d) (as adjusted under subsection (e)(1)) submitted by February 1, 2003, the Department will allocate to each NO_x budget unit covered by the request one allowance for each early reduction credit requested (as adjusted under paragraph (1)).

(5) If the compliance supplement pool has a smaller number of NO_x allowances for any of the categories of early reduction credits established in paragraph (3) than the amount of early reduction credits in all early reduction requests under subsections (a)—(d) for 2001 and 2002 (as adjusted under paragraph (1)) submitted by February 1, 2003, the Department will allocate NO_x allowances for each of the categories established in paragraph (3) to each NO_x budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate. This prorata allocation will be performed for allocations under subsections (c) and (d) and any requests for NO_x allowances that are not fully allocated shall be available for allocation under subsections (a) and (b) if they otherwise qualify under those subsections:

$$\text{unit's allocation for early reduction credits} = \text{unit's adjusted early reduction credits} \times (\text{State's compliance supplement pool} \div \text{total adjusted early reduction credits for all units})$$

where:

“unit’s allocation for early reduction credits” is the number of NO_x allowances allocated to the unit for early reduction credits.

“unit’s adjusted early reduction credits” is the amount of early reduction credits requested for the unit for 2001 and 2002 in early reduction credit requests under subsection (a)—(d), as adjusted under paragraph (1).

“States compliance supplement pool” is the number of NO_x allowances for each category of early reduction credits established in paragraph (3).

“total adjusted early reduction credits for all units” is the amount of early reduction credits requested for all units for 2001 and 2002 in early reduction credit requests under subsections (a)—(d), as adjusted under paragraph (1).

(6) By April 1, 2003, the Department will determine the allocations under paragraph (4) or (5). The Department will make available to the public each determination of NO_x allowance allocations and will provide an opportunity for comment. Based on these comments, the Department will adjust each determination to the extent necessary to ensure that it is in accordance with paragraph (1), (4) or (5).

(7) By May 1, 2003, the NO_x Budget Administrator will record the allocations under paragraph (3) or (5).

(8) NO_x allowances recorded under paragraph (7) may be deducted for compliance under § 145.54 (relating to compliance) for the control period in 2003 or 2004. Notwithstanding § 145.55(a) (relating to banking), the NO_x Budget Administrator will deduct as retired any NO_x allowance that is recorded under paragraph (7) and that is not deducted for compliance under § 145.54 for the control period in 2003 or 2004.

(9) NO_x allowances recorded under paragraph (7) are treated as banked allowances in 2004 for the purposes of §§ 145.54(f) and 145.55(b).

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.74 (relating to recordkeeping and reporting); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

ACCOUNTING PROCESS FOR DEPOSIT, USE AND TRANSFER OF ALLOWANCES

§ 145.50. NO_x Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with § 145.51(a) (relating to establishment of accounts), the NO_x Budget Administrator will establish one compliance account for each NO_x budget unit and one overdraft account for each source with two or more NO_x budget units. Allocations of NO_x allowances under §§ 145.40—145.42 or § 145.88 (relating to NO_x allowance allocations; and opt-in source change in regulatory status) and deductions or transfers of NO_x allowances under § 145.31, § 145.54, § 145.56, §§ 145.60—145.62 or §§ 145.80—145.88 will be recorded in the compliance accounts or overdraft accounts.

(b) *Nature and function of general accounts.* Consistent with § 145.51(b), the NO_x Budget Administrator will establish, upon request, a general account for any

person. Transfers of allowances under §§ 145.60—145.62 (relating to NO_x allowance transfers) will be recorded in the general account.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.51. Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under § 145.13 (relating to account certificate of representation), the NO_x Budget Administrator will establish the following:

- (1) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted.
- (2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x budget units.

(b) *General accounts.*

(1) *Elements for account.*

(i) A person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the NO_x Budget Administrator and shall include the following elements in a format prescribed by the NO_x Budget Administrator:

(A) The 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) The organization name and type of organization.

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

(D) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative:

“I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of 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 Department, 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.

(ii) Unless otherwise required by the NO_x Budget Administrator, documents of agreement referred to in the account certificate of representation may not be submitted to the NO_x Budget Administrator. The Department or NO_x Budget Administrator are not under any obligation to review or evaluate the sufficiency of the documents, if submitted.

(2) *Receipt of complete application.* Upon receipt by the NO_x Budget Administrator of a complete application for a general account under paragraph (1):

(i) The NO_x Budget Administrator will establish a general account for the person for whom the application is submitted.

(ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his 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 an agreement between the NO_x authorized account representative or an alternate NO_x authorized account representative and the person. This person shall be bound by any order or decision issued to the NO_x authorized account representative or an alternate NO_x authorized account representative by the Department, the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed and certified by the NO_x authorized account representative or an alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each submission shall include the following certification statement by the NO_x authorized account representative or an 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.”

(iv) The NO_x Budget 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 subparagraph (iii).

(3) *Representative designation.*

(i) An application for a general account may designate only one NO_x authorized account representative and one 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.

(ii) Upon receipt by the NO_x Budget Administrator of a complete application for a general account under paragraph (1), any representation, action, inaction or submission by an alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction or submission by the NO_x authorized account representative.

(4) *Revising the account representative.*

(i) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the NO_x Budget Administrator of a superseding complete application for a general account under paragraph (1). Notwithstanding a change, the representations, actions, inactions and submissions by the previous NO_x authorized account representative prior to the time and date when the NO_x Budget 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 allowances in the general account.

(ii) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the NO_x Budget Administrator of a superseding complete application for a general account under paragraph (1). Notwithstanding a change, the representations, actions, inactions and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the NO_x Budget 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 allowances in the general account.

(iii) A revision of ownership listing shall include the following:

(A) If a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of persons in the account certificate of representation, the new person shall 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 NO_x Budget Administrator, as if the new person were included in the list.

(B) Within 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 an 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.

(5) *Reliance on application.*

(i) Once a complete application for a general account under paragraph (1) has been submitted and received, the NO_x Budget Administrator will rely on the application until a superseding complete application for a general account under paragraph (1) is received by the NO_x Budget Administrator.

(ii) Except as provided in paragraph (4), no objection or other communication submitted to the NO_x Budget 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 will affect any representation, action, inaction or submission of the NO_x authorized account representative or an alternate NO_x authorized account representative or the finality of a decision or order by the Department or NO_x Budget Administrator under the NO_x Budget Trading Program.

(iii) The Department or NO_x Budget Administrator will not adjudicate a private legal dispute concerning the authorization or 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 NO_x Budget Administrator will assign a unique identifying number to each account established under subsection (a) or (b).

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.11 (relating to alternate NO_x authorized account representative); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.52. NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.

(a) *Establishment of account.* Following the establishment of a NO_x Allowance Tracking System account, the submissions to the Department or the NO_x Budget 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) *Authorized account representative identification.* The NO_x Budget Administrator will assign a unique identifying number to each NO_x authorized account representative.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.53. Recordation of NO_x allowance allocations.

(a) The NO_x Budget Administrator will record the NO_x allowances for 2003 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under §§ 145.40—145.43 (relating to NO_x allowance allocations). The NO_x Budget Administrator will also record the NO_x allowances allocated under § 145.88(a)(1) (relating to NO_x allowance allocations to opt-in units) for each NO_x budget opt-in source in its compliance account. NO_x allowances under § 145.4(b)(4)(ii) or § 145.5(c)(2) (relating to applicability; and retired unit exemption) will be recorded in the general account specified by the owners and operators of the unit.

(b) By May 1, 2001, the NO_x Budget Administrator will record the NO_x allowances for 2004 for a NO_x budget unit allocated under §§ 145.40—145.43 in the unit's compliance account, except for NO_x allowances under § 145.4(b)(4)(ii) or § 145.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The NO_x Budget Administrator will record NO_x allowances for 2004 for a NO_x budget opt-in unit in the unit's compliance account as allocated under § 145.88(a).

(c) By May 1, 2002, the NO_x Budget Administrator will record the NO_x allowances for 2005 for a NO_x budget unit allocated under §§ 145.40—145.43 in the unit's compliance account, except for NO_x allowances under § 145.4(b)(4)(ii) or § 145.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The NO_x Budget Administrator will record NO_x allowances for 2005 for a NO_x budget opt-in unit in the unit's compliance account as allocated under § 145.88(a).

(d) By May 1, 2003, the NO_x Budget Administrator will record the NO_x allowances for 2006 for a NO_x budget unit allocated under §§ 145.40—145.43 in the unit's compliance account, except for NO_x allowances under

§ 145.4(b)(4)(ii) or § 145.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The NO_x Budget Administrator will record NO_x allowances for 2006 for a NO_x budget opt-in unit in the unit's compliance account as allocated under § 145.88(a).

(e) Each year starting with 2004, after the NO_x Budget Administrator has made all deductions from a NO_x budget unit's compliance account and the overdraft account under § 145.54 (relating to compliance) (except deductions under § 145.54(d)(2)), the NO_x Budget Administrator will record the following:

(1) NO_x allowances, in the compliance account, as allocated to the unit under §§ 145.40—145.43 for the third year after the year of the control period for which the deductions were or could have been made.

(2) NO_x allowances, in the general account specified by the owners and operators of the unit, as allocated under § 145.4(b)(4)(ii) or § 145.5(c)(2) for the third year after the year of the control period for which the deductions are or could have been made.

(3) NO_x allowances, in the compliance account, as allocated to the unit under § 145.88(a).

(f) Each NO_x allowance will be assigned a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

Cross References

This section cited in 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.61 (relating to NO_x transfer recordation); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.54. 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 meet the following conditions:

(1) The allowances are allocated for a control period in a prior year or the same year.

(2) The allowances 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 § 145.60 (relating to submission of NO_x allowance transfers) by the NO_x allowance transfer deadline for that control period.

(b) *Deductions for compliance.*

(1) Following the recordation, in accordance with § 145.61 (relating to NO_x transfer recordation), 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 NO_x Budget Administrator will deduct NO_x allowances available under subsection (a) to cover the unit's NO_x emissions (as determined in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements)), or to account for actual heat input under § 145.42(e) (relating to NO_x allowance allocations), for the control period:

(i) From the compliance account.

(ii) Only if no more NO_x allowances available under subsection (a) remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the NO_x Budget 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).

(2) NO_x allowances will be deducted first under subparagraph (i) and then under subparagraph (ii):

(i) 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 §§ 145.70—145.76, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual heat input under § 145.42(e) for the control period.

(ii) Until no more NO_x allowances available under subsection (a) remain in the respective account.

(c) *Allowance identification.*

(1) *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 subsection (b), (d), (e) or (f). The identification shall be made in the compliance certification report submitted in accordance with § 145.30 (relating to compliance certification report).

(2) *First-in, first-out.* NO_x allowances will be deducted 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 paragraph (1), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_x allowances that were allocated for the control period to the unit under §§ 145.40—145.43 or §§ 145.80—145.88 (relating to NO_x allowance allocations; and opt-in process).

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account under §§ 145.60—145.62 (relating to NO_x allowance transfers), in order of their date of recordation.

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under §§ 145.40—145.43 or §§ 145.80—145.88.

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account under §§ 145.60—145.62, in order of their date of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subsection (b), the NO_x Budget 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 times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget 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.

(3) An allowance deduction required under subsection (d) does 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 the act. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) 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 (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.

(ii) 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 §§ 145.70—145.76:

(1) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. The identification shall be made in the compliance certification report submitted in accordance with § 145.30.

(2) Notwithstanding subsection (b)(2)(i), the NO_x Budget Administrator will deduct NO_x allowances for each unit until the number of NO_x allowances deducted equals the unit's identified percentage (under paragraph (1)) of the number of tons of NO_x emissions, as determined in accordance with

§§ 145.70—145.76, 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 heat input under § 145.42(e) for the control period.

(f) *Deduction of banked allowances.* Each year starting in 2005, after the NO_x Budget Administrator has completed the designation of banked allowances under § 145.55(b) (relating to banking) and before May 1 of the year, the NO_x Budget Administrator will determine the extent to which banked NO_x allowances otherwise available under subsection (a) are available for compliance in the control period for the current year as follows:

(1) The NO_x Budget Administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts or general accounts.

(2) If the total number of banked NO_x allowances determined, under paragraph (1), to be held in compliance accounts, overdraft accounts or general accounts is less than or equal to 10% of the sum of the trading program budgets under § 145.40 (relating to State Trading Program budget) for all states for the control period, any banked NO_x allowance may be deducted for compliance in accordance with subsections (a)—(e).

(3) If the total number of banked NO_x allowances determined, under paragraph (1) to be held in compliance accounts, overdraft accounts or general accounts exceeds 10% of the sum of the trading program budgets under § 145.40 for Pennsylvania and the trading program budgets approved by the administrator for other states participating in the NO_x budget trading program for the control period, any banked allowance may be deducted for compliance in accordance with subsections (a)—(e), except as follows:

(i) The NO_x Budget Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets under § 145.40 for all states for the control period and divided by the total number of banked NO_x allowances determined, under paragraph (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The NO_x Budget Administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under subparagraph (i). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with subsections (a)—(e), except that, if the NO_x allowances are used to make a deduction under subsection (b) or (e), two (rather than one), these NO_x allowances shall authorize up to 1 ton of NO_x emissions during the control period and shall be deducted for each deduction of one NO_x allowance required under subsection (b) or (e).

(g) The NO_x Budget Administrator will record in the appropriate compliance account or overdraft account all deductions from the account under subsection (b), (d) or (f).

Cross References

This section cited in 25 Pa. Code § 123.121 (relating to NO_x Allowance Program transition); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.43 (relating to compliance supplement budget); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.86 (relating to opt-in source withdrawal from NO_x Budget Trading Program); and 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status).

§ 145.55. Banking.

NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account or a general account, as follows:

(1) A NO_x allowance that is held in a compliance account, an overdraft account or a general account will remain in the account until the NO_x allowance is deducted or transferred under § 145.31, § 145.54, § 145.56, §§ 145.60—145.62 or §§ 145.80—145.88.

(2) The NO_x Budget Administrator will designate, as a “banked” NO_x allowance, a NO_x allowance that remains in a compliance account, an overdraft account or a general account after deductions have been made for a given control period from the compliance account or overdraft account under § 145.54 (relating to compliance) (except deductions under § 145.54(d)(2)) and that were allocated for that control period or a control period in a prior year).

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.43 (relating to compliance supplement pool); 25 Pa. Code § 145.54 (relating to compliance); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.56. Account error.

The NO_x Budget Administrator may correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making the correction, the NO_x Budget Administrator will notify the NO_x authorized account representative for the account.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.55 (relating to banking); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.57. Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the NO_x Budget 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 § 145.60 (relating to submission of NO_x allowance transfers) an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(b) If a general account shows no activity for 1 year or more and does not contain any NO_x allowances, the NO_x Budget 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 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the NO_x Budget Administrator receives a correctly submitted transfer of NO_x allowances into the account under § 145.60 or a statement submitted by the NO_x authorized account representative requesting that the account should not be closed.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

NO_x ALLOWANCE TRANSFERS**§ 145.60. 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 NO_x Budget Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the NO_x Budget Administrator:

- (1) The numbers identifying both the transferor and transferee accounts.
- (2) A specification by serial number of each NO_x allowance to be transferred.
- (3) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.57 (relating to closing of general accounts); 25 Pa. Code § 145.61 (relating to NO_x transfer recordation); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.61. NO_x transfer recordation.

(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in subsection (b), the NO_x Budget 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, if the following conditions are met (relating to submission of NO_x allowance transfers):

(1) The transfer is correctly submitted under § 145.60 (relating to submission of NO_x allowance transfers).

(2) The transferor account includes each NO_x allowance identified by serial number in the transfer.

(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 § 145.53 (relating to recordation of NO_x allowance allocations) in the same year as the NO_x allowance transfer deadline.

(c) A NO_x allowance transfer submitted for recordation that fails to meet the requirements of subsection (a) will not be recorded.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.62 (relating to notification); and 25 Pa. Code § 145.81 (relating to opt-in source general provisions).

§ 145.62. Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO_x allowance transfer under § 145.61 (relating to NO_x transfer recordation), the NO_x Budget 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 nonrecordation.* Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of § 145.61(a), the NO_x Budget Administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer.

(2) The reasons for the nonrecordation.

(c) *Resubmission.* Nothing in this section precludes the submission of a NO_x allowance transfer for recordation following notification of nonrecordation.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); and 25 Pa. Code § 145.81 (relating to opt-in service general provisions).

RECORDKEEPING AND REPORTING REQUIREMENTS**§ 145.70. General monitoring 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 section and §§ 145.71—145.76 (relating to recordkeeping and reporting requirements) and in 40 CFR Part 75, Subpart H (relating to continuous emission monitoring). For purposes of complying with these requirements, the definitions in § 145.2 (relating to definitions) and in 40 CFR 72.2 (relating to definitions) apply, and the terms “affected unit,” “designated representative” and “continuous emission monitoring system” (or “CEMS”) in 40 CFR Part 75 shall be replaced by the terms “NO_x budget unit,” “NO_x authorized account representative” and “continuous emission monitoring system” (or “CEMS”), respectively, as defined in § 145.2. The owner and operator of a unit that is not a NO_x budget unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the monitoring, recordkeeping and reporting requirements for a NO_x budget unit under this subchapter.

(1) *Requirements for installation, certification and data accounting.* The owner or operator of each NO_x budget unit shall meet the following requirements. These provisions also apply to a unit for which an application for a NO_x budget opt-in approval is submitted and not denied or withdrawn, as provided in §§ 145.80—145.88 (relating to opt-in process).

(i) Install all monitoring systems required under this subchapter for monitoring NO_x mass emissions. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input rate and stack flow rate, in accordance with 40 CFR Part 75, Subpart H.

(ii) Install the monitoring systems for monitoring heat input.

(iii) Successfully complete the certification tests required under § 145.71 (relating to initial certification and recertification procedures) and meet all other provisions of this subchapter and 40 CFR Part 75 applicable to the monitoring systems under subparagraphs (i) and (ii).

(iv) Record, report and quality-assure the data from the monitoring systems under subparagraphs (i) and (ii).

(2) *Compliance dates.* The owner or operator shall meet the requirements of paragraph (1)(i)—(iii) on or before the following dates and shall record and report data on and after the following dates:

(i) NO_x budget units for which the owner or operator intends to apply for early reduction credits under § 145.43(a) or (c) (relating to compliance supplement pool) shall comply with this section and §§ 145.71—145.76 by May 1, 2000, except that compliance with § 123.108 (relating to source emissions monitoring requirements) may be used as an alternative monitoring method for the 2000 control period. If the owner or operator of a NO_x budget unit fails to meet this deadline, the owner or operator is not eligible

to apply for early reduction credits under § 145.43(a) or (c) and is subject to the deadline under subparagraph (ii).

(ii) Except for NO_x budget units under subparagraph (i), NO_x budget units under § 145.4 (relating to applicability) that commence operation before January 1, 2002, shall comply with this section and §§ 145.71—145.76 by May 1, 2002.

(iii) NO_x budget units under § 145.4(a)(1) that commence operation on or after January 1, 2002, and that report on an annual basis under § 145.74(d) (relating to recordkeeping and reporting) shall comply with the requirements of this section and §§ 145.71—145.76 by the later of the following dates:

(A) May 1, 2002.

(B) Ninety days after the date on which the unit commences commercial operation.

(iv) NO_x budget units under § 145.4(a)(1) that commence operation on or after January 1, 2002, and that report on a control season basis under § 145.74(d)(2)(ii) shall comply with this section and §§ 145.71—145.76 within 90 days after the date on which the unit commences commercial operation, provided that this date is during a control period. If this date does not occur during a control period, the applicable deadline is May 1 immediately following this date.

(v) For the owner or operator of a NO_x budget unit under § 145.4(a)(2) that commences operation on or after January 1, 2002, and that reports on an annual basis under § 145.72(d) (relating to out of control periods), by the later of the following dates:

(A) May 1, 2002.

(B) One hundred-eighty days after the date on which the unit commences operation.

(vi) For the owner or operator of a NO_x budget unit under § 145.4(a)(2) that commences operation on or after January 1, 2002, and that reports on a control period basis under § 145.72(d)(2)(ii) (relating to out of control periods), by 180 days after the date on which the unit commences operation, provided that this date is during a control period. If this date does not occur during a control period, the applicable deadline is May 1 immediately following this date.

(vii) For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraph (i), (ii), (iii), (iv), (v) or (vi) or §§ 145.80—145.88 and that reports on an annual basis under § 145.72(d), 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(viii) For the owner or operator of a NO_x budget unit that has a new stack or flue for which construction is completed after the applicable deadline under subparagraph (i), (ii), (iii), (iv), (v) or (vi) or §§ 145.80—145.88 and

that reports on a control period basis under § 145.72(d)(2)(ii), by 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue, provided that this date is during a control period. If this date does not occur during the control period, the applicable deadline is May 1 immediately following this date.

(ix) For a unit for which an application for a NO_x budget opt-in approval is submitted and not denied or withdrawn, the compliance dates specified under §§ 145.80—145.88.

(3) *Reporting data prior to initial certification.* The owner or operator of a NO_x budget unit under paragraph (2)(iii), (iv), (v) or (vi) shall determine, record and report NO_x mass emissions, heat input rate, and any other values required to determine NO_x mass emissions (for example, NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) in accordance with 40 CFR 75.70(g) (relating to NO_x mass emissions provisions), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under 40 CFR Part 75, Appendix D or E, or excepted monitoring system under 40 CFR 75.19 (relating to optional SO₂, NO_x, and CO₂ emissions calculation for low mass emissions units) is provisionally certified.

(4) *Prohibitions.*

(i) An owner or operator of a NO_x budget unit or a non-NO_x budget unit may not use an alternative monitoring system, alternative reference method or another alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 145.75 (relating to petitions).

(ii) An owner or operator of a NO_x budget unit or a non-NO_x budget unit may not operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 except as provided for in 40 CFR 75.74 (relating to annual and ozone season monitoring and reporting requirements).

(iii) An owner or operator of a NO_x budget unit or a non-NO_x budget unit may not disrupt the continuous emission monitoring system, a portion thereof or another approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

(iv) An owner or operator of a NO_x budget unit or a non-NO_x budget unit may not retire or permanently discontinue use of the continuous emis-

sion monitoring system, any component thereof, or any other approved emission monitoring system under this subchapter, except under one of the following circumstances:

(A) During the period that the unit is covered by an exemption under § 145.4(b) or § 145.5 (relating to applicability; and retired unit exemption) that is in effect.

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

(C) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 145.71(b)(2) (relating to initial certification and recertification procedures).

(5) Notwithstanding the provisions of this section and §§ 145.71—145.76, sources that are also subject to the monitoring provisions of Chapter 139 (relating to sampling and testing) shall demonstrate compliance with those provisions in addition to the provisions of this section and §§ 145.71—145.76.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.71 (relating to initial certification and recertification); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in unit).

§ 145.71. Initial certification and recertification procedures.

(a) 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 Part 75 (relating to continuous emission monitoring), except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) (relating to specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO_x emission rate) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 (relating to petitions to the Administrator) 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 § 145.75(a) (relating to petitions) to determine if the approval applies under the NO_x Budget Trading Program.

(2) For additional CEMS required under the common stack provisions in 40 CFR 75.72 (relating to determination of NO_x mass emissions), or for NO_x concentration CEMS used under 40 CFR 75.71(a)(2) (relating to specific provisions for monitoring NO_x emission rate and heat input for the purpose of calculating NO_x mass emissions), the owner or operator shall meet the requirements of subsection (b).

(b) 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. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 (relating to optional SO₂, NO_x and CO₂ emissions calculation for low mass emissions unit) or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E (relating to alternative monitoring systems) shall comply with the following procedures, as modified by subsection (c) or (d). The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures:

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by 40 CFR Part 75, Subpart H (relating to NO_x mass emissions provisions) (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 (relating to certification and recertification procedures). The owner or operator shall ensure that the applicable certification tests are successfully completed by the deadlines specified in § 145.70(2) (relating to general monitoring requirements). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subchapter in a location where no monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the requirements of 40 CFR 75.21 (relating to quality assurance and quality control requirements) or 40 CFR Part 75, Appendix B (relating to quality assurance and quality control), the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Whenever the owner or operator makes a replacement, modification or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system 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.

(3) *Certification approval process for initial certifications and recertification.*

(i) *Notification of certification.* The NO_x authorized account representative shall submit to the Department and the appropriate EPA regional office a written notice of the dates of certification in accordance with § 145.73 (relating to notification).

(ii) *Certification application.* The NO_x authorized account representative shall submit to the Department and the appropriate EPA regional office a certification application for each monitoring system required under 40 CFR Part 75 Subpart H. A complete certification application shall include the information specified in 40 CFR Part 75 Subpart H.

(iii) *Provisional certification.* 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 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 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under subparagraph (ii). Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), if the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

(iv) *Certification application formal approval process.* The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days after receipt of the complete certification application under subparagraph (ii). If the Department does not issue the notice within the 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NO_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 Part 75, the Department will issue a written notice of approval of the certification application within 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 subparagraph (ii) has been received by the Department. If the certification application is not complete, the Department will issue a written notice of incompleteness that sets a date by which the NO_x autho-

rized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under clause (C). The 120-day review period may not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this section and §§ 145.70 and 145.72—145.76, or if the certification application is incomplete and the requirement for disapproval under clause (B) has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof will not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). the owner or operator shall follow the procedures for loss of certification in subparagraph (v) for each monitoring system or component thereof which is disapproved for initial certification.

(D) *Audit decertification.* The Department may issue a notice of disapproval of the certification status of a monitor in accordance with § 145.72(b).

(v) *Procedures for loss of certification.* If the Department issues a notice of disapproval of a certification application under subparagraph (iv)(C) or a notice of disapproval of certification status under subparagraph (iv)(D), the following apply:

(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), (b)(5), (h)(4) or 75.21(e) 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 rate 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.

(II) For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under 40 CFR Part 75, Appendix A Section 2 (relating to instrument span).

(B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (i) and (ii).

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, within 30 unit operating days after the date of issuance of the notice of disapproval.

(c) This subsection applies to initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 and not subject to an acid rain emission limitation shall meet the applicable general operating requirements of 40 CFR 75.10 (relating to general operating requirements) and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of subsection (b), except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of one of the following dates:

(i) For a unit that does not have monitoring equipment initially certified or recertified for the NO_x budget trading program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19, starting on the date of the submission until the completion of the period for the Department's review.

(ii) For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for the unit and that reports data on an annual basis under § 145.74(d) (relating to recordkeeping and reporting), starting January 1 of the year after the year of the submission until the completion of the period for the Department's review.

(iii) For a unit that has monitoring equipment initially certified or recertified for the NO_x budget trading program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for the unit and that reports on a control season basis under § 145.74(d), starting May 1 of the control period after the year of the submission until the completion of the period for the Department's review.

(d) This subsection applies to certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit not subject to an acid rain emissions limitation applying to monitor using an alternative monitoring system approved by the NO_x Budget Administrator under 40 CFR Part 75, Subpart E (relating to alternative monitoring systems) shall apply for certification to the Department prior to use of the system under the NO_x Trading Program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection (b). The owner or operator of an alternative monitoring system shall comply with the notification

and application requirements for certification according to the procedures specified in subsection (b) and 40 CFR 75.20(f).

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.72 (relating to out of control periods); 25 Pa. Code § 145.74 (relating to recordkeeping and reporting); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.72. Out of control periods.

(a) *Quality assurance requirements.* Whenever a monitoring system fails to meet the quality assurance or data validation requirements of 40 CFR Part 75 (relating to quality assurance and quality control procedures), data shall be substituted using the applicable procedures in 40 CFR Part 75 Subpart D, Appendix D or Appendix E (relating to missing data substitution procedures; optional SO₂ emissions data protocol for gas-fired and oil-fired units; and optional NO_x emissions estimation protocol for gas-fired peaking units and oil-fired peaking units).

(b) *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 § 145.71 (relating to initial certification and recertification procedures) or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of the system or component. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component will 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 § 145.71 for each disapproved system.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.71 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.73. Notifications.

The NO_x authorized account representative for a NO_x budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR 75.61 (relating to notification), except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the Department.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.71 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.74. Recordkeeping and reporting.**(a) General provisions.**

(1) In addition to the requirements of Chapter 127 (relating to construction, modification, reactivation and operation of sources), the NO_x authorized account representative shall comply with the recordkeeping and reporting requirements in this section and with the requirements of § 145.10(e) (relating to authorization and responsibilities of the NO_x authorized account representative).

(2) If the NO_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under 40 CFR Part 75, Subpart F or G (relating to recordkeeping requirements; and reporting requirements) and which includes data and information required under this subchapter or 40 CFR Part 75, Subpart H (relating to NO_x mass emissions provisions) is not the same person as the designated representative or the alternative designated representative for the unit

under 40 CFR Part 72 (relating to permits regulation), the submission shall also be signed by the designated representative or the alternative designated representative.

(b) *Monitoring plans.*

(1) The owner or operator of a unit subject to an acid rain emissions limitation shall comply with 40 CFR 75.62 (relating to monitoring plan), except that the monitoring plan shall also include all of the information required by 40 CFR Part 75, Subpart H.

(2) The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by 40 CFR Part 75, Subpart H.

(c) *Certification applications.* The NO_x authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under § 145.71 (relating to initial certification and recertification procedures) including the information required under 40 CFR Part 75, Subpart H.

(d) *Quarterly reports.* The NO_x authorized account representative shall submit quarterly reports, as follows:

(1) NO_x budget units subject to an acid rain emission limitation shall meet the annual reporting requirements of this subchapter. The NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with one of the following:

(i) For units that elect to comply with the early reduction credit provisions under § 145.43 (relating to compliance supplement pool), the calendar quarter that includes the date of initial provisional certification under § 145.71(b)(3)(iii) or (c). Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification.

(ii) For units commencing operation on or before May 1, 2002, and that is not subject to subparagraph (i), the earlier of the calendar quarter that includes the date of initial provisional certification under § 145.71(b)(3)(iii) or (c) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be 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, 2002.

(iii) For a unit that commences operation after May 1, 2002, 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.

(2) If a NO_x budget unit is not subject to an acid rain emission limitation, the NO_x authorized account representative shall do either of the following:

(i) Meet all the requirements of 40 CFR Part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in paragraph (1).

(ii) Submit quarterly reports covering the period May 1—September 30 of each year and including the data described in 40 CFR 75.74(c)(6) (relating to annual and ozone monitoring and reporting requirement). The NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(A) For units that intend to apply or apply for early reduction credits under § 145.43, the calendar quarter that includes the date of initial provisional certification under § 145.71(b)(3)(iii) and (c). Data shall be recorded and reported from the date and hour of provisional certification.

(B) For units commencing operation on or before May 1, 2002, and are not subject to subparagraph (i), the calendar quarter covering May 1 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under § 145.71(b)(3)(iii) or (c) or the first hour of May 1, 2002.

(C) For units that commence operation after May 1, 2002, and during a control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

(D) For units that commence operation after May 1, 2002, and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under § 145.71(b)(3)(iii) or (c) or the first hour of May 1 of the first control period after the unit commences operation.

(3) The NO_x authorized account representative shall submit each quarterly report to the Department and NO_x Budget Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR Part 75, Subpart H and 40 CFR 75.64 (relating to quarterly reports).

(i) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR Part 75, Subpart H for each NO_x budget unit (or group of units using a common stack) as well as information required in 40 CFR Part 75, Subpart G (relating to reporting requirements).

(ii) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include the data and information required in 40 CFR Part 75, Subpart H for each NO_x budget unit (or group of units using a common stack).

(4) The NO_x authorized account representative shall submit to the Department and NO_x Budget 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 the following conditions have been met:

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

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1) (relating to units with add-on emission controls), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B and the substitute values do not systematically underestimate NO_x emissions.

(iii) For a unit that is reporting on a control period basis under subparagraph (ii), the NO_x emission rate and NO_x concentration values substituted for missing data under 40 CFR Part 75, Subpart D (relating to missing data substitution procedures) are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.71 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.75. Petitions.

(a) The NO_x authorized account representative of a NO_x budget unit may submit a petition under 40 CFR 75.66 (relating to petitions to the Administrator) to the Administrator requesting approval to apply an alternative to any requirement of this section and §§ 145.70—145.74 and 145.76.

(b) Application of an alternative to any requirement of this section and §§ 145.70—145.74 and 145.76 is in accordance with this section and §§ 145.70—145.74 and 145.76 only to the extent that the petition is approved by the Administrator under 40 CFR 75.66.

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.71 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.76. Additional requirements to provide heat input data.

The owner or operator of a unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures in 40 CFR Part 75 (relating to continuous emission monitoring).

Cross References

This section cited in 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.30 (relating to compliance certification report); 25 Pa. Code § 145.42 (relating to NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.71 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.75 (relating to petitions); 25 Pa. Code § 145.81 (relating to opt-in source general provisions); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

OPT-IN PROCESS**§ 145.80. Applicability for opt-in sources.**

A unit that is not a NO_x budget unit under § 145.4(a) (relating to applicability), is not a unit exempt under § 145.4(b), vents all of its emissions to a stack, and is operating, may qualify, under this section and §§ 145.81—145.88 (relating to opt-in process), to become a NO_x budget opt-in source. A unit that is a NO_x budget unit under § 145.4(a), is covered by a retired unit exemption under §§ 145.4(b) or 145.5 (relating to retired unit exemption) that is in effect, or is not operating is not eligible to become a NO_x budget opt-in unit.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); and 25 Pa. Code § 145.84 (relating to opt-in process).

§ 145.81. Opt-in source general provisions.

Except as otherwise provided, a NO_x budget opt-in unit shall be treated as a NO_x budget unit for purposes of applying §§ 145.1—145.7, 145.10—145.14, 145.30, 145.31, 145.40—145.43, 145.50—145.57, 145.60—145.62 and 145.70—145.76.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.82. NO_x authorized account representative for opt-in sources.

A unit for which an application for a NO_x budget opt-in approval is submitted, or a NO_x budget opt-in unit, located at the same source as one or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.83. Applying for a NO_x budget opt-in approval.

To apply for a NO_x budget opt-in approval, the NO_x authorized account representative of a unit qualified under § 145.80 (relating to applicability for opt-in sources) may submit the following to the Department at any time, except as provided under § 145.86(g) (relating to opt-in source withdrawal from NO_x budget trading program):

- (1) A complete NO_x budget opt-in approval application containing the following:
 - (i) Identification of the source, including plant name and the Office of Regulatory Information Systems or facility code assigned to the source by the Energy Information Administration, if applicable.
 - (ii) Identification of each opt-in unit at the source.
 - (iii) The standard requirements under § 145.6 (relating to standard requirements).
 - (iv) The following certification statements by the NO_x authorized account representative:

(A) “I certify that each unit for which this application is submitted under §§ 145.80—145.88 is not a NO_x budget unit under § 145.4 and is not covered by a retired unit exemption under § 145.5 that is in effect.”

(B) If the application is for an initial NO_x budget opt-in approval, “I certify that each unit for which this approval application is submitted under §§ 145.80—145.88 is currently operating, as that term is defined under § 145.2.”

(2) A monitoring plan submitted in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements).

(3) A complete account certificate of representation under § 145.13 (relating to account certificate of representation), if no NO_x authorized account representative has been previously designated for the unit.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); 25 Pa. Code § 145.84 (relating to opt-in process); 25 Pa. Code § 145.85 (relating to NO_x budget opt-in application contents); 25 Pa. Code § 145.86 (relating to opt-in source withdrawal from NO_x Budget Trading Program); and 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status).

§ 145.84. Opt-in process.

The Department will issue or deny a NO_x budget opt-in approval for a unit for which an application for a NO_x budget opt-in approval under § 145.83 (relating to applying for a NO_x budget opt-in approval) is submitted, in accordance with the following:

(1) *Interim review of monitoring plan.* The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in approval under § 145.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input rate of the unit are monitored and reported in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements). A determination of sufficiency will not be construed as acceptance or approval of the unit’s monitoring plan.

(2) *Plan sufficiency.* If the Department determines that the unit’s monitoring plan is sufficient under paragraph (1) and after completion of monitoring system certification under §§ 145.70—145.76, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with §§ 145.70—145.76 for one full control period during which monitoring system availability is not less than 90% and during which the unit is in compliance

with applicable State or Federal NO_x emissions or emissions-related requirements. Solely for purposes of applying this requirement, the unit shall be treated as a NO_x budget unit prior to issuance of a NO_x budget opt-in approval covering the unit.

(3) *Base line heat rate.* Based on the information monitored and reported under paragraph (2), the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions (in pounds) for the control period divided by the unit's baseline heat input.

(4) *Proposed approval.* After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraph (3), the Department will propose approval of the application.

(5) *Issuance of NO_x budget opt-in approval.* The Department will issue the NO_x budget opt-in approval if the unit meets the requirements of this subchapter.

(6) *Nonqualification of unit.* Notwithstanding paragraphs (1)—(5), if at any time before issuance of a NO_x budget opt-in approval for the unit, the Department determines that the unit does not qualify as a NO_x budget opt-in source under § 145.80 (relating to applicability for opt-in sources), the Department will issue a denial of a NO_x budget opt-in approval for the unit.

(7) *Withdrawal of application for a NO_x budget opt-in approval.* A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in approval under § 145.83 at any time prior to the issuance of the final NO_x budget opt-in approval. Once the application for a NO_x budget opt-in approval is withdrawn, a NO_x authorized account representative wanting to reapply shall submit a new application for a NO_x budget opt-in approval under § 145.83.

(8) *Effective date.* The effective date of the initial NO_x budget opt-in approval is May 1 of the first control period starting after the issuance of the initial NO_x budget opt-in approval by the Department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in approval.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status); and 25 Pa. Code § 145.88 (relating to NO_x allowance allocations to opt-in units).

§ 145.85. NO_x budget opt-in application contents.

(a) Each NO_x budget opt-in approval will contain all elements required for a complete NO_x budget opt-in approval application under § 145.83 (relating to applying for a NO_x budget opt-in approval).

(b) Each NO_x budget opt-in approval shall incorporate the requirements of this subchapter.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.86. Opt-in source withdrawal from NO_x Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x budget 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 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NO_x budget opt-in source covered by a request under subsection (a) may withdraw from the NO_x Budget Trading Program and the NO_x budget opt-in approval may be terminated under subsection (e), the following conditions shall be met:

(1) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative shall submit or shall have submitted to the Department an annual compliance certification report in accordance with § 145.30 (relating to compliance certification report).

(2) If the NO_x budget opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the NO_x Budget Administrator will deduct or have deducted from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in unit is located, the full amount required under § 145.54(d) (relating to compliance) for the control period.

(3) After the requirements for withdrawal under paragraphs (1) and (2) are met, the NO_x Budget Administrator will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under § 145.88 (relating to NO_x allowance allocations to opt-in units) for any control period for which the withdrawal is to be effective. The NO_x Budget Administrator will close the NO_x budget opt-in unit's

compliance account and transfer any remaining allowances to a new general account specified by the owners and operators of the NO_x budget opt-in unit.

(c) *Withdrawal from program.* A NO_x budget opt-in unit that withdraws from the NO_x Budget Trading Program shall comply with the requirements under the NO_x Budget Trading Program concerning all years for which the NO_x budget opt-in unit was a NO_x budget opt-in unit, even if the requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.*

(1) After the requirements for withdrawal under subsections (a) and (b) are met (including deduction of the full amount of NO_x allowances required), the Department will issue a notification to the NO_x authorized account representative of the NO_x budget opt-in unit of the acceptance of the withdrawal of the NO_x budget opt-in unit as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under subsections (a) and (b) are not met, the Department will issue a notification to the NO_x authorized account representative of the NO_x budget opt-in unit that the NO_x budget opt-in unit's request to withdraw is denied. If the NO_x budget opt-in unit's request to withdraw is denied, the NO_x budget opt-in unit shall remain subject to the requirements for a NO_x budget opt-in unit.

(e) *Approval amendment.* After the Department issues a notification under subsection (d)(1) that the requirements for withdrawal have been met, the Department will revise the NO_x budget opt-in approval covering the NO_x budget opt-in unit to terminate the NO_x budget opt-in approval as of the effective date specified under subsection (d)(1). A NO_x budget opt-in unit shall continue to be a NO_x budget opt-in unit until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the Department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subsections (a) and (b).

(g) *Ability to return to the NO_x Budget Trading Program.* Once a NO_x budget opt-in unit withdraws from the NO_x Budget Trading Program and its NO_x budget opt-in approval is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in approval under § 145.83 (relating to applying for a NO_x budget opt-in approval) for the unit prior to the date that is 4 years after the date on which the terminated NO_x budget opt-in approval became effective.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general

monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.87. Opt-in unit change in regulatory status.

(a) *Notification.* When a NO_x budget opt-in unit becomes a NO_x budget unit under § 145.4(a) (relating to applicability), the NO_x authorized account representative shall notify in writing the Department and the Administrator of the change in the NO_x budget opt-in unit's regulatory status, within 30 days of the change.

(b) *Department's and NO_x Budget Administrator's action.*

(1) *Units with active applications.*

(i) *Revision of approval.* When the NO_x budget opt-in unit becomes a NO_x budget unit under § 145.4(a), the Department will revise the NO_x budget opt-in unit's NO_x budget opt-in approval to meet the requirements of this subchapter as of an effective date that is the date on which the NO_x budget opt-in unit becomes a NO_x budget unit under § 145.4(a).

(ii) *Compliance account.*

(A) The NO_x Budget Administrator will deduct from the compliance account for the NO_x budget unit under subparagraph (i), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as the following:

(I) NO_x allowances allocated to the NO_x budget unit (as a NO_x budget opt-in unit) under § 145.88 (relating to NO_x allowance allocations to opt-in units) for any control period after the last control period during which the unit's NO_x budget opt-in approval was effective.

(II) If the effective date of the NO_x budget approval revision under subparagraph (i) is during a control period, the NO_x allowances allocated to the NO_x budget unit (as a NO_x budget opt-in unit) under § 145.88 for the control period multiplied by the number of days, in the control period, starting with the effective date of the approval revision under subparagraph (i), divided by the total number of days in the control period and rounded to the nearest whole number of NO_x allowances as appropriate.

(B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subparagraph (i), or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under clause (A). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget 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) *Allocations.*

(A) For every control period during which the NO_x budget approval revised under subparagraph (i) is effective, the NO_x budget unit under subparagraph (i) will be treated, solely for purposes of NO_x allowance allocations under § 145.42 (relating to NO_x allowance allocations), as a unit that commenced operation on the effective date of the NO_x budget approval revision under subparagraph (i) and will be allocated NO_x allowances under § 145.42. The unit's deadline under § 145.84(b) (relating to opt-in process) for meeting monitoring requirements in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements) will not be changed by the change in the unit's regulatory status or by the revision of the NO_x budget approval under subparagraph (i).

(B) Notwithstanding clause (A), if the effective date of the NO_x budget approval revision under subparagraph (i) is during a control period, the following number of NO_x allowances will be allocated to the NO_x budget unit under subparagraph (i) under § 145.42 for the control period: the number of NO_x allowances otherwise allocated to the NO_x budget unit under § 145.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the approval revision under subparagraph (i), divided by the total number of days in the control period, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) *Units with expired approvals.*

(i) When the NO_x authorized account representative of a NO_x budget opt-in unit does not renew its NO_x budget opt-in approval under § 145.83 (relating to applying for a NO_x opt-in approval), the NO_x Budget Administrator will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x budget opt-in unit under § 145.88 for any control period after the last control period for which the NO_x budget opt-in approval is effective. The NO_x authorized account representative shall ensure that the NO_x budget opt-in unit's compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in unit is located includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the NO_x Budget 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.

(ii) After the deduction under subparagraph (i) is completed, the NO_x Budget Administrator will close the NO_x budget opt-in unit's compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under § 145.54 (relating to

compliance), the NO_x Budget Administrator will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining allowances to a general account specified by the owners and operators of the NO_x budget opt-in unit.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); and 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval).

§ 145.88. NO_x allowance allocations to opt-in units.

(a) *NO_x allowance allocation.*

(1) By April 1 immediately before the first control period for which the NO_x budget opt-in approval is effective, the Department will allocate NO_x allowances to the NO_x budget opt-in unit and submit to the NO_x Allowance Tracking System the allocation for the control period in accordance with subsection (b).

(2) By no later than April 1, after the first control period for which the NO_x budget opt-in approval is in effect, and April 1 of each year thereafter, the Department will allocate NO_x allowances to the NO_x budget opt-in unit, and submit to the NO_x Allowance Tracking System allocations for the next control period, in accordance with subsection (b).

(3) The Department will publish in the *Pennsylvania Bulletin* each determination of NO_x allowance allocations under paragraphs (1) and (2) and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with subsection (b). Based on objections, the Department will adjust each determination to the extent necessary to ensure that it is in accordance with subsection (b).

(b) *Allocation procedures.* For each control period for which the NO_x budget opt-in unit has an approved NO_x budget opt-in approval, the NO_x budget opt-in unit will be allocated NO_x allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of one of the following:

(i) The NO_x budget opt-in unit's baseline heat input determined under § 145.84(c) (relating to opt-in process).

(ii) The NO_x budget opt-in unit's heat input, as determined in accordance with §§ 145.70—145.76 (relating to recordkeeping and reporting requirements), for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

(2) The Department will allocate NO_x allowances to the NO_x budget opt-in unit in an amount equaling the heat input (in mmBtu) determined under paragraph (1) multiplied by the lesser of one of the following:

(i) The NO_x budget opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 145.84(c) divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x budget opt-in unit during the control period divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

Cross References

This section cited in 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 129.202 (relating to stationary combustion turbines); 25 Pa. Code § 145.2 (relating to definitions); 25 Pa. Code § 145.4 (relating to applicability); 25 Pa. Code § 145.5 (relating to retired unit exemption); 25 Pa. Code § 145.50 (relating to NO_x Allowance Tracking System accounts); 25 Pa. Code § 145.53 (relating to recordation of NO_x allowance allocations); 25 Pa. Code § 145.54 (relating to compliance); 25 Pa. Code § 145.55 (relating to banking); 25 Pa. Code § 145.70 (relating to general monitoring requirements); 25 Pa. Code § 145.80 (relating to applicability for opt-in sources); 25 Pa. Code § 145.83 (relating to applying for a NO_x budget opt-in approval); 25 Pa. Code § 145.86 (relating to opt-in source withdrawal from NO_x Budget Trading Program); and 25 Pa. Code § 145.87 (relating to opt-in unit change in regulatory status).

EMISSION REDUCTION CREDIT PROVISIONS

§ 145.90. Emission reduction credit provisions.

(a) NO_x budget units may create, transfer and use emission reduction credits (ERCs) in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) and this section. ERCs may not be used to satisfy NO_x allowance requirements.

(b) A NO_x budget unit may transfer NO_x ERCs to a NO_x budget unit if the new or modified NO_x budget unit's ozone season (May 1 through September 30) allowable emissions do not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(c) A NO_x budget unit may transfer NO_x ERCs to a non-NO_x budget unit under the following conditions:

(1) The non-NO_x budget unit's ozone season (May 1—September 30) allowable emissions may not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(2) The NO_x allowance tracking system account for NO_x budget units which generated ERCs transferred to non-NO_x budget units, including prior to the date of publication in the *Pennsylvania Bulletin*, shall have a corresponding number of NO_x allowances retired that reflect the transfer of emissions regulated under this subchapter to the non-NO_x budget units. The amount of annual NO_x allowances deducted shall be equivalent to that portion of the non-NO_x

budget unit's NO_x control period allowable emissions which were provided for by the NO_x ERCs from the NO_x budget unit.

(3) Allocations for NO_x allowance control periods following 2002 to the NO_x ERC generating source may not include the allowances identified in paragraph (2).

Cross References

This section cited in 25 Pa. Code § 145.40 (relating to State Trading Program budget).

INTERSTATE POLLUTION TRANSPORT REDUCTION REQUIREMENTS

§ 145.100. Applicability to upwind states.

(a) This subchapter applies to NO_x budget units located in the States of Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York or North Carolina or located in Washington, D.C.

(b) The NO_x trading program budget for each state for a control period will equal the total number of tons of NO_x emissions apportioned to the NO_x budget units in each state as follows:

<i>State</i>	<i>Electric Generating Units</i>	<i>Nonelectric Generating Units</i>
Ohio	45,432	4,103
West Virginia	26,859	2,184
Virginia	17,091	4,104
Maryland	14,519	1,013
Delaware	4,306	232
Washington, D.C.	207	26
North Carolina	31,212	2,329
New Jersey	9,716	4,838
New York	16,081	156

(c) The compliance supplement pool for each state is:

<i>State</i>	<i>Allowance</i>
Ohio	22,301
West Virginia	16,709
Virginia	5,504

<i>State</i>	<i>Allowance</i>
Maryland	3,882
Delaware	168
New Jersey	1,550
New York	1,379
North Carolina	10,737
Washington, D.C.	0

(d) Any provision to the contrary notwithstanding, this section is not applicable if one of the following applies:

(1) NO_x budget units in the state or Washington, D.C. are required to comply with an emission limitation established by the EPA under section 126 of the CAA (42 U.S.C.A. § 7416).

(2) The state or Washington, D.C. submits a state implementation plan that the EPA expressly determines meets the requirements of section 110(a)(2)(D)(i)(I) of the CAA (42 U.S.C.A. § 7410(a)(2)(D)(i)(I)).

(3) The EPA promulgates a Federal implementation plan for the state or Washington, D.C. to expressly meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA.

Cross References

This section cited in 25 Pa. Code § 145.43 (relating to compliance supplement pool).

Subchapter B. EMISSIONS OF NO_x FROM STATIONARY INTERNAL COMBUSTION ENGINES

- Sec.
145.111. Applicability.
145.112. Definitions.
145.113. Standard requirements.

Authority

The provisions of this Subchapter B issued under section 5 of the Air Pollution Control Act (35 P. S. § 4005), unless otherwise noted.

Source

The provisions of this Subchapter B adopted December 10, 2004, effective December 11, 2004, 34 Pa.B. 6509, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 129.203 (relating to stationary internal combustion engines).

§ 145.111. Applicability.

(a) An owner or operator of an engine described in subsection (c) that emitted 153 tons or more of NO_x from May 1 through September 30 in any year from 1995 through 2004 shall comply with this subchapter by May 1, 2005, and each year thereafter.

(b) An owner or operator of an engine described in subsection (c) that emits 153 tons or more of NO_x from May 1 through September 30 in any year after 2004 shall comply with this subchapter by May 1 of the following calendar year and each year thereafter.

(c) Subsections (a) and (b) apply to the following engines:

(1) A rich burn or lean burn stationary internal combustion engine with an engine rating equal to or greater than 2,400 brake horsepower.

(2) A diesel stationary internal combustion engine with an engine rating equal to or greater than 3,000 brake horsepower.

(3) A dual-fuel stationary internal combustion engine with an engine rating equal to or greater than 4,400 brake horsepower.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 145.113 (relating to standard requirements).

§ 145.112. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CEMS—Continuous Emission Monitoring System—The equipment required under this subchapter or Chapter 139 (relating to sampling and testing) to sample, analyze, measure and provide, by readings taken at least every 15 minutes of the measured parameters, a permanent record of NO_x emissions.

Diesel stationary internal combustion engine—A compression-ignited two- or four-stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

Dual-fuel stationary internal combustion engine—A compression-ignited stationary internal combustion engine that is burning liquid fuel and gaseous fuel simultaneously.

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.

Lean-burn stationary internal combustion engine—Any two- or four-stroke spark-ignited engine that is not a rich-burn stationary internal combustion engine.

Rich-burn stationary internal combustion engine—A two- or four-stroke spark-ignited engine where the manufacturer's original recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio is less than or equal to 1.1.

Stationary internal combustion engine—For the purposes of this subchapter, an internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and is not a mobile air contamination source.

Stoichiometric air/fuel ratio—The air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

Unit—An engine subject to this subchapter.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

§ 145.113. Standard requirements.

(a) The owner or operator of a unit subject to this subchapter shall calculate the difference between the unit's actual emissions from May 1 through September 30 and the allowable emissions for that period by the following dates:

(1) For a unit described in § 145.111(a) (relating to applicability), by October 31, 2005, and each year thereafter.

(2) For a unit described in § 145.111(b), by October 31 of the calendar year following the year that this subchapter becomes applicable to the unit and each year thereafter.

(b) The owner or operator shall calculate allowable emissions by multiplying the unit's cumulative hours of operation for the period by the unit's horsepower rating and the unit's applicable emission rate set forth in paragraph (1), (2) or (3).

(1) The emission rate for a rich burn stationary internal combustion engine with an engine rating equal to or greater than 2,400 brake horsepower shall be 1.5 grams per brake horsepower-hour.

(2) The emission rate for a lean burn stationary internal combustion engine with an engine rating equal to or greater than 2,400 brake horsepower shall be 3.0 grams per brake horsepower-hour.

(3) The emission rate for a diesel stationary internal combustion engine with an engine rating equal to or greater than 3,000 brake horsepower, or a

dual-fuel stationary internal combustion engine with an engine rating equal to or greater than 4,400 brake horsepower shall be 2.3 grams per brake horsepower-hour.

(c) The owner or operator shall determine actual emissions by using one of the following:

(1) If the owner or operator of the unit is required to monitor NO_x emissions with a CEMS operated and maintained in accordance with a permit or State or Federal regulation, data reported to the Department to comply with the monitoring and reporting requirements of this article. Any data invalidated under Chapter 139 (relating to sampling and testing) shall be substituted with data calculated using the potential emission rate for the unit or, if approved by the Department in writing, an alternative amount of emissions that is more representative of actual emissions that occurred during the period of invalid data.

(2) If the owner or operator of the unit is not required to monitor NO_x emissions with a CEMS, one of the following shall be used to determine actual emissions of NO_x:

(i) CEMS data, if the owner or operator elects to monitor NO_x emissions with a CEMS. The owner or operator shall monitor emissions and report the data from the CEMS in accordance with Chapter 139 or Chapter 145 (relating to interstate pollution transport reduction). Any data invalidated under Chapter 139 shall be substituted with data calculated using the potential emission rate for the unit or, if approved by the Department in writing, an alternative amount of emissions that is more representative of actual emissions that occurred during the period of invalid data.

(ii) An alternate calculation and recordkeeping procedure based upon emissions testing and correlations with operating parameters. The operator of the unit shall demonstrate that the alternate procedure does not underestimate actual emissions throughout the allowable range of operating conditions. The alternate calculation and recordkeeping procedures must be approved by the Department, in writing, prior to implementation.

(iii) The average emission rate calculated from test data from NO_x emission tests conducted from May 1 through September 30 of that year. The emissions tests must be conducted in accordance with the permit emission limit compliance monitoring procedures. Tests must be conducted at least once every 735 hours of operation. The Department may reduce the frequency of the emission testing for a unit based on the consistency of the data gathered from the testing. At least one test is required during the period of May 1 through September 30.

(d) The owner or operator of a unit subject to this section shall surrender to the Department one CAIR NO_x allowance and one CAIR NO_x Ozone Season allowance, as defined in 40 CFR 96.102 and 96.302 (relating to definitions), for

each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the units subject to this section at a facility from May 1 through September 30. The surrendered allowances shall be of current year vintage. For the purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

(e) If the combined allowable emissions from units subject to this subchapter at a facility from May 1 through September 30 exceed the combined actual emissions from units subject to this subchapter at the facility during the same period, the owner or operator may deduct the difference or any portion of it from the amount of actual emissions from units subject to this subchapter at the owner or operator's other facilities located in this Commonwealth for that same period.

(f) By November 1 of each year, an owner or operator of a unit subject to this subchapter shall surrender the required NO_x allowances to the Department's designated NO_x allowance tracking system account, as defined in § 121.1 (relating to definitions), and shall provide in writing to the Department the following:

- (1) The serial number of each NO_x allowance surrendered.
- (2) The calculations used to determine the quantity of NO_x allowances required to be surrendered.

(g) If an owner or operator fails to comply with subsection (f), the owner or operator shall by December 31 surrender three NO_x allowances of the current or later year vintage for each NO_x allowance that was required to be surrendered by November 1.

(h) The surrender of NO_x allowances under subsection (g) does not affect the liability of the owner or operator of units for any fine, penalty or assessment, or other obligation to comply with any other remedy for the same violation, under the CAA or the act.

(1) For purposes of determining the number of days of violation, if a facility has excess emissions for the period May 1 through September 30, each day in that period (153 days) constitutes a day in violation unless the owner or operator of the unit demonstrates that a lesser number of days should be considered.

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

Authority

The provisions of this § 145.113 amended under section 5 of the Air Pollution Control Act (35 P.S. § 4005).

Source

The provisions of this § 145.113 amended April 11, 2008, effective April 12, 2008, 38 Pa.B. 1705. Immediately preceding text appears at serial pages (308570) to (308572).

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

**Subchapter C. EMISSIONS OF NO_x FROM
CEMENT MANUFACTURING**

- Sec.
145.141. Applicability.
145.142. Definitions.
145.143. Standard requirements.
145.144. Compliance determination.
145.145. Compliance demonstration and reporting requirements.
145.146. Recordkeeping.

Authority

The provisions of this Subchapter C issued under section 5 of the Air Pollution Control Act (35 P.S. § 4005), unless otherwise noted.

Source

The provisions of this Subchapter C adopted December 10, 2004, effective December 11, 2004, 34 Pa.B. 6509, unless otherwise noted.

§ 145.141. Applicability.

Beginning May 1, 2005, an owner or operator of a Portland cement kiln shall comply with this subchapter.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

§ 145.142. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CEMS—Continuous Emission Monitoring System—The equipment required under this subchapter or Chapter 139 (relating to sampling and testing) to sample, analyze, measure and provide, by readings taken at least every 15 minutes of the measured parameters, a permanent record of NO_x emissions.

Calcine—To heat a substance to a high temperature, but below its melting or fusing point, to bring about thermal decomposition or a phase transition in its physical or chemical constitution.

Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

Long dry-process cement kiln—A Portland cement kiln that employs no pre-heating of the feed. The inlet feed to the kiln is dry.

Long wet-process cement kiln—A Portland cement kiln that employs no pre-heating of the feed. The inlet feed to the kiln is a slurry.

Portland cement—A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

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.

Precalciner cement kiln—A Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers and a second burner is used to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

Preheater cement kiln—A Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

System-wide—Two or more Portland cement kilns under the common control of the same owner or operator, or multiple owners, in this Commonwealth.

Authority

The provisions of this § 145.142 amended under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)).

Source

The provisions of this § 145.142 amended June 18, 2010, effective June 19, 2010, 40 Pa.B. 3346. Immediately preceding text appears at serial page (333589).

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

§ 145.143. Standard requirements.

(a) By October 31, 2005, and each year thereafter, the owner or operator of a Portland cement kiln shall calculate the difference between the actual emissions from the unit during the period from May 1 through September 30 and the allowable emissions for that period.

(b) The owner or operator of a Portland cement kiln may not operate a Portland cement kiln in a manner that results in NO_x emissions in excess of its allowable emissions, except as otherwise specified in this section.

(1) Beginning May 1 through September 30, 2005, and each year thereafter, the owner or operator shall determine allowable emissions by multiplying the tons of clinker produced by the Portland cement kiln for the period by 6 pounds per ton of clinker produced.

(2) Beginning May 1 through September 30, 2011, and each year thereafter, the owner or operator of a Portland cement kiln shall determine allowable emissions of NO_x by multiplying the tons of clinker produced by the Portland cement kiln for the period by:

(i) 3.88 pounds of NO_x per ton of clinker produced for long wet-process cement kilns.

(ii) 3.44 pounds of NO_x per ton of clinker produced for long dry-process cement kilns.

(iii) 2.36 pounds of NO_x per ton of clinker produced for:

(A) Preheater cement kilns.

(B) Precalciner cement kilns.

(c) The owner or operator of a Portland cement kiln subject to subsection (b)(1) shall install and operate a CEMS, and shall report CEMS emissions data, in accordance with the CEMS requirements of either Chapter 139 or 145 (relating to sampling and testing; and interstate pollution transport reduction) and calculate actual emissions using the CEMS data reported to the Department. Any data invalidated under Chapter 139 shall be substituted with data calculated using the potential emission rate for the unit or, if approved by the Department in writing, an alternative amount of emissions that is more representative of actual emissions that occurred during the period of invalid data.

(d) The owner or operator of a Portland cement kiln subject to this section shall surrender to the Department one CAIR NO_x allowance and one CAIR NO_x Ozone Season allowance, as defined in 40 CFR 96.102 and 96.302 (relating to definitions), for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the Portland cement kilns subject to this section at a facility from May 1 through September 30. The surrendered allowances shall be of current year vintage. For the purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

(e) If the combined allowable emissions from Portland cement kilns at a facility from May 1 through September 30 exceed the combined actual emissions from Portland cement kilns subject to this section at the facility during the same period, the owner or operator may deduct the difference or any portion of the difference from the amount of actual emissions from Portland cement kilns at the owner or operator's other facilities located in this Commonwealth for that period.

(f) By November 1, 2005, and each year thereafter, an owner or operator subject to this subchapter shall surrender the required NO_x allowances to the Department's designated NO_x allowance tracking system account, as defined in § 121.1 (relating to definitions), and shall provide in writing to the Department, the following:

(1) The serial number of each NO_x allowance surrendered.

(2) The calculations used to determine the quantity of NO_x allowances required to be surrendered.

(g) If an owner or operator fails to comply with subsection (f), the owner or operator shall by December 31 surrender three NO_x allowances of the current or later year vintage for each NO_x allowance that was required to be surrendered by November 1.

(h) The surrender of NO_x allowances under subsection (g) does not affect the liability of the owner or operator of the Portland cement kiln for any fine, penalty or assessment, or an obligation to comply with any other remedy for the same violation, under the CAA or the act.

(1) For purposes of determining the number of days of violation, if a facility has excess emissions for the period May 1 through September 30, each day in that period (153 days) constitutes a day in violation unless the owner or operator of the Portland cement kiln demonstrates that a lesser number of days should be considered.

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

Authority

The provisions of this § 145.143 amended under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)).

Source

The provisions of this § 145.143 amended April 11, 2008, effective April 12, 2008, 38 Pa.B. 1705; amended June 18, 2010, effective June 19, 2010, 40 Pa.B. 3346. Immediately preceding text appears at serial pages (333589) to (333590).

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); 25 Pa. Code § 145.144 (relating to compliance determination); and 25 Pa. Code § 145.145 (relating to compliance demonstration and reporting requirements).

§ 145.144. Compliance determination.

(a) By April 15, 2011, the owner or operator of a Portland cement kiln subject to § 145.143(b)(2) (relating to standard requirements) shall:

(1) Install, operate and maintain CEMS for NO_x emissions.

(2) Report CEMS emissions data, in accordance with the CEMS requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources), to the Department.

(3) Calculate actual emissions using the CEMS data reported to the Department.

(b) If approved by the Department in writing, data invalidated under Chapter 139, Subchapter C, shall be substituted with one of the following:

(1) The highest valid 1-hour emission value that occurred under similar source operating conditions during the reporting quarter for an invalid data period during that quarter.

(2) If no valid data were collected during the reporting quarter, one of the following shall be reported to the Department:

(i) The highest valid 1-hour emission value that occurred under similar source operating conditions during the most recent quarter for which valid data were collected.

(ii) The highest valid 1-hour emission value that occurred under similar source operating conditions during an alternative reporting period.

(3) An alternative method of data substitution.

(c) The owner or operator of a Portland cement kiln subject to this section shall submit to the Department quarterly reports of CEMS monitoring data in pounds of NO_x emitted per hour, in a format approved by the Department, which is in compliance with Chapter 139, Subchapter C.

(d) The CEMS for NO_x installed under the requirements of this section must meet the minimum data availability requirements in Chapter 139, Subchapter C.

Authority

The provisions of this § 145.144 issued under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)).

Source

The provisions of this § 145.144 adopted June 18, 2010, effective June 19, 2010, 40 Pa.B. 3346.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

§ 145.145. Compliance demonstration and reporting requirements.

(a) By October 31, 2011, and each year thereafter, the owner or operator of a Portland cement kiln subject to § 145.143(b)(2) (relating to standard requirements) shall submit a written report to the Department, in a format approved by the Department, which includes the following:

(1) The difference between the actual NO_x emissions from the kiln during the interval from May 1 through September 30 and the allowable emissions for that period.

(2) The calculations used to determine the difference in emissions, including the CEMS data and clinker production data used to show compliance with the allowable emission limits in § 145.143(b)(2). The clinker production data must consist of the quantity of clinker, in tons, produced per day for each kiln.

(b) The owner or operator of a Portland cement kiln shall demonstrate compliance with the standard requirements in § 145.143(b)(2) on one of the following:

- (1) A kiln-by-kiln basis.
- (2) A facility-wide basis.

- (3) A system-wide basis.

Authority

The provisions of this § 145.145 issued under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)).

Source

The provisions of this § 145.145 adopted June 18, 2010, effective June 19, 2010, 40 Pa.B. 3346.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

§ 145.146. Recordkeeping.

(a) The owner or operator of a Portland cement kiln shall maintain an operating log for each Portland cement kiln. The operating log must include the following on a monthly basis:

- (1) The total hours of operation.
- (2) The type and quantity of fuel used.
- (3) The quantity of clinker produced.

(b) The records maintained by the owner or operator of a Portland cement kiln must include the following:

- (1) Source tests and operating parameters established during the initial source test and subsequent testing.
- (2) The date, time and duration of any start-up, shutdown or malfunction of a Portland cement kiln or emissions monitoring system.
- (3) The date and type of maintenance, repairs or replacements performed on the kilns, control devices and emission monitoring systems.

(c) The owner or operator of a Portland cement kiln shall maintain the records required under this section onsite for 5 years. The records shall be made available to the Department upon request.

Authority

The provisions of this § 145.146 issued under section 5(a)(1) of the Air Pollution Control Act (35 P.S. § 4005(a)(1)).

Source

The provisions of this § 145.146 adopted June 18, 2010, effective June 19, 2010, 40 Pa.B. 3346.

Cross References

This section cited in 25 Pa. Code § 129.97 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and 25 Pa. Code § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

Subchapter D. CAIR NO_x AND SO₂ TRADING PROGRAMS

GENERAL PROVISIONS

- 145.201. Purpose.
- 145.202. Definitions.
- 145.203. Applicability.
- 145.204. Incorporation of Federal regulations by reference.

**ADDITIONAL REQUIREMENTS FOR CHAPTER 127
EMISSION REDUCTION CREDIT PROVISIONS**

- 145.205. Emission reduction credit provisions.

**ADDITIONAL REQUIREMENTS FOR CAIR NO_x
ANNUAL TRADING PROGRAM**

- 145.211. Timing requirements for CAIR NO_x allowance allocations.
- 145.212. CAIR NO_x allowance allocations.
- 145.213. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170—96.175.

**ADDITIONAL REQUIREMENTS FOR CAIR NO_x
OZONE SEASON TRADING PROGRAM**

- 145.221. Timing requirements for CAIR NO_x Ozone Season allowance allocations.
- 145.222. CAIR NO_x Ozone Season allowance allocations.
- 145.223. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.

Authority

The provisions of this Subchapter D issued under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this Subchapter D adopted April 11, 2008, effective April 12, 2008, 38 Pa.B. 1705, unless otherwise noted.

Cross References

This Subchapter cited in 25 Pa. Code § 145.8 (relating to transition to CAIR NO_x trading program).

GENERAL PROVISIONS

§ 145.201. Purpose.

This subchapter incorporates by reference the CAIR NO_x Annual Trading Program and CAIR NO_x Ozone Season Trading Program as a means of mitigating the interstate transport of fine particulates and NO_x, and the CAIR SO₂ Trading Program as a means of mitigating the interstate transport of fine particulates and

SO₂. This subchapter also establishes general provisions and the applicability, allowance and supplemental monitoring, recordkeeping and reporting provisions.

§ 145.202. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Demand side management—The management of customer consumption of electricity or the demand for electricity through the implementation of any of the following:

(i) Energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce electricity consumption by those customers.

(ii) Load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.

(iii) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

Demand side management energy efficiency qualifying resource—A demand side management energy efficiency measure that has no associated NO_x emissions and that generates certified alternative energy credit.

EIA—The Energy Information Administration of the United States Department of Energy or its successor.

MWh-Megawatt-hour—One million watt-hours.

Pennsylvania Alternative Energy Portfolio Standard—An applicable standard promulgated under the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8).

Renewable energy—

(i) Renewable energy generated by one or more of the following fuels, energy resources or technologies, and that does not emit NO_x or SO₂:

(A) Solar photovoltaic or solar thermal energy.

(B) Wind energy.

(C) Fuel cells that do not employ a fuel processor that emits NO_x.

(D) Ocean thermal, wave or tidal energy.

(E) Low-impact hydro energy.

(F) Geothermal energy.

(ii) The term does not include energy generated from nuclear fuel, biomass, landfill gas, fuel cells that employ a fuel processor that emits NO_x, or hydro using pumped storage.

Renewable energy certificate—The tradable alternative energy credit instrument generated under, and used to establish, verify and monitor compliance

with, the Pennsylvania Alternative Energy Portfolio Standard. A unit of credit shall equal 1 megawatt-hour of electricity from an alternative energy source.

Renewable energy qualifying resource—A renewable energy measure that generates renewable energy certificates.

§ 145.203. Applicability.

This subchapter applies to CAIR NO_x units, CAIR NO_x Ozone Season units and CAIR SO₂ units.

§ 145.204. Incorporation of Federal regulations by reference.

(a) Except as otherwise specified in this subchapter, the provisions of the CAIR NO_x Annual Trading Program, found in 40 CFR Part 96 (relating to NO_x budget trading program and CAIR NO_x and SO₂ trading programs for State implementation plans), including all appendices, future amendments and supplements thereto, are incorporated by reference.

(b) Except as otherwise specified in this subchapter, the provisions of the CAIR SO₂ Trading Program, found in 40 CFR Part 96, including all appendices, future amendments and supplements thereto, are incorporated by reference.

(c) Except as otherwise specified in this subchapter, the provisions of the CAIR NO_x Ozone Season Trading Program, found in 40 CFR Part 96, including all appendices, future amendments and supplements thereto, are incorporated by reference.

(d) In the event of a conflict between Federal regulatory provisions incorporated by reference in this subchapter and Pennsylvania regulatory provisions, the provision expressly set out in this subchapter shall be followed unless the Federal provision is more stringent. Federal regulations that are cited in this subchapter or that are cross-referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

**ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION
REDUCTION CREDIT PROVISIONS**

§ 145.205. Emission reduction credit provisions.

The following conditions shall be satisfied in order for the Department to issue a permit or plan approval to the owner or operator of a unit not subject to this subchapter that is relying on emission reduction credits (ERCs) or creditable emission reductions in an applicability determination under Chapter 127, Subchapter E (relating to new source review), or is seeking to enter into an emissions trade authorized under Chapter 127 (relating to construction, modification, reactivation and operation of sources), if the ERCs or creditable emission reductions were, or will be, generated by a unit subject to this subchapter.

(1) Prior to issuing the permit or plan approval, the Department will permanently reduce the Commonwealth's CAIR NO_x trading budget or CAIR

NO_x Ozone Season trading budget, or both, as applicable, beginning with the sixth control period following the date the plan approval or permit to commence operations or increase emissions is issued. The Department will permanently reduce the applicable CAIR NO_x budgets by an amount of allowances equal to the ERCs or creditable emission reductions relied upon in the applicability determination for the non-CAIR unit subject to Chapter 127, Subchapter E or in the amount equal to the emissions trade authorized under Chapter 127, as if these emissions had already been emitted.

(2) The permit or plan approval must prohibit the owner or operator from commencing operation or increasing emissions until the owner or operator of the CAIR unit generating the ERC or creditable emission reduction surrenders to the Department an amount of allowances equal to the ERCs or emission reduction credits relied upon in the applicability determination for the non-CAIR unit under Chapter 127, Subchapter E or the amount equal to the ERC trade authorized under Chapter 127, for each of the five consecutive control periods following the date the non-CAIR unit commences operation or increases emissions. The allowances surrendered must be of present or past vintage years.

ADDITIONAL REQUIREMENTS FOR CAIR NO_x ANNUAL TRADING PROGRAM

§ 145.211. Timing requirements for CAIR NO_x allowance allocations.

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.141 (relating to timing requirements for CAIR NO_x allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.141, the requirements set forth in this section apply.

(b) *Regular allocations.* The Department will make regular allocations of CAIR NO_x allowances as follows:

(1) Except for allocations made under subsection (c), by April 30, 2008, the Department will submit to the Administrator the CAIR NO_x allowance allocations made in accordance with § 145.212 (relating to CAIR NO_x allowance allocations) for the control periods in 2010-2012 in a format prescribed by the Administrator.

(2) Except for allocations made under subsection (c), by April 30, 2009, the Department will submit to the Administrator the CAIR NO_x allowance allocations made in accordance with § 145.212 for the control period in 2013 in a format prescribed by the Administrator. By April 30 every year after 2009, the Department will submit the allocations for the next consecutive control period.

(3) The Department will reserve 1.3% of the CAIR NO_x Trading Budget for each annual control period for allocation to units as provided under § 145.212(f)(2).

(c) *New CAIR NO_x unit allowance allocations.* By April 30, 2011, and by April 30 every year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations made in accordance with § 145.212(e). The Department will base the allocations on actual emissions in the calendar year preceding the year of the submission.

(d) *Publication.* The Department will publish notice of the proposed CAIR NO_x allowance allocations in the *Pennsylvania Bulletin* and will publish the final allocations after a 15-day public comment period. The Department will include in the notice the name and telephone number of a person to contact for access to additional information. The Department will publish notice according to the following schedule:

(1) For allocations made under subsection (b)(1), by April 1, 2008.

(2) For allocations made under subsection (b)(2), by April 1, 2009, and by April 1 every year thereafter.

(3) For allocations made under subsection (c), by March 1 each year, beginning in 2011.

(e) *Order of budget allowance withdrawal.* The Department will issue CAIR NO_x allowances from the CAIR NO_x Trading Budget established in 40 CFR 96.140 (relating to State trading budgets) in the following order:

(1) To new units under § 145.212(e).

(2) To units under § 145.212(f)(2).

(3) To units under § 145.212(c).

Cross References

This section cited in 25 Pa. Code § 145.212 (relating to CAIR NO_x allowance allocations).

§ 145.212. CAIR NO_x allowance allocations.

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.142 (relating to CAIR NO_x allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.142, the requirements set forth in this section apply.

(b) *Baseline heat input.* Baseline heat input for each CAIR NO_x unit will be converted as follows:

(1) A unit's control period heat input and a unit's status as coal-fired or oil-fired for a calendar year under this paragraph will be determined in one of the following two ways:

(i) In accordance with 40 CFR Part 75 (relating to continuous emission monitoring), to the extent that the unit was otherwise subject to 40 CFR Part 75 for the year.

(ii) Based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(2) Except as provided in subparagraphs (iv) and (v), a unit's converted control period heat input for a calendar year shall be determined as follows:

(i) The control period gross electrical output of the generators served by the unit multiplied by 7,900 Btu/kWh if the unit is coal-fired for the year, and divided by 1,000,000 Btu/mmBtu.

(ii) The control period gross electrical output of the generators served by the unit multiplied by 6,675 Btu/kWh if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu.

(iii) If a generator is served by two or more units, the gross electrical output of the generator will be attributed to each unit in proportion to the share of the total control period heat input from each of the units for the year.

(iv) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the total heat energy (in Btus) of the steam produced by the boiler during the annual control period, divided by 0.8 and by 1,000,000 Btu/mmBtu.

(v) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the annual control period gross electrical output of the enclosed device comprising the compressor, combustor and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the annual control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(vi) Calculations will be based on the best output data available on or before January 31 of the year the allocations are published. If unit level electrical or steam output data are not available from EIA, or submitted by this date by the owner or operator of the CAIR NOx unit, then heat input data for the period multiplied by 0.25 and converted to MWh will be used to determine total output.

(c) *Existing unit, new unit and subsection (f)(1) qualifying resource allocation baseline.* For each control period beginning with January 1, 2010, and each year thereafter, the Department will allocate to qualifying resources and CAIR NOx units, including CAIR NOx units issued allowances under subsection (e), a total amount of CAIR NOx allowances equal to the number of CAIR NOx allowances remaining in the Commonwealth's CAIR NOx trading budget under 40 CFR 96.140 (relating to State trading budgets) for those control periods using summed baseline heat input data as determined under subsections (b) and (f)(1) from a baseline year that is 6 calendar years before the control period.

(d) *Proration of allowance allocations.* The Department will allocate CAIR NOx allowances to each existing CAIR NOx unit and qualifying resource in an amount determined by multiplying the amount of CAIR NOx allowances in the Commonwealth's CAIR NOx trading budget available for allocation under subsection (c) by the ratio of the baseline heat input of the existing CAIR NOx unit

or qualifying resource to the sum of the baseline heat input of existing CAIR NO_x units and of the qualifying resources, rounding to the nearest whole allowance as appropriate.

(e) *Allocations to new CAIR NO_x units.* By March 31, 2011, and March 31 each year thereafter, the Department will allocate CAIR NO_x allowances under § 145.211(c) (relating to timing requirements for CAIR NO_x allowance allocations) to CAIR NO_x units equal to the previous year's emissions at each unit, unless the unit has been issued allowances of the previous year's vintage in a regular allocation under § 145.211(b). The Department will allocate CAIR NO_x allowances under this subsection of a vintage year that is 5 years later than the year in which the emissions were generated. The number of CAIR NO_x allowances allocated may not exceed the actual emission of the year preceding the year in which the Department makes the allocation. The allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under another provision of this subchapter.

(f) *Allocations to qualifying resources and units exempted by section 405(g)(6)(a) of the Clean Air Act.* For each control period beginning with 2010 and thereafter, the Department will allocate CAIR NO_x allowances to qualifying resources under paragraph (1) in this Commonwealth that are not also allocated CAIR NO_x allowances under another provision of this subchapter and to existing units under paragraph (2) that were exempted at any time under section 405(g)(6)(a) of the Clean Air Act (42 U.S.C.A. § 7651d(g)(6)(A)), regarding phase II SO₂ requirements, and that commenced operation prior to January 1, 2000, but did not receive an allocation of SO₂ allowances under the EPA's Acid Rain Program, as follows:

(1) The Department will allocate CAIR NO_x allowances to a renewable energy qualifying resource or demand side management energy efficiency qualifying resource in accordance with subsections (c) and (d) upon receipt by the Department of an application, in writing, on or before June 30 of the year following the control period, except for vintage year 2011 and 2012 NO_x allowance allocations whose application deadline will be prescribed by the Department, meeting the requirements of this paragraph. The number of allowances allocated to the qualifying resource will be determined by converting the certified quantity of electric energy production, useful thermal energy, and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. Equivalent thermal energy is a unit's baseline heat input for allocation purposes. The conversion rate for converting electrical energy to equivalent thermal energy is 3,413 Btu/kWh. To receive allowances under this subsection, the qualifying resource must have commenced operation after January 1, 2005, must be located in this Commonwealth and may not be a CAIR NO_x unit. The following procedures apply:

(i) The owner of a qualifying renewable energy resource shall appoint a CAIR-authorized account representative and file a certificate of representation with the EPA and the Department.

(ii) The Department will transfer the allowances into an account designated by the owner's CAIR-authorized account representative of the qualifying resource, or into an account designated by an aggregator approved by the Pennsylvania Public Utility Commission or its designee.

(iii) The applicant shall provide the Department with the corresponding renewable energy certificate serial numbers.

(iv) At least one whole allowance must be generated per owner, operator or aggregator for an allowance to be issued.

(2) The Department will allocate CAIR NO_x allowances to the owner or operator of a CAIR SO₂ unit that commenced operation prior to January 1, 2000, that has not received an SO₂ allocation for that compliance period, as follows:

(i) By January 31, 2011, and each year thereafter, the owner or operator of a unit may apply, in writing, to the Department under this subsection to receive extra CAIR NO_x allowances.

(ii) The owner or operator may request under this subparagraph one CAIR NO_x allowance for every 8 tons of SO₂ emitted from a qualifying unit during the preceding control period. An owner or operator of a unit covered under this subparagraph that has opted into the Acid Rain Program may request one CAIR NO_x allowance for every 8 tons of SO₂ emissions that have not been covered by the SO₂ allowances received as a result of opting into the Acid Rain Program.

(iii) If the original CAIR NO_x allowance allocation for the unit for the control period exceeded the unit's actual emissions of NO_x for the control period, the owner or operator shall also deduct the excess CAIR NO_x allowances from the unit's request under subparagraph (ii). This amount is the unit's adjusted allocation and will be allocated unless the proration described in subparagraph (iv) applies.

(iv) The Department will make any necessary corrections and then sum the requests. If the total number of NO_x allowances requested by all qualified units under this paragraph, as adjusted by subparagraph (iii), is less than 1.3% of the Commonwealth's CAIR NO_x Trading Budget, the Department will allocate the corrected amounts. If the total number of NO_x allowances requested by all qualified units under this paragraph exceeds 1.3% of the Commonwealth's CAIR NO_x Trading Budget, the Department will prorate the allocations based upon the following equation:

$$A_A = [E_A \times (0.013 \times B_{NA})] / T_{RA}$$

where,

A_A is the unit's prorated allocation,

E_A is the adjusted allocation the unit may request under subparagraph (iii),

B_{NA} is the total number of CAIR NO_x allowances in the Commonwealth's CAIR NO_x trading budget,

T_{RA} is the total number of CAIR NO_x allowances requested by all units requesting allowances under this paragraph.

(3) The Department will review each CAIR NO_x allowance allocation request under this subsection and will allocate CAIR NO_x allowances for each control period under a request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of this section.

(ii) On or after January 1 of the year of allocation, the Department will determine the sum of the CAIR NO_x allowances requested.

(4) Up to 1.3% of the Commonwealth's CAIR NO_x trading budget is available for allocation in each allocation cycle from 2011-2016 to allocate 2010-2015 allowances for the purpose of offsetting SO₂ emissions from units described in paragraph (2). Beginning January 1, 2017, and for each allocation cycle thereafter, the units will no longer be allocated CAIR NO_x allowances under paragraph (2). Any allowances remaining after this allocation will be allocated to units under subsection (c) during the next allocation cycle.

(5) Notwithstanding the provisions of paragraphs (2)—(4), the Department may extend, terminate or otherwise modify the allocation of NO_x allowances made available under this subsection for units exempted under section 405(g)(6)(a) of the Clean Air Act after providing notice in the *Pennsylvania Bulletin* and at least a 30-day public comment period.

(g) The Department will correct any errors in allocations made by the Department and discovered after final allocations are made but before the next allocation cycle, in the subsequent allocation cycle using future allowances that have not yet been allocated.

Cross References

This section cited in 25 Pa. Code § 145.211 (relating to timing requirements for CAIR NO_x allowance allocations).

§ 145.213. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170—96.175.

(a) By January 1, 2009, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NO_x unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in

megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).

(b) By September 1, 2008, for a CAIR NO_x unit that is a cogeneration unit, and for a CAIR NO_x unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit, and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NO_x unit that produces useful thermal energy but uses an energy transfer medium other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.

(c) Beginning with 2009, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.

(d) The owner or operator of a CAIR NO_x unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NO_x unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NO_x unit shall provide the Department with a written copy of the monitoring plan by January 1, 2009, and thereafter within 3 calendar months of making updates to the plan.

(e) The owner or operator of a CAIR NO_x unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).

ADDITIONAL REQUIREMENTS FOR CAIR NO_x OZONE SEASON TRADING PROGRAM

§ 145.221. Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.341 (relating to timing requirements for CAIR NO_x Ozone Season allowance

allocations) are not incorporated by reference. Instead of 40 CFR 96.341, the requirements in this section apply.

(b) *Regular allocations.* The Department will make regular allocations of CAIR NO_x ozone season allowances as follows:

(1) Except for allocations made under subsection (c), by April 30, 2008, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222 (relating to CAIR NO_x Ozone Season allowance allocations) for the control periods in 2010-2012 in a format prescribed by the Administrator.

(2) Except for allocations made under subsection (c), by April 30, 2009, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222 for the control period in 2013 in a format prescribed by the Administrator. By April 30 every year after 2009, the Department will submit the allocations for the next consecutive control period.

(c) *New CAIR NO_x unit allowance allocations.* By April 30, 2011, and by April 30 every year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222(e). The Department will base the allocations on actual emissions in the ozone season in the calendar year preceding the year of the submission.

(d) *Publication.* The Department will publish notice of the proposed CAIR NO_x Ozone Season allowance allocations in the *Pennsylvania Bulletin* and will publish the final allocations after a 15-day public comment period. The Department will include in the notice the name and telephone number of a person to contact for access to additional information. The Department will publish notice according to the following schedule:

(1) For allocations made under subsection (b)(1), by April 1, 2008.

(2) For allocations made under subsection (b)(2), by April 1, 2009, and by April 1 every year thereafter.

(3) For allocations made under subsection (c), by March 1 each year, beginning in 2011.

(e) *Order of budget allowance withdrawal.* The Department will issue CAIR NO_x Ozone Season allowances from the CAIR NO_x Ozone Season trading budget established in 40 CFR 96.240 (relating to State trading budgets) in the following order:

(1) To new units under § 145.222(e).

(2) To units under § 145.222(c).

Cross References

This section cited in 25 Pa. Code § 145.8 (relating to transition to CAIR NO_x trading programs); and 25 Pa. Code § 145.222 (relating to CAIR NO_x Ozone Season allowance allocations).

§ 145.222. CAIR NO_x Ozone Season allowance allocations.

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.342 (relating to CAIR NO_x Ozone Season allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.342, the requirements in this section apply.

(b) *Baseline heat input.* Baseline heat input for each CAIR NO_x Ozone Season unit will be converted as follows:

(1) A unit's control period heat input and a unit's status as coal-fired or oil-fired for the ozone season portion of a calendar year under this paragraph will be determined in one of the following two ways:

(i) In accordance with 40 CFR Part 75 (relating to continuous emission monitoring), to the extent that the unit was otherwise subject to the requirements of 40 CFR Part 75 for the control period.

(ii) Based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(2) Except as provided in subparagraphs (iv) and (v), a unit's converted control period heat input for the ozone season portion of a calendar year shall be determined as follows:

(i) The control period gross electrical output of the generators served by the unit multiplied by 7,900 Btu/kWh if the unit is coal-fired for the ozone season control period, and divided by 1,000,000 Btu/mmBtu.

(ii) The control period gross electrical output of the generators served by the unit multiplied by 6,675 Btu/kWh if the unit is not coal-fired for the ozone season control period, and divided by 1,000,000 Btu/mmBtu.

(iii) If a generator is served by 2 or more units, the gross electrical output of the generator will be attributed to each unit in proportion to the share of the total control period heat input from each of the units for the ozone season control period.

(iv) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the total heat energy (in Btus) of the steam produced by the boiler during the ozone season control period, divided by 0.8 and by 1,000,000 Btu/mmBtu.

(v) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the ozone season control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(vi) Calculations will be based on the best output data available on or before January 31 of the year the allocations are published. If unit level electrical or steam output data are not available from EIA, or submitted by this date by the owner or operator of the CAIR NO_x Ozone Season unit, then heat input data for the period multiplied by 0.25 and converted to MWh will be used to determine total output.

(c) *Existing unit, new unit and subsection (f)(1) qualifying resource allocation baseline.* For each control period beginning with the 2010 control period and thereafter, the Department will allocate to qualifying resources and CAIR NO_x Ozone Season units, including CAIR NO_x Ozone Season units issued allowances under subsection (e), a total amount of CAIR NO_x Ozone Season allowances equal to the number of CAIR NO_x Ozone Season allowances remaining in the Commonwealth's CAIR NO_x Ozone Season trading budget under 40 CFR 96.140 (relating to State trading budgets) for those control periods using summed baseline heat input data as determined under subsections (b) and (f)(1) from an ozone season control period in a baseline year that is 6 calendar years before the control period.

(d) *Proration of allowance allocations.* The Department will allocate CAIR NO_x Ozone Season allowances to each existing CAIR NO_x Ozone Season unit and qualifying resource in an amount determined by multiplying the amount of CAIR NO_x Ozone Season allowances in the Commonwealth's CAIR NO_x Ozone Season trading budget available for allocation under subsection (c) by the ratio of the baseline heat input of the existing CAIR NO_x Ozone Season unit or qualifying resource to the sums of the baseline heat input of existing CAIR NO_x Ozone Season units and of the qualifying resources, rounding to the nearest whole allowance as appropriate.

(e) *Allocations to new CAIR NO_x Ozone Season units.* By March 31, 2011, and March 31 each year thereafter, the Department will allocate CAIR NO_x Ozone Season allowances under § 145.221(c) (relating to timing requirements for CAIR NO_x Ozone Season allowance allocations) to CAIR NO_x Ozone Season units equal to the previous year's emissions at each unit, unless the unit has been issued allowances of the previous year's vintage in a regular allocation under § 145.221(b). The Department will allocate CAIR NO_x allowances under this subsection of a vintage year that is 5 years later than the year in which the emissions were generated. The number of CAIR NO_x Ozone Season allowances allocated shall not exceed the actual emission of the year preceding the year in which the Department makes the allocation. The allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under another provision of this subchapter.

(f) *Allocations to qualifying resources.* For each control period beginning with the 2010 control period, and thereafter, the Department will allocate CAIR NO_x Ozone Season allowances to qualifying resources in this Commonwealth

that are not also allocated CAIR NO_x Ozone Season allowances under another provision of this subchapter, as follows:

(1) The Department will allocate CAIR NO_x Ozone Season allowances to a renewable energy qualifying resource or demand side management energy efficiency qualifying resource in accordance with subsections (c) and (d) upon receipt by the Department of an application, in writing, on or before June 30 of the year following the control period, except for vintage year 2011 and 2012 NO_x Ozone Season allowance allocations whose application deadline will be prescribed by the Department, meeting the requirements of this paragraph. The number of allowances allocated to the qualifying resource will be determined by converting the certified quantity of electric energy production, useful thermal energy, and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. Equivalent thermal energy is a unit's baseline heat input for allocation purposes. The conversion rate for converting electrical energy to equivalent thermal energy is 3,413 Btu/kWh. To receive allowances under this subsection, the qualifying resource must have commenced operation after January 1, 2005, must be located in this Commonwealth and may not be a CAIR NO_x Ozone Season unit. The following procedures apply:

(i) The owner of a qualifying renewable energy resource shall appoint a CAIR-authorized account representative and file a certificate of representation with the EPA and the Department.

(ii) The Department will transfer the allowances into an account designated by the owner's CAIR-authorized account representative of the qualifying resource, or into an account designated by an aggregator approved by the Pennsylvania Public Utility Commission or its designee.

(iii) The applicant shall provide the Department with the corresponding renewable energy certificate serial numbers.

(iv) At least one whole allowance must be generated per owner, operator or aggregator for an allowance to be issued.

(g) The Department will correct any errors in allocations made by the Department and discovered after final allocations are made but before the next allocation cycle, in the subsequent allocation cycle using future allowances that have not yet been allocated.

Cross References

This section cited in 25 Pa. Code § 145.221 (relating to timing requirements for CAIR NO_x Ozone Season allowance allocations).

§ 145.223. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.

(a) By January 1, 2009, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NO_x Ozone Season unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).

(b) By September 1, 2008, for a CAIR NO_x Ozone Season unit that is a cogeneration unit, and for a CAIR NO_x Ozone Season unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NO_x Ozone Season unit that produces useful thermal energy but uses an energy transfer medium other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.

(c) Beginning with 2009, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.

(d) The owner or operator of a CAIR NO_x Ozone Season unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NO_x Ozone Season unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NO_x Ozone Season unit shall provide the Department with a written copy of the monitoring plan by January 1, 2009, and thereafter within 3 calendar months of making updates to the plan.

(e) The owner or operator of a CAIR NO_x Ozone Season unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).

Subchapter E. CO₂ BUDGET TRADING PROGRAM**GENERAL PROVISIONS**

Sec.

- 145.301. Purpose.
- 145.302. Definitions.
- 145.303. Measurements, abbreviations and acronyms.
- 145.304. Applicability.
- 145.305. Limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions.
- 145.306. Standard requirements.
- 145.307. Computation of time.

**CO₂ AUTHORIZED ACCOUNT REPRESENTATIVE
FOR A CO₂ BUDGET SOURCE**

- 145.311. Authorization and responsibilities of the CO₂ authorized account representative.
- 145.312. CO₂ authorized alternate account representative.
- 145.313. Changing the CO₂ authorized account representative and the CO₂ authorized alternate account representative; changes in the owner or operator.
- 145.314. Account certificate of representation.
- 145.315. Objections concerning the CO₂ authorized account representative.
- 145.316. Delegation of authority to make electronic submissions and review information in COATS.

PERMITS

- 145.321. General requirements for a permit incorporating CO₂ Budget Trading Program requirements.
- 145.322. Submission of an application for a new, renewed or modified permit incorporating CO₂ Budget Trading Program requirements.
- 145.323. Contents of an application for a permit incorporating CO₂ Budget Trading Program requirements.

COMPLIANCE CERTIFICATION

- 145.331. Compliance certification report.
- 145.332. Department action on compliance certifications.

CO₂ ALLOWANCE ALLOCATIONS

- 145.341. Pennsylvania CO₂ Budget Trading Program base budget.
- 145.342. CO₂ allowance allocations.
- 145.343. Distribution of CO₂ allowances in the air pollution reduction account.

CO₂ ALLOWANCE TRACKING SYSTEM

- 145.351. CO₂ Allowance Tracking System (COATS) accounts.
- 145.352. Establishment of accounts.
- 145.353. COATS responsibilities of CO₂ authorized account representative and CO₂ authorized alternate account representative.
- 145.354. Recordation of CO₂ allowance allocations.
- 145.355. Compliance.
- 145.356. Banking.
- 145.357. Account error.
- 145.358. Closing of general accounts.

CO₂ ALLOWANCE TRANSFERS

- 145.361. Submission of CO₂ allowance transfers.
- 145.362. Recordation.
- 145.363. Notification.

**MONITORING, REPORTING AND RECORDKEEPING
REQUIREMENTS**

- 145.371. General monitoring requirements.
- 145.372. Initial certification and recertification procedures.
- 145.373. Out-of-control periods.
- 145.374. Notifications.
- 145.375. Recordkeeping and reporting.
- 145.376. Petitions.
- 145.377. CO₂ budget units that co-fire eligible biomass.

AUCTION OF CO₂ CCR AND ECR ALLOWANCES

- 145.381. Purpose.
- 145.382. General requirements.

CO₂ EMISSIONS OFFSET PROJECTS

- 145.391. Purpose.
- 145.392. Definitions.
- 145.393. General requirements.
- 145.394. Application process.
- 145.395. CO₂ emissions offset project standards.
- 145.396. Accreditation of independent verifiers.
- 145.397. Award and recordation of CO₂ offset allowances.

CO₂ ALLOWANCE AUCTIONS

- 145.401. Auction of CO₂ allowances.
- 145.402. Auction format.
- 145.403. Auction timing and CO₂ allowance submission schedule.
- 145.404. Auction notice.
- 145.405. Auction participant requirements.
- 145.406. Auction participant qualification.
- 145.407. Submission of financial security.
- 145.408. Bid submittal requirements.
- 145.409. Approval of auction results.

Authority

The provisions of this Subchapter E added under sections 5(a)(1) and 6.3(a) of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and 4006.3(a)), unless otherwise noted.

Source

The provisions of this Subchapter E added April 22, 2022, effective April 23, 2022, 52 Pa.B. 2471, unless otherwise noted.

GENERAL PROVISIONS**§ 145.301. Purpose.**

This subchapter establishes the Pennsylvania component of the CO₂ Budget Trading Program, which is designed to reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in a manner that is protective of public health, welfare and the environment.

§ 145.302. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Account number—The identification number given by the Department or its agent to each CO₂ Allowance Tracking System (COATS) account.

Acid rain emissions limitation—A limitation on emissions of sulfur dioxide or NO_x under the Acid Rain Program under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651—7651o).

Acid Rain Program—A multi-state sulfur dioxide and NO_x air pollution control and emission reduction program established by the Administrator under Title IV of the Clean Air Act and 40 CFR Parts 72—78.

Adjustment for banked allowances—An adjustment that may be applied to the Pennsylvania CO₂ Budget Trading Program base budget for an allocation year to address CO₂ allowances held in general and compliance accounts, including compliance accounts established under the CO₂ Budget Trading Pro-

gram, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO₂ budget sources in all of the participating states at the end of the control period immediately preceding the allocation year and as reflected in the CO₂ Allowance Tracking System on March 15 of the year following the control period.

Administrator—The Administrator of the EPA or the Administrator's authorized representative.

Agent—A qualified entity that may assist the Department with technical and administrative support functions in accordance with the requirements of this subchapter.

Air pollution reduction account—The general account established by the Department from which CO₂ allowances will be sold or distributed to provide funds for use in the elimination of air pollution in accordance with the act and Chapter 143 (relating to disbursements from the clean air fund) and the administration of the Pennsylvania component of the CO₂ Budget Trading Program.

Allocate or allocation—The determination by the Department of the number of CO₂ allowances to be recorded in the compliance account of a CO₂ budget source, the waste coal set-aside account, the strategic use set-aside account, the combined heat and power set-aside account, the air pollution reduction account, or the general account of the sponsor of an approved CO₂ emissions offset project.

Allocation year—A calendar year for which the Department allocates or awards CO₂ allowances under §§ 145.341 and 145.391—145.397 (relating to Pennsylvania CO₂ Budget Trading Program base budget; and CO₂ emissions offset projects). The allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance under § 145.354(c) (relating to recordation of CO₂ allowance allocations).

Allowance auction or auction—A bidding process in which the Department or its agent offers CO₂ allowances for sale.

Ascending price, multiple-round auction—A bidding process that starts with an opening price that increases each round by predetermined increments. In each round, a bidder offers the quantity of CO₂ allowances the bidder is willing to purchase at the posted price. Rounds continue as long as demand exceeds the quantity of CO₂ allowances offered for sale. At the completion of the final round, CO₂ allowances will be allocated by one of three methods:

- (i) At the final price to remaining bidders and unsold CO₂ allowances to be withheld for a future auction.
- (ii) At the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining CO₂ allowances.
- (iii) According to an alternative mechanism designed to effectuate the objectives of this subchapter.

Attribute—A characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for and tracked.

Attribute credit—A unit that represents the attributes related to 1 MW-hour of electricity generation.

Automated Data Acquisition and Handling System—The component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under § 145.371 (relating to general monitoring requirements), designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by § 145.371.

Award—The determination by the Department of the number of CO₂ offset allowances to be recorded in the general account of a project sponsor under § 145.397 (relating to award and recordation of CO₂ offset allowances). Award is a type of allocation.

Beneficial interest—A profit, benefit or advantage resulting from the ownership of a CO₂ allowance.

Bidder—A qualified participant who has met the requirements of §§ 145.405 and 145.406 (relating to auction participant requirements; and auction participant qualification) and has been determined by the Department to be eligible to participate in a specified CO₂ allowance auction under § 145.406.

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.

CEMS—continuous emissions monitoring system—The equipment required under § 145.371 to sample, analyze, measure and provide, by means of readings recorded at least once every 15 minutes, using an automated data acquisition and handling system, a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration, as applicable, in a manner consistent with 40 CFR Part 75 (relating to continuous emission monitoring) and § 145.371. The following systems are types of continuous emissions monitoring systems required under § 145.371:

(i) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour.

(ii) A nitrogen oxides emissions rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million, diluent gas concentration, in percent CO₂ or O₂; and NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu).

(iii) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) (relating to specific provisions for monitoring SO₂ emissions) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O.

(iv) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂.

(v) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

COATS—CO₂ allowance tracking system—

(i) A system by which the Department or its agent records allocations, deductions and transfers of CO₂ allowances under the CO₂ Budget Trading Program.

(ii) The system may also be used to track all of the following:

- (A) CO₂ emissions offset projects.
- (B) CO₂ allowance prices.
- (C) Emissions from affected sources.

*COATS account—*An account established by the Department or its agent for purposes of recording the allocation, holding, transferring or deducting of CO₂ allowances. The tracking system may also be used to track CO₂ offset allowances, CO₂ allowance prices and emissions from affected sources.

*CO₂ allowance—*A limited authorization by the Department or a participating state under the CO₂ Budget Trading Program to emit up to 1 ton of CO₂, subject to all applicable limitations contained in this subchapter.

*CO₂ allowance auction or auction—*The sale of CO₂ allowances through competitive bidding as administered in accordance with §§ 145.401—145.409 (relating to CO₂ allowance auctions).

*CO₂ allowance deduction or deduct CO₂ allowances—*The permanent withdrawal of CO₂ allowances by the Department or its agent from a COATS compliance account to account for one of the following:

(i) The number of tons of CO₂ emitted from a CO₂ budget source for a control period or an interim control period, determined in accordance with § 145.371.

(ii) The forfeit or retirement of CO₂ allowances as provided by this subchapter.

*CO₂ allowances held or hold CO₂ allowances—*The CO₂ allowances recorded by the Department or its agent or submitted to the Department or its agent for recordation, in accordance with §§ 145.351 and 145.361 (relating to CO₂ Allowance Tracking System (COATS) accounts; and submission of CO₂ allowance transfers), in a COATS account.

CO₂ allowance price—The price for CO₂ allowances in the CO₂ Budget Trading Program for a particular time period as determined by the Department, calculated based on a volume-weighted average of transaction prices reported to the Department, and taking into account prices as reported publicly through reputable sources.

CO₂ allowance transfer deadline—Midnight of the March 1 occurring after the end of the relevant control period and each relevant interim control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO₂ allowances must be submitted for recordation in a CO₂ budget source's compliance account in order for the source to meet the CO₂ requirements of § 145.306(c) (relating to standard requirements) for the control period and each interim control period immediately preceding the deadline.

CO₂ authorized account representative—

(i) For a CO₂ budget source and each CO₂ budget unit at the source, the person who is authorized by the owner or operator of the source and all CO₂ budget units at the source, in accordance with § 145.311 (relating to authorization and responsibilities of the CO₂ authorized account representative), to represent and legally bind each owner and operator in matters pertaining to the CO₂ Budget Trading Program.

(ii) For a general account, the person who is authorized under §§ 145.351—145.358 (relating to CO₂ allowance tracking system) to transfer or otherwise dispose of CO₂ allowances held in the general account.

CO₂ authorized alternate account representative—

(i) For a CO₂ budget source and each CO₂ budget unit at the source, the alternate person who is authorized by the owner or operator of the source and all CO₂ budget units at the source, in accordance with § 145.311, to represent and legally bind each owner and operator in matters pertaining to the CO₂ Budget Trading Program.

(ii) For a general account, the alternate person who is authorized under §§ 145.351—145.358 to transfer or otherwise dispose of CO₂ allowances held in the general account.

CO₂ budget emissions limitation—For a CO₂ budget source, the tonnage equivalent, in CO₂ emissions in a control period or an interim control period, of the CO₂ allowances available for compliance deduction for the source for a control period or an interim control period.

CO₂ budget permit condition—The portion of the permit issued by the Department under Chapter 127 (relating to construction, modification, reactivation and operation of sources) to the owner or operator of a CO₂ budget source which specifies the CO₂ Budget Trading Program requirements applicable to the CO₂ budget source.

CO₂ budget source—A facility that includes one or more CO₂ budget units.

CO₂ Budget Trading Program—A multi-state CO₂ air pollution control and emissions reduction program established under this subchapter and corresponding regulations in other participating states as a means of reducing emissions of CO₂ from CO₂ budget sources.

CO₂ budget unit—A unit that is subject to the CO₂ Budget Trading Program requirements under § 145.304 (relating to applicability).

CO₂ CCR allowance or *CO₂ cost containment reserve allowance*—A CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ allowances.

CO₂ CCR trigger price or *CO₂ cost containment reserve trigger price*—The minimum price at which CO₂ CCR allowances are offered for sale by the Department or its agent at an auction.

CO₂ ECR allowance or *CO₂ emissions containment reserve allowance*—A CO₂ allowance that is withheld from sale at an auction by the Department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

CO₂ ECR trigger price or *CO₂ emissions containment reserve trigger price*—The price below which CO₂ allowances will be withheld from sale by the Department or its agent at an auction.

CO₂e—CO₂ equivalent—The quantity of a given greenhouse gas multiplied by its global warming potential.

CO₂ offset allowance—A CO₂ allowance that is awarded to the sponsor of a CO₂ emissions offset project under § 145.397 and is subject to the relevant compliance deduction limitations of § 145.355(a)(3) (relating to compliance).

Combined cycle system—A system comprised of one or more combustion turbine, heat recovery steam generator and steam turbine configured to improve overall efficiency of electricity generation or steam production.

Combined heat and power set-aside account—A general account established by the Department for the allocation of CO₂ allowances in an amount sufficient to retire CO₂ allowances equal to the CO₂ emissions from combined heat and power units under § 145.342(k) (relating to CO₂ allowance allocations).

Combined heat and power unit—An electric-generating unit that simultaneously produces both electricity and useful thermal energy.

Combustion turbine—An enclosed fossil or other fuel-fired device that is comprised of a compressor, if applicable, 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.

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.

(i) For a unit that is a CO₂ budget unit under § 145.304 on the date the unit commences commercial operation, the date shall remain the unit's date

of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) For a unit that is not a CO₂ budget unit under § 145.304 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit under § 145.304 is the unit's date of commencement of commercial operation.

Commence operation—To have begun any mechanical, chemical or electronic process, including, with regard to a unit, start-up of the unit's combustion chamber.

(i) For a unit that is a CO₂ budget unit under § 145.304 on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) For a unit that is not a CO₂ budget unit under § 145.304 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit under § 145.304 shall be the unit's date of commencement of operation.

Compliance account—A COATS account, established by the Department or its agent for a CO₂ budget source under § 145.351, that holds CO₂ allowances available for use by the owner or operator of the source for a control period and each interim control period for the purpose of meeting the CO₂ requirements of § 145.306(c).

Control period—A 3-calendar-year period. The fifth control period is from January 1, 2021, through December 31, 2023, inclusive. Each subsequent sequential 3-calendar-year period is a separate control period.

Decay rate—The amount of a gas removed from the atmosphere over a number of years.

Descending price, multiple-round auction—An auction that starts with a high provisional price, which falls in each round by predetermined increments. In each round, a bidder can lock in the purchase of some number of CO₂ allowances at the current provisional price and wait for the price to fall. Rounds continue so long as the number of CO₂ allowances locked-in is less than the quantity of CO₂ allowances offered for sale.

Discriminatory price, sealed-bid auction—A single-round, sealed-bid auction in which a bidder may submit multiple bids for CO₂ allowances at different prices. The price paid by winning bidders with the highest bids for CO₂ allowances is their own bid price.

Electronic submission agent—The person who is delegated authority by a CO₂ authorized account representative or a CO₂ authorized alternate account representative to make an electronic submission to the Department or its agent under this subchapter.

Eligible biomass—

(i) Sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis, including dedicated energy crops

and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, biogas and other neat liquid biofuels derived from these fuel sources.

(ii) This term does not include old growth timber.

Excess emissions—The amount of CO₂ emissions, in tons, emitted by a CO₂ budget source during a control period that exceeds the CO₂ budget emissions limitation for the source.

Excess interim emissions—The amount of CO₂ emissions, in tons, emitted by a CO₂ budget source during an interim control period multiplied by 0.50 that exceeds the CO₂ budget emissions limitation for the source.

GWP—Global Warming Potential—

(i) A measure of the radiative efficiency or heat-absorbing ability of a particular gas relative to that of CO₂ after taking into account the decay rate of each gas relative to that of CO₂.

(ii) GWPs used in this subchapter are consistent with the values used in the Intergovernmental Panel on Climate Change, Fifth Assessment Report.

General account—A COATS account established by the Department under § 145.351 that is not a compliance account.

Gross generation—The electrical output in MWe at the terminals of the generator.

Interim control period—A calendar-year period, during each of the first and second calendar years of each control period. The first interim control period for the fifth control period starts on January 1, 2021, and ends on December 31, 2021, inclusive. The second interim control period for the fifth control period starts on January 1, 2022, and ends on December 31, 2022, inclusive. Each successive 3-year control period will have 2 interim control periods, comprised of each of the first 2 calendar years of that control period.

Legacy emissions—The amount of CO₂ emissions in tons equal to the highest year of CO₂ emissions from a waste coal-fired unit during the 10-year period beginning January 1, 2010, through December 31, 2019, as determined by the Department.

Life-of-the-unit contractual arrangement—A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity or associated energy from any specified unit under a contract for:

(i) The life of the unit.

(ii) A cumulative term of no less than 30 years, including a contract that permits an election for early termination.

(iii) A period equal to or greater than 25 years or 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.

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 40 CFR Part 75, Appendix D (relating to optional SO₂ emissions data protocol for gas-fired and oil-fired units) to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO₂ concentration in percent CO₂ or the minimum O₂ concentration in percent O₂.

Minimum reserve price—The price for calendar year 2021 is \$2.38. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

Monitoring system—A monitoring system that meets the requirements of this subchapter, including a CEMS, an excepted monitoring system or an alternative monitoring system.

Nameplate capacity—The maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other de-ratings as measured in accordance with the United States Department of Energy standards.

Notice of CO₂ allowance auction—The notification for a specific auction or auctions issued under § 145.404 (relating to auction notice).

Operator—A person who operates, controls or supervises a CO₂ budget unit or a CO₂ budget source and shall include, but not be limited to, a holding company, utility system or plant manager of the unit or source.

Owner—Any of the following persons:

(i) A holder of any portion of the legal or equitable title in a CO₂ budget unit or a CO₂ budget source.

(ii) A holder of a leasehold interest in a CO₂ budget unit or a CO₂ budget source, other than 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 CO₂ budget unit.

(iii) A purchaser of power from a CO₂ budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit.

(iv) With respect to any general account, a person who has an ownership interest with respect to the CO₂ allowances held in the general account and who is subject to the binding agreement for the CO₂ authorized account representative to represent that person's ownership interest with respect to CO₂ allowances.

Participating state—A state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.

Pennsylvania CO₂ Budget Trading Program adjusted budget—The annual amount of CO₂ tons available in Pennsylvania for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program, determined in accordance with § 145.342. CO₂ offset allowances allocated to project sponsors and CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Pennsylvania CO₂ Budget Trading Program adjusted budget.

Pennsylvania CO₂ Budget Trading Program base budget—The annual amount of CO₂ tons available in Pennsylvania for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program and as specified in § 145.341. CO₂ offset allowances allocated to project sponsors and CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Pennsylvania CO₂ Budget Trading Program base budget.

Qualified participant—A person who has submitted a qualification application under § 145.406(a) and that the Department determines to be qualified to participate in CO₂ allowance auctions under § 145.406(e).

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

Recordation, record or recorded—With regard to CO₂ allowances, the movement of CO₂ allowances by the Department or its agent from one COATS account to another, for purposes of allocation, transfer or deduction.

Reserve price—The minimum acceptable price for each CO₂ allowance offered for sale in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in § 145.382 (relating to general requirements).

Reviewer—The individual who is delegated authority by a CO₂ authorized account representative or a CO₂ authorized alternate account representative to review information in COATS under this subchapter.

Source—A governmental, institutional, commercial or industrial structure, installation, plant, building or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

Strategic use set-aside account—A general account established by the Department for the distribution of CO₂ allowances to reduce greenhouse gas emissions through energy efficiency measures, renewable or noncarbon-emitting energy technologies or innovative greenhouse gas emissions abatement technologies with significant greenhouse gas reduction potential.

Ton or tonnage—A short ton that is 2,000 pounds or 0.9072 metric ton.

Total useful energy—The sum of useful thermal energy and gross generation.

Undistributed CO₂ allowance—A CO₂ allowance originally allocated to a set-aside account under § 145.342 that was not distributed.

Uniform-price, sealed-bid auction—A single-round, sealed-bidding process in which a bidder may submit multiple bids at different prices. The price paid by all successful bidders will be uniform and equal to the highest rejected bid price.

Unit—A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system.

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

Unsold CO₂ allowance—A CO₂ allowance that has been made available for sale in an auction conducted by the Department or its agent, but not sold.

Useful thermal energy—

(i) Energy in the form of direct heat, steam, hot water, air or other thermal form which is applied for a useful purpose in an industrial, institutional or commercial process.

(ii) This term does not include steam made available for electricity production.

Waste coal—The coal disposed or abandoned prior to July 31, 1982, or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of and used to generate electricity, as defined in the definition of “alternative energy sources” under section 2 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.2).

Waste coal-fired—The combustion of waste coal or, if in combination with any other fuel, waste coal comprises 75% or greater of the annual heat input on a Btu basis. Facilities combusting waste coal shall use at a minimum a circulating fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system.

Waste coal set-aside account—A general account established by the Department for the allocation of CO₂ allowances in an amount sufficient to provide CO₂ allowances equal to the legacy emissions from all waste coal-fired units under § 145.342(i).

Cross References

This section cited in 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions); 25 Pa. Code § 145.371 (relating to general monitoring requirements); and 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards).

§ 145.303. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

- CH₄*—methane.
- hr*—hour.
- lb*—pounds.
- MMBtu*—Million Btu.
- MW*—megawatt.
- MWe*—megawatt electrical.

Cross References

This section cited in 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions).

§ 145.304. Applicability.

(a) *CO₂ budget unit.* Beginning April 23, 2022, this subchapter applies to an owner or operator of a unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe.

(b) *CO₂ budget source.* Any source that includes one or more CO₂ budget units shall be a CO₂ budget source, subject to the requirements of this subchapter.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions); and 25 Pa. Code § 145.342 (relating to CO₂ allowance allocations).

§ 145.305. Limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions.

(a) *Exemption.* Notwithstanding § 145.304 (relating to applicability), a CO₂ budget source that has a permit issued by the Department containing a condition restricting the supply of the CO₂ budget unit's annual electrical output to the electric grid to no more than 10% of the annual gross generation of the unit, or restricting the supply less than or equal to 15% of its annual total useful energy to any entity other than the industrial, institutional or commercial facility to which the CO₂ budget source is interconnected and which complies with subsection (c), shall be exempt from the requirements of this subchapter, except for the provisions of this section, §§ 145.302, 145.303, and 145.307 (relating to definitions; measurements, abbreviations and acronyms; and computation of time) and, if applicable because of the allocation of CO₂ allowances during the pre-exemption time period, §§ 145.341, 145.351 and 145.361 (relating to Pennsylvania CO₂ Budget Trading Program base budget; CO₂ Allowance Tracking System (COATS) accounts; and submission of CO₂ allowance transfers).

(b) *Effective date.* The exemption under subsection (a) shall become effective as of the January 1 on or after the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid and the provisions in the permit required under subsection (a) become final.

(c) *Compliance.*

(1) The owner or operator of a CO₂ budget unit exempt under subsection (a) shall comply with the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a).

(2) The owner or operator of a CO₂ budget unit exempt under subsection (a) shall report to the Department the amount of annual gross generation and the amount of annual gross generation supplied to the electric grid during the calendar year by the following March 1.

(3) For a period of 10 years from the date the records are created, the owner or operator of a CO₂ budget unit exempt under subsection (a) shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under subsection (a) were met. The Department may, in writing, extend the 10-year period for keeping records, at any time prior to the end of the period. The owner or operator bears the burden of proof that the unit met the restriction on the percentage of annual gross generation that may be supplied to the electric grid.

(4) The owner or operator and, to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit exempt under subsection (a) shall comply with the requirements of this subchapter concerning all time periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(5) A CO₂ budget unit exempt under subsection (a) will lose its exemption, on the earlier of the following dates:

(i) The restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a) is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after April 23, 2022.

(ii) The unit fails to comply or the owner or operator fails to meet their burden of proving that the unit is complying with the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a) during any year that commences on or after April 23, 2022.

(6) A unit that loses its exemption in accordance with paragraph (5) shall be subject to the requirements of this subchapter. For the purposes of this subchapter, the unit shall be treated as commencing operation on the date the unit loses its exemption.

§ 145.306. Standard requirements.(a) *Permit requirements.*

(1) The owner or operator of each CO₂ budget source shall have a CO₂ budget permit condition in their permit required under Chapter 127 (relating to construction, modification, reactivation and operation of sources) and shall submit to the Department the following:

(i) A complete application for a new, renewed or modified permit under § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements) in accordance with the deadlines specified in § 145.322 (relating to submission of an application for a new, renewed or modified permit incorporating CO₂ Budget Trading Program requirements).

(ii) Any supplemental information that the Department determines is necessary to review the permit application and issue or deny a permit, permit renewal or permit modification that includes CO₂ Budget Trading Program requirements.

(2) The owner or operator of each CO₂ budget source required to have a permit under Chapter 127 shall ensure that the permit incorporates the requirements of the CO₂ Budget Trading Program and shall operate the CO₂ budget source and each CO₂ budget unit at the source in compliance with the permit.

(b) *Monitoring requirements.*

(1) The owner or operator and, to the extent applicable, the CO₂ authorized account representative of each CO₂ budget source and each CO₂ budget unit at the source, shall comply with the monitoring requirements of §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements).

(2) The Department will use the emissions measurements recorded and reported in accordance with §§ 145.371—145.377 to determine the unit's compliance with the CO₂ requirements under subsection (c).

(3) The Department will use the emissions measurements recorded and reported to the Department under this article to determine whether areas of this Commonwealth have been disproportionately impacted by increased air pollution as a result of implementation of this subchapter. The Department will publish notice of the availability of a report of the emissions measurements and the determination in the *Pennsylvania Bulletin* on an annual basis. The report will include the following:

(i) Baseline air emissions data from each CO₂ budget unit for the calendar year prior to the year Pennsylvania becomes a participating state.

(ii) Annual emissions measurements recorded and reported to the Department from each CO₂ budget unit.

(c) *CO₂ requirements.* A CO₂ budget unit shall be subject to the CO₂ requirements starting on July 1, 2022, or the date on which the unit commences operation, whichever is later.

(1) For the purpose of determining compliance with paragraph (2), total tons for a control period or an interim 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 §§ 145.371—145.377. The Department will round total CO₂ emissions to the nearest whole ton, so that any fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

(2) The owner or operator of each CO₂ budget source and each CO₂ budget unit at the source shall, as of the CO₂ allowance transfer deadline, hold CO₂ allowances available for compliance deductions under § 145.355 (relating to compliance), in the source's compliance account, as follows:

(i) For a control period, the amount of CO₂ allowances held shall be no less than the total CO₂ emissions for the control period from all CO₂ budget units at the source, less the CO₂ allowances deducted to meet the requirements of subparagraph (ii), with respect to the previous 2 interim control periods, as determined in accordance with §§ 145.351—145.358 (relating to CO₂ allowance tracking system) and §§ 145.371—145.377.

(ii) For an interim control period, the amount of CO₂ allowances held shall be no less than the total CO₂ emissions for the interim control period from all CO₂ budget units at the source multiplied by 0.50, as determined in accordance with §§ 145.351—145.358 and 145.371—145.377.

(3) Each ton of CO₂ emitted in excess of the CO₂ budget emissions limitation for a control period shall constitute a separate violation of this subchapter and the act.

(4) Each ton of excess interim emissions shall constitute a separate violation of this subchapter and the act.

(5) CO₂ allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with §§ 145.341—145.343 (relating to CO₂ allowance allocations), 145.351—145.358, 145.361—145.363 (relating to CO₂ allowance transfers) and 145.397 (relating to award and recordation of CO₂ offset allowances).

(6) A CO₂ allowance shall not be deducted, to comply with the requirements under this subsection, for a control period or interim control period that ends prior to the year for which the CO₂ allowance was allocated.

(7) A CO₂ offset allowance shall not be deducted, to comply with the requirements under this subsection, beyond the applicable percent limitations in § 145.355(a)(3).

(8) A CO₂ allowance is a limited authorization by the Department or a participating state to emit 1 ton of CO₂ in accordance with the CO₂ Budget Trading Program. No provision of the CO₂ Budget Trading Program, this subchapter, an application for a new, renewed or modified permit to incorporate the requirements of the CO₂ Budget Trading Program, a permit that includes the requirements of the CO₂ Budget Trading Program, or any provision of law

shall be construed to limit the authority of the Department or a participating state to terminate or limit the authorization.

(9) A CO₂ allowance under the CO₂ Budget Trading Program does not constitute a property right.

(d) *Excess emissions requirements.* The owner or operator of a CO₂ budget source that has excess emissions in any control period or excess interim emissions for any interim control period shall do the following:

(1) Forfeit the CO₂ allowances required for deduction under § 145.355(d)(1) and (2).

(2) Pay any fine, penalty or assessment or comply with any other remedy imposed under § 145.355(d)(3).

(e) *Recordkeeping and reporting requirements.*

(1) Except as provided in subparagraph (i), the owner or operator of the CO₂ budget source and each CO₂ budget unit at the source shall maintain at a central location and provide upon request by the Department the following documents for 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the Department.

(i) The account certificate of representation for the CO₂ authorized account representative for the CO₂ budget source and each CO₂ budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 145.314 (relating to account certificate of representation). The certificate and documents shall be retained beyond the 10-year period until the documents are superseded because of the submission of a new account certificate of representation changing the CO₂ authorized account representative.

(ii) The emissions monitoring information, in accordance with §§ 145.371—145.377 and 40 CFR 75.57 (relating to general recordkeeping provisions).

(iii) Copies of all reports, compliance certifications and other submissions and all records made or required under the CO₂ Budget Trading Program.

(iv) Copies of the documents used to complete an application for a new or modified permit that incorporates the requirements of the CO₂ Budget Trading Program and any submission under the CO₂ Budget Trading Program or to demonstrate compliance with the requirements of the CO₂ Budget Trading Program.

(2) The CO₂ authorized account representative of a CO₂ budget source and each CO₂ budget unit at the source shall submit the reports and compliance certifications required under this subchapter, including the requirements under §§ 145.331 and 145.332 (relating to compliance certification report; and Department action on compliance certifications).

(f) *Liability.*

(1) Except as provided under § 127.403 (relating to permitting of sources operating lawfully without a permit), a permit revision may not excuse any violation of the requirements of this subchapter that occurs prior to the date that the revision takes effect.

(2) Any provision of this subchapter that applies to a CO₂ authorized account representative shall apply to the owner or operator of the source and of the CO₂ budget units at the source.

(3) Any provision of this subchapter that applies to a CO₂ budget source shall also apply to the owner or operator of the source and of the CO₂ budget units at the source.

(4) Any provision of this subchapter that applies to a CO₂ budget unit shall also apply to the owner or operator of the unit.

(g) *Effect on other authorities.* No provision of this subchapter, a permit application or a permit shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the CO₂ authorized account representative, from compliance with any provision of the act, the Clean Air Act or the regulations promulgated under the Clean Air Act or the act.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.342 (relating to CO₂ allowance allocations); and 25 Pa. Code § 145.355 (relating to compliance).

§ 145.307. Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CO₂ Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CO₂ Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CO₂ Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Cross References

This section cited in 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions).

**CO₂ AUTHORIZED ACCOUNT REPRESENTATIVE FOR A
CO₂ BUDGET SOURCE**

§ 145.311. Authorization and responsibilities of the CO₂ authorized account representative.

(a) Except as provided under § 145.312 (relating to CO₂ authorized alternate account representative), each CO₂ budget source, including all CO₂ budget units at the source, shall have only one CO₂ authorized account representative, with regard to all matters under the CO₂ Budget Trading Program concerning the source or any CO₂ budget unit at the source.

(b) The CO₂ authorized account representative of the CO₂ budget source shall be selected by an agreement binding on the owner or operator of the source and all CO₂ budget units at the source and must act in accordance with the certificate of representation under § 145.314 (relating to account certificate of representation).

(c) Upon receipt by the Department or its agent of a complete account certificate of representation under § 145.314, the CO₂ authorized account representative of the source shall represent and, by their representations, actions, inactions or submissions, legally bind each owner and operator of the CO₂ budget source represented and each CO₂ budget unit at the source in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative and the owner or operator. The owner or operator shall be bound by any decision or order issued to the CO₂ authorized account representative by the Department or a court regarding the source or unit.

(d) The Department will issue a permit that incorporates the requirements of the CO₂ Budget Trading Program and establish a COATS account for a CO₂ budget source only after the Department or its agent has received a complete account certificate of representation under § 145.314 for a CO₂ authorized account representative of the source and the CO₂ budget units at the source.

(e) Each submission under the CO₂ Budget Trading Program shall be submitted, signed and certified by the CO₂ authorized account representative for each CO₂ budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the CO₂ authorized account representative:

“I am authorized to make this submission on behalf of the owner or operator of the CO₂ budget sources or CO₂ 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 under 18 Pa.C.S. § 4904 (relating to unsworn

falsification to authorities) for submitting false statements and information or omitting required statements and information.”

(f) The Department or its agent will accept or act on a submission made on behalf of the owner or operator of a CO₂ budget source or a CO₂ budget unit only if the submission has been made, signed and certified in accordance with subsection (e).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.312 (relating to CO₂ authorized alternate account representative); and 25 Pa. Code § 145.375 (relating to recordkeeping and reporting).

§ 145.312. CO₂ authorized alternate account representative.

(a) An account certificate of representation may designate only one CO₂ authorized alternate account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the CO₂ authorized alternate account representative is selected shall include a procedure for authorizing the CO₂ authorized alternate account representative to act instead of the CO₂ authorized account representative.

(b) Upon receipt by the Department or its agent of a complete account certificate of representation under § 145.314 (relating to account certificate of representation), any representation, action, inaction or submission by the CO₂ authorized alternate account representative shall be deemed to be a representation, action, inaction or submission by the CO₂ authorized account representative.

(c) Except in this section and §§ 145.311(a), 145.313, 145.314 and 145.352, whenever the term “CO₂ authorized account representative” is used in this subchapter, the term shall include the CO₂ authorized alternate account representative.

Cross References

This section cited in 25 Pa. Code § 145.311 (relating to authorization and responsibilities of the CO₂ authorized account representative).

§ 145.313. Changing the CO₂ authorized account representative and the CO₂ authorized alternate account representative; changes in the owner or operator.

(a) *Changing the CO₂ authorized account representative.* The CO₂ authorized account representative may be changed at any time upon receipt by the Department or its agent of a superseding complete account certificate of representation under § 145.314 (relating to account certificate of representation). Notwithstanding a change, the representations, actions, inactions and submissions by the previous CO₂ authorized account representative or CO₂ authorized alternate account representative prior to the time and date when the Department or its agent receives the superseding account certificate of representation shall be binding on

the new CO₂ authorized account representative and the owner or operator of the CO₂ budget source and the CO₂ budget units at the source.

(b) *Changing the CO₂ authorized alternate account representative.* The CO₂ authorized alternate account representative may be changed at any time upon receipt by the Department or its agent of a superseding complete account certificate of representation under § 145.314. Notwithstanding a change, the representations, actions, inactions and submissions by the previous CO₂ authorized alternate account representative prior to the time and date when the Department or its agent receives the superseding account certificate of representation shall be binding on the new CO₂ authorized alternate account representative and the owner or operator of the CO₂ budget source and the CO₂ budget units at the source.

(c) *Changes in the owner or operator.*

(1) If a new owner or operator of a CO₂ budget source or a CO₂ budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions and submissions of the CO₂ authorized account representative and any CO₂ authorized alternate account representative of the source or unit, and the decisions, orders, actions and inactions of the Department, as if the new owner or operator were included in the list.

(2) Within 30 days following any change in the owner or operator of a CO₂ budget source or a CO₂ budget unit, including the addition of a new owner or operator, the CO₂ authorized account representative or CO₂ authorized alternate account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Cross References

This section cited in 25 Pa. Code § 145.312 (relating to CO₂ authorized alternate account representative); and 25 Pa. Code § 145.315 (relating to objections concerning the CO₂ authorized account representative).

§ 145.314. Account certificate of representation.

(a) A complete account certificate of representation for a CO₂ authorized account representative or a CO₂ authorized alternate account representative shall include the following elements in a format prescribed by the Department or its agent:

(1) Identification of the CO₂ budget source and each CO₂ budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address and telephone number of the CO₂ authorized account representative and any CO₂ authorized alternate account representative.

(3) A list of the owners and operators of the CO₂ budget source and of each CO₂ budget unit at the source.

(4) The following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative:

“I certify that I was selected as the CO₂ authorized account representative or CO₂ authorized alternate account representative, as applicable, by an agreement binding on the owner or operator of the CO₂ budget source and each CO₂ budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO₂ Budget Trading Program on behalf of the owner or operator of the CO₂ budget source and of each CO₂ budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department or a court regarding the source or unit.”

(5) The signature of the CO₂ authorized account representative and any CO₂ authorized alternate account representative and the dates signed.

(b) Unless otherwise required by the Department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or its agent. The Department and its agent are not under any obligation to review or evaluate the sufficiency of documents of agreement, if submitted.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.311 (relating to authorization and responsibilities of the CO₂ authorized account representative); 25 Pa. Code § 145.312 (relating to CO₂ authorized alternate account representative); 25 Pa. Code § 145.313 (relating to changing the CO₂ authorized account representative and the CO₂ authorized alternate account representative; changes in the owner or operator); 25 Pa. Code § 145.315 (relating to objections concerning the CO₂ authorized account representative); and 25 Pa. Code § 145.352 (relating to establishment of accounts).

§ 145.315. Objections concerning the CO₂ authorized account representative.

(a) Once a complete account certificate of representation under § 145.314 (relating to account certificate of representation) has been submitted and received, the Department and its agent will rely on the account certificate of representation unless the Department or its agent receives a superseding complete account certificate of representation under § 145.314.

(b) Except as provided in § 145.313(a) or (b) (relating to changing the CO₂ authorized account representative and the CO₂ authorized alternate account representative; changes in the owner or operator), an objection or other communication submitted to the Department or its agent concerning the authorization, or any representation, action, inaction or submission of the CO₂ authorized account representative will not affect any representation, action, inaction or submission of the CO₂ authorized account representative or the finality of a decision or order by the Department or its agent under the CO₂ Budget Trading Program.

(c) The Department and its agent will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of a CO₂ authorized account representative, including private legal disputes concerning the proceeds of CO₂ allowance transfers.

§ 145.316. Delegation of authority to make electronic submissions and review information in COATS.

(a) A CO₂ authorized account representative or a CO₂ authorized alternate account representative may delegate, to one or more persons, their authority to make an electronic submission to the Department or its agent under this subchapter.

(b) To delegate authority to make an electronic submission to the Department or its agent, the CO₂ authorized account representative or CO₂ authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(1) The name, address, e-mail address and telephone number of the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative.

(2) The name, address, e-mail address and telephone number of each electronic submission agent.

(3) For each electronic submission agent, a list of the type of electronic submissions under subsection (a) for which authority is delegated.

(4) The following certification statements by the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative:

(i) “I agree that any electronic submission to the Department or its agent that is by the electronic submission agent identified in this notice of delegation and of a type listed for the electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative and before this notice of delegation is superseded by another notice of delegation under subsection (d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under subsection (d), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under this subsection is terminated.”

(c) A notice of delegation submitted under subsection (b) will be effective, with regard to the CO₂ authorized account representative or CO₂ authorized alternate account representative identified in the notice, upon receipt of the notice by the Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation by the CO₂ authorized account representative or CO₂ authorized alternate account representative. The superseding notice of

delegation may replace any previously identified electronic submission agent, add a new electronic submission agent or eliminate entirely any delegation of authority.

(d) Any electronic submission covered by the certification under subsection (b)(4) and made in accordance with a notice of delegation effective under subsection (b) shall be deemed to be an electronic submission by the CO₂ authorized account representative or CO₂ authorized alternate account representative submitting the notice of delegation.

(e) A CO₂ authorized account representative or a CO₂ authorized alternate account representative may delegate, to one or more persons, their authority to review information in COATS under this subchapter.

(f) To delegate authority to review information in COATS under subsection (e), the CO₂ authorized account representative or CO₂ authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(1) The name, address, e-mail address and telephone number of the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative.

(2) The name, address, e-mail address and telephone number of each reviewer.

(3) For each reviewer, a list of the type of information under subsection (e) for which authority is delegated.

(4) The following certification statements by the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative:

(i) "I agree that any information that is reviewed by the reviewer identified in this notice of delegation and of a type listed for the information accessible by the reviewer in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative and before this notice of delegation is superseded by another notice of delegation under subsection (g) shall be deemed to be a review by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under subsection (g), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under this subsection is terminated."

(g) A notice of delegation submitted under subsection (f) shall be effective, with regard to the CO₂ authorized account representative or CO₂ authorized alternate account representative identified in the notice, upon receipt of the notice by the Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation by the CO₂ authorized account representative or CO₂ authorized alternate account representative. The superseding notice of

delegation may replace any previously identified reviewer, add a new reviewer or eliminate entirely any delegation of authority.

PERMITS

§ 145.321. General requirements for a permit incorporating CO₂ Budget Trading Program requirements.

(a) Except as provided under § 127.403 (relating to permitting of sources operating lawfully without a permit), each CO₂ budget source must have a permit issued by the Department under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

(b) The permit for each CO₂ budget source shall contain all applicable CO₂ Budget Trading Program requirements.

§ 145.322. Submission of an application for a new, renewed or modified permit incorporating CO₂ Budget Trading Program requirements.

(a) For any CO₂ budget source, the owner or operator shall submit a complete permit application under Chapter 127 (relating to construction, modification, reactivation and operation of sources) incorporating the CO₂ Budget Trading Program requirements in this subchapter to the Department by the later of the following:

(1) Six months after April 23, 2022.

(2) Twelve months before the date on which the CO₂ budget source or a new unit at the source commences operation.

(b) If the Department approves the incorporation of CO₂ Budget Trading Program requirements into a permit, the Department will establish permit conditions in the permit that will enable the Department to readily verify whether emissions from the source operations meet the requirements of this subchapter. Such permit conditions will set forth replicable procedures, including monitoring, source emissions testing and recordkeeping and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions limitation under this subchapter is enforceable.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements).

§ 145.323. Contents of an application for a permit incorporating CO₂ Budget Trading Program requirements.

A complete permit application shall include the following concerning the CO₂ budget source for which the application is submitted, in a format prescribed by the Department:

(1) Identification of the CO₂ budget source, including plant name and the Office of Regulatory Information Systems or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable.

- (2) Identification of each CO₂ budget unit at the CO₂ budget source.
- (3) The standard requirements under § 145.306 (relating to standard requirements).
- (4) The compliance certification requirements under § 145.331 (relating to compliance certification report).
- (5) The compliance requirements under § 145.355 (relating to compliance).
- (6) The monitoring, recordkeeping and reporting requirements under §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements).

COMPLIANCE CERTIFICATION

§ 145.331. Compliance certification report.

(a) *Applicability and deadline.* For each control period, except for an interim control period, in which a CO₂ budget source is subject to the CO₂ requirements of § 145.306(c) (relating to standard requirements), the CO₂ authorized account representative of the source shall submit a compliance certification report to the Department by March 1 following the relevant control period.

(b) *Contents of report.* The CO₂ authorized account representative shall include in the compliance certification report under subsection (a) the following:

- (1) Identification of the CO₂ budget source and each CO₂ budget unit at the source.
- (2) At the CO₂ authorized account representative's option, the serial numbers of the CO₂ allowances that are to be deducted from the source's compliance account under § 145.355 (relating to compliance) for the control period or an interim control period, including the serial numbers of any CO₂ offset allowances that are to be deducted subject to the limitations of § 145.355(a)(3).
- (3) The compliance certification under subsection (c).

(c) *Compliance certification.* In the compliance certification report under subsection (a), the CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO₂ Budget Trading Program, including the following:

(1) Whether the CO₂ budget source was operated in compliance with the CO₂ requirements of § 145.306(c).

(2) Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit and contains the information necessary to attribute CO₂ emissions to the unit, in accordance with §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements).

(3) Whether all the CO₂ emissions from the units at the source 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 §§ 145.371—145.377. 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.

(4) Whether the facts that form the basis for certification under §§ 145.371—145.377 of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under §§ 145.371—145.377, if any, have changed.

(5) If a change is required to be reported under paragraph (4), 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.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); and 25 Pa. Code § 145.355 (relating to compliance).

§ 145.332. Department action on compliance certifications.

(a) The Department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the compliance certification or other submission.

(b) The Department or its agent may deduct CO₂ allowances from or transfer CO₂ allowances to a CO₂ budget source's compliance account based on the information in the compliance certification or other submission, as adjusted under subsection (a).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); and 25 Pa. Code § 145.356 (relating to banking).

CO₂ ALLOWANCE ALLOCATIONS**§ 145.341. Pennsylvania CO₂ Budget Trading Program base budget.**

(a) For 2022, if Pennsylvania is a participating state on January 1, 2022, the Pennsylvania CO₂ Budget Trading Program base budget is 78 million tons. If Pennsylvania is a participating state after January 1, 2022, then the Pennsylvania CO₂ Budget Trading Program base budget for 2022 will be one of the following:

(1) If Pennsylvania is a participating state after January 1, 2022, but before or on April 1, 2022, then the Pennsylvania CO₂ Budget Trading Program base budget is 57,954,000 tons.

(2) If Pennsylvania is a participating state after April 1, 2022, but before or on July 1, 2022, then the Pennsylvania CO₂ Budget Trading Program base budget is 40,716,000 tons.

(3) If Pennsylvania is a participating state after July 1, 2022, but before or on October 1, 2022, then the Pennsylvania CO₂ Budget Trading Program base budget is 18,564,000 tons.

(b) For 2023, the Pennsylvania CO₂ Budget Trading Program base budget is 75,510,630 tons.

(c) For 2024, the Pennsylvania CO₂ Budget Trading Program base budget is 73,021,260 tons.

(d) For 2025, the Pennsylvania CO₂ Budget Trading Program base budget is 70,531,890 tons.

(e) For 2026, the Pennsylvania CO₂ Budget Trading Program base budget is 68,042,520 tons.

(f) For 2027, the Pennsylvania CO₂ Budget Trading Program base budget is 65,553,150 tons.

(g) For 2028, the Pennsylvania CO₂ Budget Trading Program base budget is 63,063,780 tons.

(h) For 2029, the Pennsylvania CO₂ Budget Trading Program base budget is 60,574,410 tons.

(i) For 2030 and each succeeding calendar year, the Pennsylvania CO₂ Budget Trading Program base budget is 58,085,040 tons.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.342 (relating to CO₂ allowance allocations); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.342. CO₂ allowance allocations.

(a) *General allocations.* The Department will allocate CO₂ allowances representing 100% of the tons for each allocation year from the Pennsylvania CO₂

Budget Trading Program base budget set forth in § 145.341 (relating to Pennsylvania CO₂ Budget Trading Program base budget) to the air pollution reduction account, less those CO₂ allowances set aside each allocation year under subsection (b).

(b) *Set-aside allocations.*

(1) *Waste coal set-aside account.* The Department will allocate CO₂ allowances to a waste coal set-aside account for each allocation year from the Pennsylvania CO₂ Budget Trading Program base budget set forth in § 145.341, as provided under subsection (i).

(2) *Strategic use set-aside account.* The Department will allocate undistributed CO₂ allowances to the strategic use set-aside account for each allocation year from the waste coal set-aside account, as provided under subsection (j).

(3) *Combined heat and power set-aside account.* The Department will allocate CO₂ allowances to a combined heat and power set-aside account for each allocation year from the Pennsylvania CO₂ Budget Trading Program base budget set forth in § 145.341, as provided under subsection (k).

(c) *CO₂ allowances available for allocation.* For each allocation year, the Pennsylvania CO₂ Budget Trading Program adjusted budget shall be the maximum number of CO₂ allowances available for allocation in a given allocation year, except for CO₂ offset allowances and CO₂ CCR allowances. In any year in which there is no adjusted budget, the adjusted budget shall equal the base budget.

(d) *Cost Containment Reserve (CCR) allocation.* To contain the cost of CO₂ allowances, the Department will allocate CO₂ CCR allowances, separate from and additional to the Pennsylvania CO₂ Budget Trading Program base budget set forth in § 145.341, to the air pollution reduction account. The Department will allocate CO₂ CCR allowances by doing the following:

(1) The Department will initially allocate CCR allowances for calendar year 2022 in an amount equal to 10% of the Pennsylvania CO₂ Budget Trading Program base budget for 2022 set forth in § 145.341(a).

(2) On or before January 1, 2023, and on or before January 1 of each calendar year thereafter, the Department will allocate current vintage year CCR allowances equal to 10% of the Pennsylvania CO₂ Budget Trading Program base budget for the calendar year and withdraw the number of CO₂ CCR allowances that remain in the air pollutant reduction account at the end of the prior calendar year.

(e) *Emissions Containment Reserve (ECR) Withholding.* To provide additional emissions reductions in the event of lower than anticipated emissions reduction costs, the Department will convert and transfer any CO₂ allowances that have been withheld from any auction into the Pennsylvania ECR account. The Department will withhold CO₂ ECR allowances by doing the following:

(1) If the condition in § 145.382(d)(1) (relating to general requirements) is met at an auction, then the maximum number of CO₂ ECR allowances that will

be withheld from that auction will be equal to 10% of the Pennsylvania CO₂ Budget Trading Program base budget for that calendar year minus the total quantity of CO₂ ECR allowances that have been withheld from any prior auction in that calendar year. Any CO₂ ECR allowances withheld from an auction will be transferred into the Pennsylvania ECR account.

(2) CO₂ allowances that have been transferred into the Pennsylvania ECR account will remain in the Pennsylvania ECR account as CO₂ ECR allowances and not be withdrawn.

(f) *Adjustment for banked allowances.* The Department may determine whether any adjustments for banked allowances will be made by using the following formula:

$$ABA = ((A - AE)/Y) \times RS\%$$

Where:

ABA = The adjustment for banked allowances quantity in tons.

A (adjustment) = The total quantity of CO₂ allowances of vintage years held in general and compliance accounts, including compliance accounts established under the CO₂ Budget Trading Program, but not including accounts opened by participating states, as reflected in COATS.

AE (adjustment emissions) = The total quantity of emissions from all CO₂ budget sources in all participating states, reported under the CO₂ Budget Trading Program as reflected in COATS prior to the year of the adjustment.

RS% = The Commonwealth's adjustment year budget divided by the adjustment year regional budget.

Y = The time period in years over which the adjustment occurs.

(g) *CO₂ Budget Trading Program adjusted budget.* The Department may establish the Pennsylvania CO₂ Budget Trading Program adjusted budget for an allocation year by the following formula:

$$AB = BB - ABA$$

Where:

AB = The Pennsylvania CO₂ Budget Trading Program adjusted budget.

BB = The Pennsylvania CO₂ Budget Trading Program base budget.

ABA = The adjustment for banked allowances quantity in tons.

(h) *Publication.* If the Department determines to adjust the budget for banked allowances under subsections (f) and (g), the Department will publish in the *Pennsylvania Bulletin* the CO₂ Budget Trading Program adjusted budget for the allocation year.

(i) *Waste coal set-aside allocation.* The waste coal set-aside allocation will consist of tons from the Pennsylvania CO₂ Budget Trading Program base budget set forth in § 145.341, as applicable. The Department will administer the waste coal set-aside account in accordance with the following:

(1) *Applicability.* This subsection applies to waste coal-fired units located in Pennsylvania that commenced operation on or before April 23, 2022, that are subject to the CO₂ Budget Trading Program requirements under § 145.304 (relating to applicability).

(2) *General account.* The Department will open and manage a general account for the waste coal set-aside account.

(3) *Allowance transfer.* Except for 2022, by March 1 of each calendar year, the Department may transfer a portion of the CO₂ allowances allocated to the air pollution reduction account to the waste coal set-aside account in an amount equal to legacy emissions from waste coal-fired units applicable under paragraph (1). The Department has determined that the total amount of legacy emissions equal 12.8 million tons.

(4) *Compliance allocation.* Except for 2022 and a year with an exceedance of legacy emissions under paragraph (5), by March 1 of each calendar year, the Department will allocate CO₂ allowances from the waste coal set-aside account to the compliance account of each waste coal-fired unit in an amount equal to the actual number of CO₂ emissions in tons emitted from the waste coal-fired unit during the previous year.

(i) After allocating CO₂ allowances under this paragraph, the Department will transfer any undistributed CO₂ allowances from the waste coal set-aside account to the strategic use set-aside account.

(ii) CO₂ allowances allocated under this subsection must only be used for compliance with the CO₂ budget emissions limitation for the waste coal-fired unit. The sale or transfer of CO₂ allowances from the unit's compliance account will be considered a violation of this subchapter.

(5) *Exception for exceedance of legacy emissions.* If the total actual CO₂ emissions from waste coal-fired units exceed 12.8 million tons during a calendar year, the Department will account for the exceedance as follows:

(i) By February 15 of the year following the exceedance, the Department will determine the difference between each unit's legacy emissions and the unit's actual emissions during the previous year.

(ii) By February 15 of the year following the exceedance, the Department will allocate CO₂ allowances from the waste coal set-aside account to the compliance account of each waste coal-fired unit in an amount equal to the actual number of CO₂ emissions in tons emitted from the waste coal-fired unit during the previous year minus the exceedance of legacy emissions.

(iii) After the allocation under subparagraph (ii), if there are CO₂ allowances remaining in the waste coal set-aside account, the Department may distribute CO₂ allowances to each waste coal-fired unit requiring CO₂ allowances to meet the CO₂ requirements under § 145.306(c) (relating to standard requirements) in an amount proportionate to the exceedance.

(iv) By the CO₂ allowance transfer deadline of the year following the exceedance, the owner or operator of each waste coal-fired unit requiring

additional CO₂ allowances to satisfy the CO₂ requirements under § 145.306(c) must transfer CO₂ allowances for compliance deductions under § 145.355 (relating to compliance) to the compliance account of the unit.

(6) *Set-aside termination.* If no CO₂ allowances are allocated under paragraph (4) in any calendar year due to the fact that there were no actual CO₂ emissions from waste coal-fired units subject to this subsection, then the CO₂ allowances remaining in the waste coal set-aside account will be transferred to the strategic use set-aside account. No additional CO₂ allowances will be allocated to the waste coal set-aside account under paragraph (3), and the Department will close the waste coal set-aside account.

(j) *Strategic use set-aside allocation.* The strategic use set-aside allocation will consist of undistributed CO₂ allowances from the waste coal set-aside account. The Department will administer the strategic use set-aside account in accordance with the following:

(1) *General account.* The Department will open and manage a general account for the strategic use set-aside account.

(2) *Allowance transfer.* By April 1 of each calendar year, the Department will transfer undistributed CO₂ allowances allocated to the waste coal set-aside account to the strategic use set-aside account.

(3) *Allocation to eligible projects.* The Department may distribute CO₂ allowances from the strategic use set-aside account to eligible projects located in Pennsylvania that result in a greenhouse gas emission reduction benefit including the following:

(i) Implementation of energy efficiency measures.

(ii) Implementation of renewable or noncarbon-emitting energy technologies.

(iii) Development of innovative greenhouse gas emissions abatement technologies with significant greenhouse gas reduction potential.

(4) *Strategic use application.* To apply for CO₂ allowances, the owner of an eligible project shall submit to the Department a complete application, in a format prescribed by the Department, that includes the following:

(i) Documentation that the project will result in greenhouse gas emission reductions.

(ii) Identification of the general account for the eligible project.

(iii) Specification of the number of CO₂ allowances being requested.

(iv) The calculations and supporting data used to determine the greenhouse gas emission reductions and an explanation of the data and the methods on which the calculations are based.

(5) *CO₂ allowance determination.* After verifying that the information submitted in the application under paragraph (4) is complete and accurate, the Department will determine the number of CO₂ allowances to distribute based on the greenhouse gas emission reductions achieved. The Department will distribute the allotted CO₂ allowances upon completion of the eligible project.

(6) *General requirements.* The Department will not award CO₂ allowances to an eligible project that is required under any local, State or Federal law, regulation, or administrative or judicial order.

(7) *Use of CO₂ allowances.* The owner of an eligible project may sell, transfer or submit a written request to the Department to retire allocated CO₂ allowances.

(8) *Transfer or retirement of CO₂ allowances.* At the end of each control period, the Department may retire or transfer to the air pollution reduction account any undistributed CO₂ allowances from the strategic use set-aside account.

(k) *Combined heat and power set-aside allocation.* The combined heat and power set-aside allocation will consist of tons from the Pennsylvania CO₂ Budget Trading Program base budget set forth in § 145.341, as applicable. The Department will administer the combined heat and power set-aside account in accordance with the following:

(1) *Applicability.* This subsection applies to combined heat and power units located in Pennsylvania that are subject to the CO₂ Budget Trading Program requirements under § 145.304.

(2) *General account.* The Department will open and manage a general account for the combined heat and power set-aside account.

(3) *CO₂ allowance retirement.* The Department will retire CO₂ allowances for a CO₂ budget unit that is a combined heat and power unit. Based on information provided under paragraph (4), the CO₂ authorized account representative of a CO₂ budget unit may request one of the following:

(i) Retirement of CO₂ allowances equal to the total amount of CO₂ emitted as a result of providing useful thermal energy or electricity, or both, during the allocation year.

(ii) Retirement of CO₂ allowances equal to the partial amount of CO₂ emitted as a result of supplying useful thermal energy or electricity, or both, to an interconnected industrial, institutional or commercial facility during the allocation year.

(4) *CO₂ allowance retirement application.* By January 30 of the year following the allocation year for which the retirement of CO₂ allowances is being requested, the CO₂ authorized account representative seeking the retirement of CO₂ allowances for a combined heat and power unit shall submit to the Department a complete application, in a format prescribed by the Department, that includes the following:

(i) Documentation that the CO₂ budget unit is a combined heat and power unit that satisfies the applicability under paragraph (1).

(ii) Identification of the compliance account for the CO₂ budget unit.

(iii) Identification of the allocation year for which the retirement of CO₂ allowances request is being made.

(iv) Specification of the amount of the retirement of CO₂ allowances being requested, as determined under paragraph (5).

(v) The calculations and supporting data used to determine the amount of the retirement of CO₂ allowances being requested and an explanation of the data and the methods on which the calculations are based.

(vi) If the CO₂ budget unit is requesting retirement of CO₂ allowances under paragraph (3)(i), then the application must include the following:

(A) Documentation that the useful thermal energy is at least 25% of the total energy output of the combined heat and power unit on an annual basis.

(B) Documentation that the overall efficiency of the combined heat and power unit is at least 60% on an annual basis.

(C) The percentage of useful thermal energy and overall efficiency must be calculated as follows:

$$\text{Percentage of UTE} = \text{UTE} / (\text{UTE} + \text{TEO}) \times 100$$

$$\text{OE} = ((\text{UTE} + \text{TEO}) / \text{HI}) \times 100$$

Where:

UTE = Useful Thermal Energy (MMBtu)

OE = Overall Efficiency

TEO = Total Electrical Output (MMBtu) = GG × 3.412

GG = Gross Generation (MWe)

HI = Total Heat Input (MMBtu)

(vii) If the CO₂ budget unit is requesting retirement of CO₂ allowances under paragraph (3)(ii), then the application must include documentation of the amount of useful thermal energy or electricity, or both, supplied to an interconnected industrial, institutional or commercial facility.

(5) *CO₂ allowance retirement determination.* After verifying that the information submitted in the application under paragraph (4) is complete and accurate, the Department will determine the number of CO₂ allowances to retire on behalf of a CO₂ budget unit that meets the applicability requirements under paragraph (1) and the application requirements under paragraph (4).

(i) For a CO₂ budget unit that meets the application requirements under paragraph (4)(vi), the Department will retire the number of CO₂ allowances equal to the amount of CO₂ that is emitted as a result of providing useful thermal energy or electricity, or both, during the allocation year.

(ii) For a CO₂ budget unit that meets the application requirements under paragraph (4)(vii), the Department will retire the number of CO₂ allowances equal to the amount of useful thermal energy or electricity, or both, supplied to an interconnected industrial, institutional or commercial facility during the allocation year.

(iii) The owner or operator of each CO₂ budget unit requiring additional CO₂ allowances to satisfy the CO₂ requirements under § 145.306(c) shall

transfer CO₂ allowances for compliance deductions under § 145.355 to the compliance account of the unit.

(6) *Retirement and transfer of CO₂ allowances.* At the end of each control period or interim control period, the Department will retire CO₂ allowances from the combined heat and power set-aside account in an amount equal to the determination under paragraph (5) for each CO₂ budget unit. The Department will transfer any remaining CO₂ allowances to the air pollution reduction account to be available for auction.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.343 (relating to distribution of CO₂ allowances in the air pollution reduction account); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.354 (relating to recordation of CO₂ allowance allocations); 25 Pa. Code § 145.382 (relating to general requirements); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); 25 Pa. Code § 145.403 (relating to auction timing and CO₂ allowance submission schedule); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.343. Distribution of CO₂ allowances in the air pollution reduction account.

(a) Except for the CO₂ allowances allocated to the waste coal set-aside account under § 145.342(i) (relating to CO₂ allowance allocations), the strategic use set-aside account under § 145.342(j) and the combined heat and power set-aside account under § 145.342(k), the Department will make all CO₂ allowances for an allocation year that are held in the air pollution reduction account for that allocation year available for purchase or auction by no later than the December 31 of the calendar year that corresponds to that allocation year.

(b) The Department will administer the air pollution reduction account so that CO₂ allowances will be sold in a transparent allowance auction. The proceeds of the auction will be used in the elimination of air pollution in accordance with the act and Chapter 143 (relating to disbursements from the Clean Air Fund) and for programmatic costs associated with the CO₂ Budget Trading Program.

(c) The Department or its agent, will not be obligated to sell any CO₂ allowances for less than the reserve price.

(d) The Department may transfer to the air pollution reduction account undistributed or unsold CO₂ allowances at the end of each control period, including CO₂ allowances allocated to the waste coal set-aside account under § 145.342(i), the strategic use set-aside account under § 145.342(j) and the combined heat and power set-aside account under § 145.342(k).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); and 25 Pa. Code § 145.409 (relating to approval of auction results).

CO₂ ALLOWANCE TRACKING SYSTEM**§ 145.351. CO₂ Allowance Tracking System (COATS) accounts.**

(a) *Nature and function of compliance accounts.* Consistent with § 145.352(a) (relating to establishment of accounts), the Department or its agent will establish one compliance account for each CO₂ budget source. Allocations of CO₂ allowances under §§ 145.341—145.343 (relating to CO₂ allowance allocations) and deductions or transfers of CO₂ allowances under §§ 145.332, 145.355 and 145.357 (relating to Department action on compliance certifications; compliance; and account error) or §§ 145.361—145.363 (relating to CO₂ allowance transfers) will be recorded in the compliance accounts.

(b) *Nature and function of general accounts.* Consistent with § 145.352(b), the Department or its agent will establish, upon request, a general account for any person. Transfers of CO₂ allowances under §§ 145.361—145.363 will be recorded in the general account.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.405 (relating to auction participant requirements); and 25 Pa. Code § 145.406 (relating to auction participant qualification).

§ 145.352. Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under § 145.314 (relating to account certificate of representation), the Department or its agent will establish a compliance account for each CO₂ budget source for which the account certificate of representation was submitted.

(b) *General accounts.*

(1) *Complete application.* Any person may apply to open a general account for the purpose of holding and transferring CO₂ allowances by submitting a complete application for a general account to the Department or its agent that includes the following:

(i) The name, mailing address, e-mail address and telephone number of the CO₂ authorized account representative and any CO₂ authorized alternate account representative.

(ii) The organization name and type of organization.

(iii) A list of all persons subject to a binding agreement for the CO₂ authorized account representative or any CO₂ authorized alternate account representative to represent their ownership interest with respect to the CO₂ allowances held in the general account.

(iv) The following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative:

“I certify that I was selected as the CO₂ authorized account representative or the CO₂ authorized alternate account representative by an agreement that is binding on all persons who have an ownership interest with respect to CO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO₂ Budget

Trading Program on behalf of all persons and that each person shall be fully bound by my representations, actions, inactions or submissions and by any order or decision issued to me by the Department or its agent or a court regarding the general account.”

(v) The signature of the CO₂ authorized account representative and any CO₂ authorized alternate account representative and the dates signed.

(vi) Unless otherwise required by the Department or its agent, documents of agreement referred to in the application for a general account should not be submitted to the Department or its agent. The Department and its agent are not under any obligation to review or evaluate the sufficiency of any documents of agreement, if submitted.

(2) *Authorization of CO₂ authorized account representative.*

(i) Upon receipt by the Department or its agent of a complete application for a general account under paragraph (1), the Department or its agent will establish a general account for the person for whom the application is submitted.

(ii) The CO₂ authorized account representative and any CO₂ authorized alternate account representative for the general account shall represent and, by their representations, actions, inactions or submissions, legally bind each person who has an ownership interest with respect to CO₂ allowances held in the general account in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding an agreement between the CO₂ authorized account representative or any CO₂ authorized alternate account representative and the person. This person shall be bound by any order or decision issued to the CO₂ authorized account representative or any CO₂ authorized alternate account representative by the Department or its agent or a court regarding the general account.

(iii) Any representation, action, inaction or submission by any CO₂ authorized alternate account representative shall be deemed to be a representation, action, inaction or submission by the CO₂ authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed and certified by the CO₂ authorized account representative or any CO₂ authorized alternate account representative for the persons having an ownership interest with respect to CO₂ allowances held in the general account. Each submission shall include the following certification statement by the CO₂ authorized account representative or any CO₂ authorized alternate account representative:

“I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO₂ 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 under 18 Pa.C.S.

§ 4904 for submitting false statements and information or omitting required statements and information.”

(v) The Department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed and certified in accordance with subparagraph (iv).

(3) *Changing CO₂ authorized account representative and CO₂ authorized alternate account representative; changes in persons with ownership interest.*

(i) The CO₂ authorized account representative or the CO₂ authorized alternate account representative for a general account may be changed at any time upon receipt by the Department or its agent of a superseding complete application for a general account under paragraph (1). Notwithstanding a change, the representations, actions, inactions and submissions by the previous CO₂ authorized account representative, or the previous CO₂ authorized alternate account representative, prior to the time and date when the Department or its agent receives the superseding application for a general account shall be binding on the new CO₂ authorized account representative or the new CO₂ authorized alternate account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.

(ii) A revision of ownership listing shall include the following:

(A) If a new person having an ownership interest with respect to CO₂ allowances in the general account is not included in the list of persons in the application for a general account, the new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions and submissions of the CO₂ authorized account representative and any CO₂ authorized alternate account representative, and the decisions, orders, actions and inactions of the Department or its agent, as if the new person were included in the list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CO₂ allowances in the general account, including the addition or deletion of persons, the CO₂ authorized account representative or any CO₂ authorized alternate 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 CO₂ allowances in the general account to include the change.

(4) *Objections concerning CO₂ authorized account representative.*

(i) Once a complete application for a general account under paragraph (1) has been submitted and received, the Department or its agent will rely on the application until a superseding complete application for a general account under paragraph (3)(i) is received by the Department or its agent.

(ii) Except as provided in paragraph (3)(i) and (ii), no objection or other communication submitted to the Department or its agent concerning the authorization, or any representation, action, inaction or submission of the CO₂ authorized account representative or any CO₂ authorized alternate account representative for a general account will affect any representation, action, inaction or submission of the CO₂ authorized account representative

or any CO₂ authorized alternate account representative or the finality of any decision or order by the Department or its agent under the CO₂ Budget Trading Program.

(iii) The Department or its agent will not adjudicate a private legal dispute concerning the authorization or any representation, action, inaction or submission of the CO₂ authorized account representative or any CO₂ authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO₂ allowance transfers.

(5) *Delegation by CO₂ authorized account representative and CO₂ authorized alternate account representative.*

(i) A CO₂ authorized account representative or a CO₂ authorized alternate account representative may delegate, to one or more persons, their authority to make an electronic submission to the Department or its agent under § 145.361 (relating to submission of CO₂ allowance transfers).

(ii) To delegate authority to make an electronic submission to the Department or its agent in accordance with subparagraph (i), the CO₂ authorized account representative or CO₂ authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(A) The name, address, e-mail address and telephone number of the CO₂ authorized account representative or CO₂ authorized alternate account representative.

(B) The name, address, e-mail address and telephone number of each electronic submission agent.

(C) For each electronic submission agent, a list of the type of electronic submissions under subparagraph (i) for which authority is delegated.

(D) The following certification statements by the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative:

(I) “I agree that any electronic submission to the Department or its agent that is by an electronic submission agent identified in this notice of delegation and of a type listed for the electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative before this notice of delegation is superseded by another notice of delegation under 25 Pa. Code § 145.352(b)(5)(ii) shall be deemed to be an electronic submission by me.”

(II) “Until this notice of delegation is superseded by another notice of delegation under 25 Pa. Code § 145.352(b)(5)(ii), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under subsection (b)(5)(ii) is terminated.”

(iii) A notice of delegation submitted under subparagraph (ii) shall be effective, with regard to the delegating CO₂ authorized account representative or CO₂ authorized alternate account representative identified in the notice, upon receipt of the notice by the Department or its agent and until

receipt by the Department or its agent of a superseding notice of delegation by the CO₂ authorized account representative or CO₂ authorized alternate account representative. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

(iv) Any electronic submission covered by the certification in clause (D) and made in accordance with a notice of delegation effective under subparagraph (ii) shall be deemed to be an electronic submission by the CO₂ authorized account representative or CO₂ authorized alternate account representative submitting the notice of delegation.

(c) *Account identification.* The Department or its agent will assign a unique identifying number to each account established under subsections (a) or (b).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.312 (relating to CO₂ authorized alternate account representative); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.355 (relating to compliance); and 25 Pa. Code § 145.394 (relating to application process).

§ 145.353. COATS responsibilities of CO₂ authorized account representative and CO₂ authorized alternate account representative.

Following the establishment of a COATS account, the submissions to the Department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO₂ allowances in the account, shall be made only by the CO₂ authorized account representative or CO₂ authorized alternate account representative for the account.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); and 25 Pa. Code § 145.355 (relating to compliance).

§ 145.354. Recordation of CO₂ allowance allocations.

(a) Except for 2022, by January 1 of each calendar year, the Department or its agent will record the CO₂ allowances allocated for the air pollution reduction account under § 145.342(a) (relating to CO₂ allowance allocations).

(b) By January 1 of each calendar year, the Department or its agent will record the CO₂ allowances allocated for the waste coal set-aside account under § 145.342(b)(1), for the strategic use set-aside account under § 145.342(b)(2) and for the combined heat and power set-aside account under § 145.342(b)(3) for the year after the last year for which CO₂ allowances were previously allocated to the set-aside account.

(c) The Department or its agent will assign each CO₂ allowance a serial number that will include digits identifying the year for which the CO₂ allowance is allocated.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); and 25 Pa. Code § 145.355 (relating to compliance).

§ 145.355. Compliance.

(a) *Allowances available for compliance deduction.* The CO₂ allowances are available to be deducted for compliance with the CO₂ requirements under § 145.306(c) (relating to standard requirements) for a control period or an interim control period only if the CO₂ allowances meet the following:

(1) The CO₂ allowances, other than CO₂ offset allowances, are allocated for a prior control period, the same control period or the interim control period for which the allowances will be deducted.

(2) The CO₂ allowances are held in the CO₂ budget source's compliance account as of the CO₂ allowance transfer deadline for that control period or the interim control period or are transferred into the compliance account by a CO₂ allowance transfer correctly submitted for recordation under § 145.361 (relating to submission of CO₂ allowance transfers) by the CO₂ allowance transfer deadline for that control period or the interim control period.

(3) For CO₂ offset allowances, the number of CO₂ offset allowances available to be deducted for a CO₂ budget source to comply with the CO₂ requirements under § 145.306(c) for a control period or an interim control period may not exceed 3.3% of the CO₂ budget source's CO₂ emissions for that control period or 3.3% of 0.50 times the CO₂ budget source's CO₂ emissions for an interim control period, as determined in accordance with §§ 145.351—145.358 (relating to CO₂ allowance tracking system) and 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements).

(4) The CO₂ allowances are not necessary for deductions for excess emissions for a prior control period under subsection (d).

(b) *Deductions for compliance.* Following the recordation, in accordance with § 145.362 (relating to recordation), of CO₂ allowance transfers submitted for recordation in the CO₂ budget source's compliance account by the CO₂ allowance transfer deadline for a control period or interim control period, the Department or its agent will deduct CO₂ allowances available under subsection (a) to cover the source's CO₂ emissions for the control period or interim control period, as follows:

(1) Until the amount of CO₂ allowances deducted equals the number of tons of total CO₂ emissions, or 0.50 times the number of tons of total CO₂ emissions for an interim control period, less any CO₂ emissions attributable to the burning of eligible biomass, determined in accordance with §§ 145.371—145.377, from all CO₂ budget units at the CO₂ budget source for the control period or interim control period.

(2) Until there are no more CO₂ allowances remaining in the compliance account that are available to be deducted under subsection (a), if there are insufficient CO₂ allowances to complete the deductions in paragraph (1).

(c) *Allowance identification.*

(1) The CO₂ authorized account representative for a CO₂ budget source's compliance account may identify by serial number the CO₂ allowances to be deducted from the compliance account for emissions or excess emissions for a control period or an interim control period in accordance with subsection (b)

or subsection (d). The identification shall be made in the compliance certification report submitted in accordance with § 145.331 (relating to compliance certification report).

(2) The Department or its agent will deduct CO₂ allowances for a control period or an interim control period from the CO₂ budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number under paragraph (1), in the following order:

(i) CO₂ offset allowances subject to the relevant compliance deduction limitations under subsection (a)(3) will be deducted in chronological order. In the event that some, but not all, CO₂ offset allowances from a particular allocation year are to be deducted, CO₂ offset allowances will be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(ii) CO₂ allowances, other than CO₂ offset allowances, that are available for deduction under subsection (a) will be deducted in chronological order. In the event that some, but not all, CO₂ allowances from a particular allocation year are to be deducted, CO₂ allowances will be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subsection (b), the Department or its agent will deduct from the CO₂ budget source's compliance account a number of CO₂ allowances, equal to 3 times the number of the CO₂ budget source's excess emissions.

(2) If the compliance account does not contain sufficient CO₂ allowances to cover 3 times the number of the CO₂ budget source's excess emissions, the CO₂ budget source shall immediately transfer CO₂ allowances into its compliance account in an amount equal to 3 times the number of the CO₂ budget source's excess emissions. No CO₂ offset allowances may be deducted to account for the source's excess emissions.

(3) A CO₂ allowance deduction required under paragraph (1) will not affect the liability of the owner or operator of the CO₂ budget source or the CO₂ budget units at the source for any fine, penalty or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or the act. The following guidelines will be followed by the Department in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CO₂ budget source has excess emissions for a control period or an interim control period, each day in the control period or an interim control period constitutes a day of violation unless the owner or operator of the unit demonstrates that a lesser number of days should be considered.

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

(e) *Recordation.* The Department or its agent will record in the appropriate compliance account all deductions from the account under subsections (b)—(d).

(f) *Action by the Department on submissions.*

(1) The Department may review and conduct independent audits concerning any submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Department may deduct CO₂ allowances from or transfer CO₂ allowances to a CO₂ budget source's compliance account based on information in the submissions, as adjusted under paragraph (1).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.342 (relating to CO₂ allowance allocations); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.356 (relating to banking); 25 Pa. Code § 145.362 (relating to recordation); and 25 Pa. Code § 145.391 (relating to purpose).

§ 145.356. Banking.

A CO₂ allowance that is held in a compliance account or a general account will remain in the account until the CO₂ allowance is deducted or transferred under § 145.332, § 145.355, § 145.357 or §§ 145.361—145.363 (relating to Department action on compliance certifications; compliance; account error; and CO₂ allowance transfers).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); and 25 Pa. Code § 145.355 (relating to compliance).

§ 145.357. Account error.

The Department or its agent may correct any error in a COATS account. Within 10 business days of making the correction, the Department or its agent will notify the CO₂ authorized account representative for the account.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.355 (relating to compliance); and 25 Pa. Code § 145.356 (relating to banking).

§ 145.358. Closing of general accounts.

(a) The CO₂ authorized account representative of a general account may instruct the Department or its agent to close the account by submitting a statement requesting deletion of the account from COATS and by correctly submitting for recordation under § 145.361 (relating to submission of CO₂ allowance transfers) a CO₂ allowance transfer of all CO₂ allowances in the account to one or more other COATS account.

(b) If a general account shows no activity for 1 year or more and does not contain any CO₂ allowances, the Department or its agent may notify the CO₂ authorized account representative for the account that the account will be closed in COATS following 30 business days after the notice is sent. The Department or its agent will close the account after the 30-day period unless before the end of

the 30-day period the Department or its agent receives a correctly submitted transfer of CO₂ allowances into the account under § 145.361 or a statement submitted by the CO₂ authorized account representative requesting that the account should not be closed. The Department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); and 25 Pa. Code § 145.355 (relating to compliance).

CO₂ ALLOWANCE TRANSFERS

§ 145.361. Submission of CO₂ allowance transfers.

The CO₂ authorized account representatives seeking recordation of a CO₂ allowance transfer shall submit the transfer to the Department or its agent. The CO₂ allowance transfer shall include the following, in a format prescribed by the Department:

- (1) The numbers identifying the accounts of the transferor and transferee.
- (2) A specification by serial number of each CO₂ allowance to be transferred.
- (3) The printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed.
- (4) The date of the completion of the last sale or purchase transaction for the CO₂ allowance, if any.
- (5) The purchase or sale price of the CO₂ allowance that is the subject of a sale or purchase transaction under paragraph (4).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.305 (relating to limited exemption for CO₂ budget units with electrical output to the electric grid restricted by permit conditions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.352 (relating to establishment of accounts); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.356 (relating to banking); 25 Pa. Code § 145.358 (relating to closing of general accounts); and 25 Pa. Code § 145.362 (relating to recordation).

§ 145.362. Recordation.

(a) Within 5 business days of receiving a CO₂ allowance transfer, except as provided in subsection (b), the Department or its agent will record a CO₂ allowance transfer by moving each CO₂ allowance from the account of the transferor to the account of the transferee as specified by the request, if the following are met:

- (1) The transfer is correctly submitted under § 145.361 (relating to submission of CO₂ allowance transfers).
 - (2) The account of the transferor includes each CO₂ allowance identified by serial number in the transfer.
- (b) A CO₂ allowance transfer into or out of a compliance account that is submitted for recordation following the CO₂ allowance transfer deadline and that includes any CO₂ allowance allocated for a control period or interim control

period prior to or the same as the control period or interim control period to which the CO₂ allowance transfer deadline applies will not be recorded until after completion of the process in § 145.355(b) (relating to compliance).

(c) A CO₂ allowance transfer submitted for recordation that fails to meet the requirements of subsection (a) will not be recorded.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.356 (relating to banking); and 25 Pa. Code § 145.363 (relating to notification).

§ 145.363. Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CO₂ allowance transfer under § 145.362 (relating to recordation), the Department or its agent will notify each party to the transfer. Notice will be given to the CO₂ authorized account representative of the account of the transferor and the CO₂ authorized account representative of the account of the transferee.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CO₂ allowance transfer that fails to meet the requirements of § 145.362(a), the Department or its agent will notify the CO₂ authorized account representative of the account of the transferor and the CO₂ authorized account representative of the account of the transferee of the following:

- (1) A decision not to record the transfer.
- (2) The reasons for the non-recordation.

(c) *Resubmission.* Nothing in this section precludes the resubmission of a CO₂ allowance transfer for recordation following notification under subsection (b).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.351 (relating to CO₂ Allowance Tracking System (COATS) accounts); and 25 Pa. Code § 145.356 (relating to banking).

MONITORING, REPORTING AND RECORDKEEPING REQUIREMENTS

§ 145.371. General monitoring requirements.

The owner or operator, and to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in this section and §§ 145.372—145.377 and all applicable sections of 40 CFR Part 75 (relating to continuous emission monitoring). Where referenced in §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements), the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO₂ mass emissions under this subchapter. For purposes of complying with these requirements, the definitions in § 145.302 (relating to definitions) and in 40 CFR 72.2 (relating to definitions) apply, and the terms “affected unit,” “designated representative” and “continuous emissions monitoring system” in 40 CFR Part 75 shall be replaced by the

terms “CO₂ budget unit,” “CO₂ authorized account representative” and “continuous emissions monitoring system,” respectively, as defined in § 145.302. For units not subject to an acid rain emissions limitation, the term “Administrator” in 40 CFR Part 75 shall be replaced with “the Administrator, Department or its agent.” The owner or operator of a CO₂ budget unit who monitors a unit that is not a CO₂ budget unit pursuant to the common, multiple or bypass stack procedures in 40 CFR 75.72(b)(2)(ii) (relating to determination of NO_x mass emissions for common stack and multiple stack configurations) or 40 CFR 75.16(b)(2)(ii)(B) (relating to special provisions for monitoring emissions from common, bypass, and multiple stacks for SO₂ emissions and heat input determinations) as pursuant to 40 CFR 75.13 (relating to specific provisions for monitoring CO₂ emissions) for purposes of complying with this subchapter, shall monitor and report CO₂ mass emissions from a unit that is not a CO₂ budget unit in accordance with the monitoring, reporting and recordkeeping requirements for a CO₂ budget unit under §§ 145.371—145.377.

(1) *Requirements for installation, certification and data accounting.* The owner or operator of each CO₂ budget unit must meet the following:

(i) Install all monitoring systems necessary to monitor CO₂ mass emissions in accordance with 40 CFR Part 75, except for equation G-1. This includes all systems required to monitor CO₂ concentration, stack gas flow rate, O₂ concentration, heat input and fuel flow rate, in accordance with 40 CFR Part 75, Subpart H (relating to NO_x mass emissions provisions).

(ii) Successfully complete all certification tests required under § 145.372 (relating to initial certification and recertification procedures) and meet all other provisions of this subchapter and 40 CFR Part 75 applicable to the monitoring systems under subparagraph (i).

(iii) Record, report and quality-assure the data from the monitoring systems under subparagraph (i).

(2) *Compliance dates.* The owner or operator of a CO₂ budget unit shall meet the monitoring system certification and other requirements of paragraph (1) and shall record, report and quality-assure data from the monitoring systems under paragraph (1)(i) according to the following schedule:

(i) Except for a CO₂ budget unit under subparagraph (ii), a CO₂ budget unit that commences commercial operation before October 25, 2021, shall comply with this section and §§ 145.372—145.377 by April 23, 2022.

(ii) A CO₂ budget unit that commences commercial operation on or after October 25, 2021, shall comply with the requirements of this section and §§ 145.372—145.377 by the later of the following dates:

(A) April 23, 2022.

(B) The earlier of:

(I) 90-unit operating days after the date on which the unit commences commercial operation.

(II) 180 calendar days after the date on which the unit commences commercial operation.

(iii) The owner or operator of a CO₂ budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subparagraphs (i) or (ii) by the earlier of:

(A) 90-unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(B) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(3) *Reporting data.*

(i) Except as provided in subparagraph (ii), the owner or operator of a CO₂ budget unit that does not meet the applicable compliance date set forth in paragraph (2) for any monitoring system under paragraph (1)(i) shall, for each monitoring system, determine, record and report maximum potential, or as appropriate minimum potential, values for CO₂ concentration, CO₂ emissions rate, stack gas moisture content, fuel flow rate, heat input and any other parameter required to determine CO₂ mass emissions under 40 CFR 75.31(b)(2) or (c)(3) (relating to initial missing data procedures), or 40 CFR Part 75, Appendix D, section 2.4 (relating to optional SO₂ emissions data protocol for gas-fired and oil-fired units), regarding missing data procedures, as applicable.

(ii) The owner or operator of a CO₂ budget unit that does not meet the applicable compliance date set forth in paragraph (2)(iii) for any monitoring system under paragraph (1)(i) shall, for each monitoring system, determine, record and report substitute data using the applicable missing data procedures in 40 CFR Part 75, Subpart D (relating to missing data substitution procedures) or Appendix D, instead of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (2)(iii).

(A) A CO₂ budget unit subject to an acid rain emissions limitation that qualifies for the optional SO₂, NO_x and CO₂ emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 (relating to optional SO₂, NO_x, and CO₂ emissions calculation for low mass emissions (LME) units) and report emissions for the acid rain program using the calculations under 40 CFR 75.19, shall also use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this subchapter.

(B) A CO₂ budget unit subject to an acid rain emissions limitation that does not qualify for the optional SO₂, NO_x and CO₂ emissions calculations for LME units under 40 CFR 75.19, shall not use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this subchapter.

(C) A CO₂ budget unit not subject to an acid rain emissions limitation shall qualify for the optional CO₂ emissions calculation for LME units under 40 CFR 75.19, if the unit emits less than 100 tons of NO_x annually and no more than 25 tons of SO₂ annually.

(4) *Prohibitions.*

(i) An owner or operator of a CO₂ budget unit may not use an alternative monitoring system, alternative reference method or another alternative for the required CEMS without having obtained prior written approval in accordance with § 145.376 (relating to petitions).

(ii) An owner or operator of a CO₂ budget unit may not operate the unit so as to discharge, or allow to be discharged, CO₂ emissions to the atmosphere without accounting for the emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75.

(iii) An owner or operator of a CO₂ budget unit may not disrupt the CEMS, a portion thereof or another approved emissions monitoring method, and thereby avoid monitoring and recording CO₂ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this subchapter and 40 CFR Part 75.

(iv) An owner or operator of a CO₂ budget unit may not retire or permanently discontinue use of the CEMS, any component thereof or another approved emissions monitoring system under this subchapter, except under one of the following circumstances:

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

(B) The CO₂ authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 145.372(d)(3)(i).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.372 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.376 (relating to petitions); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.372. Initial certification and recertification procedures.

(a) *Exemption.* The owner or operator of a CO₂ budget unit shall be exempt from the initial certification requirements for a monitoring system under § 145.371(1)(i) (relating to general monitoring requirements) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR Part 75 (relating to continuous emission monitoring).

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 (relating to quality assurance and quality control requirements) and 40 CFR Part 75, Appendix B (relating to quality assurance and quality

control procedures) and Appendix D (relating to optional SO₂ emissions data protocol for gas-fired and oil-fired units) are fully met for the certified monitoring system described in paragraph (1).

(b) *Applicability.* The recertification provisions of this section shall apply to a monitoring system under § 145.371(1)(i) that is exempt from initial certification requirements under subsection (a).

(c) *Petitions.* Notwithstanding subsection (a), if the Administrator approved a petition under 40 CFR 75.72(b)(2)(ii) or 40 CFR 75.16(b)(2)(ii)(B) (relating to determination of NO_x mass emissions for common stack and multiple stack configurations; and special provisions for monitoring emissions from common, bypass, and multiple stacks for SO₂ emissions and heat input determinations) as pursuant to 40 CFR 75.13 (relating to specific provisions for monitoring CO₂ emissions) for apportioning the CO₂ emissions rate measured in a common stack or a petition under 40 CFR 75.66 (relating to petitions to the administrator) for an alternative requirement in 40 CFR Part 75, the CO₂ authorized account representative shall submit the petition to the Department under § 145.376(a) (relating to petitions) to determine if the approval applies under the CO₂ Budget Trading Program.

(d) *Certification and recertification.* Except as provided in subsection (a), the owner or operator of a CO₂ budget unit shall comply with the initial certification and recertification procedures for a CEMS and an excepted monitoring system under 40 CFR Part 75, Appendix D and under § 145.371(1)(i). The owner or operator of a CO₂ budget unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 (relating to optional SO₂, NO_x, and CO₂ emissions calculation for low mass emissions (LME) units) or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E (relating to alternative monitoring systems) shall comply with the procedures in subsections (e) or (f), respectively.

(1) *Requirements for initial certification.* The owner or operator of a CO₂ budget unit shall ensure that each CEMS required under § 145.371(1)(i), including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20 (relating to initial certification and recertification procedures) by the applicable deadlines specified in § 145.371(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subchapter in a location where no monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(2) *Requirements for recertification.*

(i) Whenever the owner or operator makes a replacement, modification or change to a certified CEMS under § 145.371(1)(i) that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record CO₂ mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75, Appendix B, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

(ii) For a system using stack measurements including stack flow, stack moisture content, CO₂ or O₂ monitors, 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 Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b).

(3) *Approval process for initial certification and recertification.*

(i) *Notification of certification.* The CO₂ authorized account representative shall submit to the Department and the appropriate EPA Regional Office a written notice of the dates of certification in accordance with § 145.374 (relating to notifications).

(ii) *Certification application.* The CO₂ authorized account representative shall submit to the Department a certification application for each monitoring system required under 40 CFR 75.63 (relating to initial certification or recertification application). A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) *Provisional certification data.* The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO₂ Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under subparagraph (ii). Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), if the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

(iv) *Certification application approval process.* The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subparagraph (ii). If the Department does not issue the notice within the 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO₂ 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 Part 75, the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, the Department will issue a written notice of incompleteness that sets a date by which the CO₂ authorized account representative must submit the additional information required to complete the certification application. If the CO₂ authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department

may issue a notice of disapproval under clause (C). The 120-day review period may not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under clause (B) is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof will 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 subparagraph (v) for each monitoring system or component thereof which is disapproved for initial certification.

(D) *Audit decertification.* The Department may issue a notice of disapproval of the certification status of a monitor in accordance with § 145.373(b) (relating to out-of-control periods).

(v) *Procedures for loss of certification.* If the Department issues a notice of disapproval of a certification application under subparagraph (iv)(C) or a notice of disapproval of certification status under subparagraph (iv)(D), the following apply:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, 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) or (g)(7):

(I) For a unit using or intending to monitor for CO₂ mass emissions using heat input or for a unit using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit.

(II) For a unit intending to monitor for CO₂ mass emissions using a CO₂ pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO₂ and the maximum potential flow rate of the unit under 40 CFR Part 75, Appendix A, section 2.1 (relating to specifications and test procedures).

(B) The CO₂ authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (i) and (ii).

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30-unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for low mass emissions units using the excepted methodologies under § 145.371(3)(ii).* The owner or

operator of a unit qualified to use the low mass emissions excepted methodology under § 145.371(3)(ii) shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h) and this section. If the owner or operator of the unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

(f) *Certification and recertification procedures for an alternative monitoring system.* The CO₂ authorized account representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, by the Department under 40 CFR Part 75, Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); 25 Pa. Code § 145.373 (relating to out-of-control periods); 25 Pa. Code § 145.375 (relating to recordkeeping and reporting); 25 Pa. Code § 145.376 (relating to petitions); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.373. Out-of-control periods.

(a) *Quality assurance requirements.* Whenever a monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR Part 75 (relating to continuous emission monitoring), data shall be substituted using the applicable procedures in 40 CFR Part 75, Subpart D (relating to missing data substitution procedures) or Appendix D (relating to optional SO₂ emissions data protocol for gas-fired and oil-fired units).

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 145.372 (relating to initial certification and recertification procedures) or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of the monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in § 145.372 for each disapproved monitoring system.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); 25 Pa. Code § 145.372 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.376 (relating to petitions); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.374. Notifications.

The CO₂ authorized account representative for a CO₂ budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR 75.61 (relating to notifications).

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); 25 Pa. Code § 145.372 (relating to initial certification and recertification procedures); 25 Pa. Code § 145.376 (relating to petitions); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.375. Recordkeeping and reporting.

(a) *General provisions.* The CO₂ authorized account representative shall comply with the recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73 (relating to recordkeeping and reporting) and with the requirements of § 145.311(e) (relating to authorization and responsibilities of the CO₂ authorized account representative).

(b) *Monitoring plans.* The owner or operator of a CO₂ budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62 (relating to monitoring plan submittals).

(c) *Certification applications.* The CO₂ authorized account representative shall submit an application to the Department within 45 days after completing all CO₂ monitoring system initial certification or recertification tests required under § 145.372 (relating to initial certification and recertification procedures) including the information required under 40 CFR 75.63 (relating to initial certification or recertification application) and 40 CFR 75.53(g) and (h) (relating to monitoring plan).

(d) *Quarterly reports.* The CO₂ authorized account representative shall submit quarterly reports, as follows:

(1) The CO₂ mass emissions data for the CO₂ budget unit, in an electronic format prescribed by the Administrator unless otherwise prescribed by the Administrator or the Department for each calendar quarter.

(2) The CO₂ authorized account representative shall submit each quarterly report to the Administrator and the Department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR Part 75, Subpart H (relating to NO_x mass emissions provisions) and 40 CFR 75.64 (relating to

quarterly reports) and for each CO₂ budget unit, or group of units using a common stack, and shall include all the data and information required in 40 CFR Part 75, Subpart G (relating to reporting requirements), except for opacity, heat input, NO_x and SO₂ provisions.

(3) The CO₂ authorized account representative shall submit to the Administrator or the Department a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all the unit's emissions are correctly and fully monitored. The certification shall state that the following conditions have been met:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subchapter and 40 CFR Part 75 (relating to continuous emission monitoring), including the quality assurance procedures and specifications.

(ii) For a unit with add-on CO₂ emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1) (relating to units with add-on emission controls), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B (relating to quality assurance and quality control procedures) and the substitute values do not systematically underestimate CO₂ emissions.

(iii) The CO₂ concentration values substituted for missing data under 40 CFR Part 75, Subpart D (relating to missing data substitution procedures) do not systematically underestimate CO₂ emissions.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); 25 Pa. Code § 145.376 (relating to petitions); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.376. Petitions.

(a) Except as provided in subsection (c), the CO₂ authorized account representative of a CO₂ budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 (relating to petitions to the administrator) and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75 (relating to continuous emission monitoring).

(b) Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

(c) The CO₂ authorized account representative of a CO₂ budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an

alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

(d) In the event that the Administrator declines to review a petition under subsection (c), the CO₂ authorized account representative of a CO₂ budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Department requesting approval to apply an alternative to any requirement of §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements). That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of §§ 145.371—145.377 is in accordance with §§ 145.371—145.377 only to the extent that the petition is approved in writing by the Department.

(e) The CO₂ authorized account representative of a CO₂ budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 (relating to determination of NO_x mass emissions for common stack and multiple stack configurations) or a CO₂ concentration CEMS used under 40 CFR 75.71(a)(2) (relating to specific provisions for monitoring NO_x and heat input for the purpose of calculating NO_x mass emissions). Application of an alternative to any requirement is in accordance with §§ 145.371—145.377 only to the extent the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); 25 Pa. Code § 145.372 (relating to initial certification and recertification procedures); and 25 Pa. Code § 145.377 (relating to CO₂ budget units that co-fire eligible biomass).

§ 145.377. CO₂ budget units that co-fire eligible biomass.

(a) The CO₂ authorized account representative of a CO₂ budget unit that co-fires eligible biomass as a compliance mechanism under this subchapter shall report the following information to the Department or its agent for each calendar quarter:

- (1) For each shipment of solid eligible biomass fuel fired at the CO₂ budget unit:
 - (i) The total eligible biomass fuel input, on an as-fired basis, in pounds.
 - (ii) The moisture content, on an as-fired basis, as a fraction by weight.
- (2) For each distinct type of gaseous eligible biomass fuel fired at the CO₂ budget unit:
 - (i) The density of the biogas, on an as-fired basis, in pounds per standard cubic foot.
 - (ii) The moisture content of the biogas, on an as-fired basis, as a fraction by total weight.
 - (iii) The total eligible biomass fuel input, in standard cubic feet.

- (3) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit:
- (i) The dry basis carbon content of the fuel type, as a fraction by dry weight.
 - (ii) The dry basis higher heating value, in MMBtu per dry pound.
 - (iii) The total dry basis eligible biomass fuel input, in pounds, calculated in accordance with subsection (b).
 - (iv) The total eligible biomass fuel heat input, in MMBtu, calculated in accordance with subsection (d)(1).
 - (v) A chemical analysis, including heating value and carbon content.
- (4) The total amount of CO₂ emitted from the CO₂ budget unit due to firing eligible biomass fuel, in tons, calculated in accordance with subsection (c).
- (5) The total amount of heat input to the CO₂ budget unit due to firing eligible biomass fuel, in MMBtu, calculated in accordance with subsection (d)(2).
- (6) A description and documentation of the monitoring technology employed, and a description and documentation of the fuel sampling methodology employed, including sampling frequency and carbon ash testing.
- (b) An owner or operator of a CO₂ budget unit shall calculate and submit to the Department or its agent on a quarterly basis the total dry weight for each distinct type of eligible biomass fired by the CO₂ budget unit during the reporting quarter. The total dry weight shall be determined for each fuel type as follows:

- (1) For solid fuel types:

$$F_j = \sum_{i=1}^m (1 - M_i) \times F_i$$

Where:

- F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j.
 F_i = Eligible biomass as fired fuel input (lbs) for fired shipment i.
 M_i = Moisture content (fraction) for fired shipment i.
 i = Fired fuel shipment.
 j = Fuel type.
 m = Number of shipments.

- (2) For gaseous fuel types:

$$F_j = D_j \times V_j \times (1 - M_j)$$

Where:

- F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j.
 D_j = Density of biogas (lbs/scf) for fuel type j.
 V_j = Total volume (scf) for fuel type j.
 M_j = Moisture content (fraction) for fuel type j.
 j = Fuel type.

(c) CO₂ emissions due to firing of eligible biomass shall be determined as follows:

- (1) For any full calendar quarter during which no fuel other than eligible biomass is combusted at the CO₂ budget unit, as measured and recorded in

accordance with §§ 145.371—145.377 (relating to monitoring, reporting and recordkeeping requirements).

(2) For any full calendar quarter during which fuels other than eligible biomass are combusted at the CO₂ budget unit, as determined using the following equation:

$$CO_2 \text{ tons} = \sum_{j=1}^n F_j \times C_j \times O_j \times \frac{44}{12} \times 0.0005$$

Where:

CO₂ tons = CO₂ emissions due to firing of eligible biomass for the reporting quarter.

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in subsection (b).

C_j = Carbon fraction (dry basis) for fuel type j.

O_j = Oxidation factor for eligible biomass fuel type j, derived for solid fuels based on the ash content of the eligible biomass fired and the carbon content of this ash, as determined under subsection (a)(3)(v); for gaseous eligible biomass fuels, a default oxidation factor of 0.995 may be used.

44/12 = The number of tons of carbon dioxide that are created when 1 ton of carbon is combusted.

0.0005 = The number of short tons which is equal to 1 pound.

j = Fuel type.

n = Number of distinct fuel types.

(d) Heat input due to firing of eligible biomass for each quarter shall be determined as follows:

(1) For each distinct fuel type:

$$H_j = F_j \times HHV_j$$

Where:

H_j = Heat input (MMBtu) for fuel type j.

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in subsection (b).

HHV_j = Higher heating value (MMBtu/lb), dry basis, for fuel type j, as determined through chemical analysis.

j = Fuel type.

(2) For all fuel types:

$$\text{Heat input MMBtu} = \sum_{i=1}^n H_j$$

Where:

H_j = Heat input (MMBtu) for fuel type j.

j = Fuel type.

n = Number of distinct fuel types.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.323 (relating to contents of an application for a permit incorporating CO₂ Budget Trading Program requirements); 25 Pa. Code § 145.331 (relating to compliance certification report); 25 Pa. Code § 145.355 (relating to compliance); 25 Pa. Code § 145.371 (relating to general monitoring requirements); and 25 Pa. Code § 145.376 (relating to petitions).

AUCTION OF CO₂ CCR AND ECR ALLOWANCES**§ 145.381. Purpose.**

The following requirements shall apply to each allowance auction. The Department or its agent may specify additional information in the auction notice for each auction. This additional information may include the time and location of the auction, auction rules, registration deadlines and any additional information deemed necessary or useful.

Cross References

This section cited in 25 Pa. Code § 145.402 (relating to auction format).

§ 145.382. General requirements.

(a) In the auction notice for each auction, the Department or its agent shall include the following:

- (1) The number of CO₂ allowances offered for sale at the auction, not including any CO₂ CCR allowances.
- (2) The number of CO₂ CCR allowances that will be offered for sale at the auction if the condition in subsection (b)(1) is met.
- (3) The minimum reserve price for the auction.
- (4) The CCR trigger price for the auction. The CCR trigger price in calendar year 2022 shall be \$13.91. Each calendar year after 2022, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 1.

Table 1. CO₂ CCR Trigger Price

2023	2024	2025	2026	2027	2028	2029	2030
\$14.88	\$15.92	\$17.03	\$18.22	\$19.50	\$20.87	\$22.33	\$23.89

(5) The maximum number of CO₂ allowances that may be withheld from sale at the auction if the condition in subsection (d)(1) is met.

(6) The ECR trigger price for the auction. The ECR trigger price in calendar year 2022 shall be \$6.42. Each calendar year after 2022, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 2.

Table 2. CO₂ ECR Trigger Price

2023	2024	2025	2026	2027	2028	2029	2030
\$6.87	\$7.35	\$7.86	\$8.41	\$9.00	\$9.63	\$10.30	\$11.02

(b) For the sale of CO₂ CCR allowances, the Department or its agent will do the following:

(1) CO₂ CCR allowances will only be sold at an auction in which the total demand for allowances, above the CCR trigger price, exceeds the number of CO₂ allowances available for purchase at the auction, not including any CO₂ CCR allowances.

(2) If the condition in paragraph (1) is met at an auction, then the number of CO₂ CCR allowances offered for sale by the Department or its agent at the auction will be equal to the number of CO₂ CCR allowances in the air pollution reduction account at the time of the auction.

(3) After all of the CO₂ CCR allowances in the air pollution reduction account have been sold in a given calendar year, no additional CO₂ CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition in paragraph (1) is met at an auction.

(4) At an auction in which CO₂ CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

(5) If the condition in paragraph (1) is not satisfied, no CO₂ CCR allowances will be offered for sale at the auction and the reserve price for the auction will be equal to the minimum reserve price.

(c) The Department or its agent will implement the reserve price in the following manner:

(1) No CO₂ allowances will be sold at any auction for a price below the reserve price for that auction.

(2) If the total demand for CO₂ allowances at an auction is less than or equal to the total number of CO₂ allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

(d) For the withholding of CO₂ ECR allowances from an auction, the Department or its agent will do the following:

(1) CO₂ ECR allowances will only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.

(2) If the condition in paragraph (1) is met at an auction, then the maximum number of CO₂ ECR allowances that may be withheld from that auction will be equal to the quantity in § 145.342(e)(1) (relating to CO₂ allowance allocations) minus the total quantity of CO₂ ECR allowances that have been withheld from any prior auction in that calendar year. The Department will transfer any CO₂ ECR allowances withheld from an auction into the Pennsylvania ECR Account.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.342 (relating to CO₂ allowance allocations); 25 Pa. Code § 145.402 (relating to auction format); and 25 Pa. Code § 145.404 (relating to auction notice).

CO₂ EMISSIONS OFFSET PROJECTS**§ 145.391. Purpose.**

The Department may award CO₂ offset allowances to sponsors of CO₂ emissions offset projects that have reduced or avoided atmospheric loading of CO₂, CO₂e or sequestered carbon as demonstrated in accordance with the applicable provisions of §§ 145.391—145.397 (relating to CO₂ emissions offset projects). The requirements of §§ 145.391—145.397 seek to ensure that CO₂ offset allowances awarded represent CO₂ equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable and permanent within the framework of a standards-based approach. Subject to the relevant compliance deduction limitations of § 145.355(a)(3) (relating to compliance), CO₂ offset allowances may be used by any CO₂ budget source for compliance purposes.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.392. Definitions.

The following words and terms, when used in §§ 145.391—145.397 (relating to CO₂ emissions offset projects), have the following meanings, unless the context clearly indicates otherwise:

AEPS—Alternative energy portfolio standards—Standards establishing that a certain amount of energy sold from alternative energy sources, as defined under section 2 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.2), is included as part of the sources of electric generation by electric utilities within this Commonwealth.

Anaerobic digester—A device that promotes the decomposition of organic material to simple organics and gaseous biogas products, in the absence of elemental oxygen, usually accomplished by means of controlling temperature and volume, and that includes a methane recovery system.

Anaerobic digestion—The decomposition of organic material including manure brought about through the action of microorganisms in the absence of elemental oxygen.

Anaerobic storage—Storage of organic material in an oxygen-free environment, or under oxygen-free conditions, including holding tanks, ponds and lagoons.

Biogas—Gas resulting from the decomposition of organic matter under anaerobic conditions, the principle constituents of which are methane and carbon dioxide.

Conflict of interest—A situation that may arise with respect to an individual in relation to any specific project sponsor, CO₂ emissions offset project or category of offset projects, such that the individual's other activities or relation-

ships with other persons or organizations render or may render the individual incapable of providing an impartial certification opinion, or otherwise compromise the individual's objectivity in performing certification functions.

Forest offset project—An offset project involving reforestation, improved forest management or avoided conversion.

Forest offset project data report—The report prepared by a project sponsor each year that provides the information and documentation required by §§ 145.391—145.397 or the forest offset protocol.

Forest offset protocol—The protocol titled “Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects,” published by the participating states on June 12, 2013.

Independent verifier—An individual that has been approved by the Department or its agent to conduct verification activities.

Intentional reversal—Any reversal caused by a forest owner's negligence, gross negligence or willful intent, including harvesting, development and harm to the area within the offset project boundary.

Market penetration rate—A measure of the diffusion of a technology, product or practice in a defined market, as represented by the percentage of annual sales for a product or practice, or as a percentage of the existing installed stock for a product or category of products, or as the percentage of existing installed stock that utilizes a practice.

Offset project—

(i) All equipment, materials, items or actions directly related to the reduction of CO₂e emissions or the sequestration of carbon specified in a consistency application submitted under § 145.394 (relating to application process).

(ii) This term does not include equipment, materials, items or actions unrelated to an offset project reduction of CO₂e emissions or the sequestration of carbon but occurring at a location where an offset project occurs, unless specified in § 145.395 (relating to CO₂ emissions offset project standards).

Project commencement—

(i) For an offset project involving physical construction, other work at an offset project site or installation of equipment or materials, the date of the beginning of the activity.

(ii) For an offset project that involves the implementation of a management activity or protocol, the date on which the activity is first implemented or the protocol is first utilized.

(iii) For an offset project involving reforestation, improved forest management or avoided conversion, the date specified in section 3.2 of the forest offset protocol.

Project sponsor—The sponsor of an offset project under §§ 145.391—145.397.

Regional-type anaerobic digester—An anaerobic digester using feedstock from more than one agricultural operation or importing feedstock from more than one agricultural operation.

Reporting period—The period of time covered by a forest offset project data report. The first reporting period for a forest offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting and all reporting periods in any renewed crediting period must consist of 12 consecutive months.

Reversal—A greenhouse gas emission reduction or greenhouse gas removal enhancement for which CO₂ offset allowances have been issued that is subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.

System benefit fund—Any fund collected directly from retail electricity or natural gas ratepayers.

Total solids—The total of all solids in a sample, including the total suspended solids, total dissolved solids and volatile suspended solids.

Unintentional reversal—Any reversal, including wildfires, insects or disease, that is not the result of the forest owner's negligence, gross negligence or willful intent.

Verification—The confirmation by an independent verifier that certain parts of a CO₂ emissions offset project consistency application and measurement, monitoring or verification report conforms to the requirements of §§ 145.391—145.397.

Volatile solids—The fraction of total solids that is comprised primarily of organic matter as defined in EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.393. General requirements.

(a) *Eligibility.* To qualify for the award of CO₂ offset allowances, offset projects shall satisfy all the applicable requirements of §§ 145.391—145.397 (relating to CO₂ emissions offset projects).

(1) *Offset project types.* The following types of offset projects are eligible for the award of CO₂ offset allowances:

- (i) Landfill methane capture and destruction.
- (ii) Sequestration of carbon due to reforestation, improved forest management or avoided conversion.
- (iii) Avoided methane emissions from agricultural manure management operations.

(2) *Offset project locations.* To qualify for the award of CO₂ offset allowances, an offset project must be located in:

(i) This Commonwealth.

(ii) Partly in this Commonwealth and partly in one or more other participating states, provided that more of the CO₂e emissions reduction or carbon sequestration due to the offset project is projected to occur in this Commonwealth than in any other participating state.

(b) *Project sponsor.* Any person may act as the sponsor of an offset project, provided that person meets the requirements under § 145.394 (relating to application process).

(c) *General additionality requirements.* Except as provided under § 145.395 (relating to CO₂ emissions offset project standards), the Department will not award CO₂ offset allowances to an offset project that meets the following:

(1) An offset project that is required under any local, state or Federal law, regulation, or administrative or judicial order. If an offset project receives a consistency determination under § 145.394 and is later required by local, state or Federal law, regulation, or administrative or judicial order, then the offset project will remain eligible for the award of CO₂ offset allowances until the end of its current allocation period but its eligibility will not be extended for an additional allocation period.

(2) An offset project that includes an electric generation component, unless the project sponsor transfers legal rights to any and all attribute credits, other than the CO₂ offset allowances awarded under § 145.397 (relating to award and recordation of CO₂ offset allowances), generated from the operation of the offset project that may be used for compliance with AEPS or a regulatory requirement, to the Department or its agent.

(3) An offset project that receives funding or other incentives from any system benefit fund or other incentives provided through revenue from the auction or sale of CO₂ allowances in the air pollution reduction account under § 145.342(a) (relating to CO₂ allowance allocations).

(4) An offset project that is awarded credits or allowances under any other mandatory or voluntary greenhouse gas program, except as described in § 145.395(b)(10).

(d) *Maximum allocation periods for offset projects.*

(1) *Maximum allocation periods.* Except as provided in paragraph (2), the Department may award CO₂ offset allowances under § 145.397 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the Department may award CO₂ offset allowances for a second 10-year allocation period, provided the project sponsor has submitted a consistency application under § 145.394 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination under § 145.394(e)(2).

(2) *Maximum allocation period for sequestration of carbon due to reforestation, improved forest management or avoided conversion.* The Department may award CO₂ offset allowances under § 145.397 for any project involving reforestation, improved forest management or avoided conversion for an initial 25-year allocation period. At the end of the initial 25-year allocation period, or

any subsequent crediting period, the Department may award CO₂ offset allowances for a subsequent 25-year allocation period, provided the project sponsor has submitted a consistency application for the offset project under § 145.394 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination under § 145.394(e)(2).

(e) *Offset project audit.* A project sponsor shall provide in writing, an access agreement to the Department granting the Department or its agent access to the physical location of the offset project to inspect for compliance with §§ 145.391—145.397.

(f) *Ineligibility due to noncompliance.*

(1) If at any time the Department determines that a project sponsor has not complied with the requirements of §§ 145.391—145.397, then the Department may revoke and retire any and all CO₂ offset allowances in the project sponsor's account.

(2) If at any time the Department determines that an offset project does not comply with the requirements of §§ 145.391—145.397, then the Department may revoke any approvals it has issued relative to the offset project.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.394. Application process.

(a) *Establishment of general account.* The sponsor of an offset project must establish a general account under § 145.352(b) (relating to establishment of accounts). Submissions to the Department required for the award of CO₂ offset allowances under §§ 145.391—145.397 (relating to CO₂ emissions offset projects) must be from the CO₂ authorized account representative for the general account of the project sponsor.

(b) *Consistency application deadlines.* A consistency application for an offset project shall be submitted, in a format prescribed by the Department and consistent with the requirements of this section by the following deadlines:

(1) For an offset project not involving reforestation, improved forest management or avoided conversion, by the date that is 6 months after the offset project is commenced.

(2) For an offset project involving reforestation, improved forest management or avoided conversion the consistency application, by the date that is one year after the offset project is commenced, except as provided under § 145.395(b)(9) (relating to CO₂ emissions offset project standards).

(3) The Department will deny any consistency application that fails to meet the deadlines in this subsection.

(c) *Consistency application contents.* For an offset project, the consistency application must include the following:

(1) The project sponsor's name, address, e-mail address, telephone number, facsimile transmission number and account number.

(2) The offset project description as required by the relevant provisions under § 145.395.

(3) A demonstration that the offset project meets all applicable requirements in §§ 145.391—145.397.

(4) The emissions baseline determination as required by the relevant provisions under § 145.395.

(5) An explanation of how the projected reduction or avoidance of atmospheric loading of CO₂ or CO₂e or the sequestration of carbon is to be quantified, monitored and verified as required by the relevant provisions under § 145.395.

(6) A completed consistency application agreement signed by the project sponsor that reads as follows:

“The undersigned project sponsor recognizes and accepts that the application for, and the receipt of, CO₂ offset allowances under the CO₂ Budget Trading Program is predicated on the project sponsor following all the requirements of §§ 145.391—145.397. The undersigned project sponsor holds the legal rights to the offset project or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO₂ offset allowances under §§ 145.391—145.397 is contingent on meeting the requirements of §§ 145.391—145.397. I authorize the Department or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of the Commonwealth of Pennsylvania.”

(7) A statement and certification report signed by the offset project sponsor certifying that all offset projects for which the sponsor has received CO₂ offset allowances under §§ 145.391—145.397, under the sponsor’s ownership or control or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor are in compliance with all applicable requirements of the CO₂ Budget Trading Program in all participating states.

(8) A verification report and certification statement signed by an independent verifier accredited under § 145.396 (relating to accreditation of independent verifiers) that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements at § 145.393 (relating to general requirements) and § 145.395, and any applicable guidance issued by the Department:

(i) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of §§ 145.393 and 145.395.

(ii) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions under the applicable requirements under § 145.395.

(iii) The adequacy of the monitoring and verification plan submitted under the applicable requirements under § 145.395.

(iv) Any other evaluations and statements as may be required by the Department.

(9) Disclosure of any voluntary or mandatory programs, other than the CO₂ Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been or will be reported.

(d) *Consistency application submitted in another state.* The Department will not accept as submitted a consistency application for an offset project if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating state, unless the consistency application was rejected by another participating state solely because more of the CO₂e emissions reduction or carbon sequestration resulting from the offset project is projected to occur in this Commonwealth than in any other participating state.

(e) *Department action on consistency applications.*

(1) *Completeness determination.* Within 30 days following receipt of the consistency application submitted under subsection (b), the Department will notify the project sponsor whether the consistency application is complete. A complete consistency application is one that is in a form prescribed by the Department and is determined by the Department to contain all applicable information and documentation required by §§ 145.391—145.397. In no event will a completeness determination prevent the Department from requesting additional information to make a consistency determination under paragraph (2).

(2) *Consistency determination.* Within 90 days of making the completeness determination under paragraph (1), the Department will issue a determination as to whether the offset project is consistent with the requirements of § 145.393 and this section and the requirements of the applicable offset project standard of § 145.395. For any offset project found to lack consistency with these requirements, the Department will inform the project sponsor of the offset project's deficiencies.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); 25 Pa. Code § 145.396 (relating to accreditation of independent verifiers); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.395. CO₂ emissions offset project standards.

(a) *Landfill methane capture and destruction.* To qualify for the award of CO₂ offset allowances under §§ 145.391—145.397 (relating to CO₂ emissions offset projects), an offset project that captures and destroys methane from a landfill shall meet the requirements of this subsection and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* An offset project shall occur at a landfill that is not subject to the New Source Performance Standards for municipal solid waste landfills, 40 CFR Part 60, Subpart Cc and Subpart WWW (relating to emission guidelines and compliance times for municipal solid waste landfills; and standards

of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014).

(2) *Offset project description.* The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1). The project narrative shall include the following:

- (i) Identification of the owner or operator of the offset project.
- (ii) Location and specifications of the landfill where the offset project will occur, including waste in place.
- (iii) Identification of the owner or operator of the landfill where the offset project will occur.
- (iv) Specifications of the equipment to be installed and a technical schematic of the offset project.

(3) *Emissions baseline determination.* The emissions baseline shall represent the potential fugitive landfill emissions of CH₄, in tons of CO₂e, as represented by the CH₄ collected and metered for thermal destruction as part of the offset project and calculated as follows:

$$\text{Emissions (tons CO}_2\text{e)} = (V \times M \times (1 - \text{OX}) \times \text{GWP})/2000$$

Where:

V = Volume of CH₄ collected (ft³).

M = Mass of CH₄ per cubic foot (0.04246 lbs/ft³ default value at 1 atmosphere, 20°C).

OX = Oxidation factor (0.10), representing estimated portion of collected CH₄ that would have eventually oxidized to CO₂ if not collected.

GWP = CO₂e global warming potential of CH₄ (28).

(4) *Calculating emissions reductions.* Emissions reductions shall be determined based on potential fugitive CH₄ emissions that would have occurred at the landfill if metered CH₄ collected from the landfill for thermal destruction as part of the offset project was not collected and destroyed. CO₂e emissions reductions shall be calculated as follows:

$$\text{Emissions (tons CO}_2\text{e)} = (V \times M \times (1 - \text{OX}) \times C_{ef} \times \text{GWP})/2000$$

Where:

V = Volume of CH₄ collected (ft³).

M = Mass of CH₄ per cubic foot (0.04246 lbs/ft³ default value at 1 atmosphere and 20°C).

OX = Oxidation factor (0.10), representing estimated portion of collected CH₄ that would have eventually oxidized to CO₂ if not collected.

C_{ef} = Combustion efficiency of methane control technology (0.98).

GWP = CO₂e global warming potential of CH₄ (28).

(5) *Monitoring and verification requirements.* An offset project shall employ a landfill gas collection system that provides continuous metering and data computation of landfill gas volumetric flow rate and CH₄ concentration. Annual monitoring and verification reports shall include monthly volumetric flow rate and CH₄ concentration data, including documentation that the CH₄

was actually supplied to the combustion source. Monitoring and verification is also subject to the following:

(i) As part of the consistency application, the project sponsor shall submit a monitoring and verification plan that includes a quality assurance and quality control program associated with equipment used to determine landfill gas volumetric flow rate and CH₄ composition. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated and calibrated based on manufacturer recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an independent verifier accredited under § 145.396 (relating to accreditation of independent verifiers).

(ii) The project sponsor shall annually verify landfill gas CH₄ composition through landfill gas sampling and independent laboratory analysis using applicable EPA laboratory test methods.

(b) *Sequestration of carbon due to reforestation, improved forest management or avoided conversion.* To qualify for the award of CO₂ offset allowances under §§ 145.391—145.397, an offset project that involves reforestation, improved forest management, or avoided conversion shall meet all requirements of this subsection and the forest offset protocol, and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* A forest offset project shall satisfy all eligibility requirements of the forest offset protocol and this subsection.

(2) *Offset project description.* The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1). The offset project description must include all information identified in sections 8.1 and 9.1 of the forest offset protocol, and any other information deemed necessary by the Department.

(3) *Carbon sequestration baseline determination.* Baseline onsite carbon stocks shall be determined as required by sections 6.1.1, 6.1.2, 6.2.1, 6.2.2, 6.2.3, 6.3.1 and 6.3.2 of the forest offset protocol, as applicable.

(4) *Calculating carbon sequestered.* Net greenhouse gas reductions and greenhouse gas removal enhancements shall be calculated as required by section 6 of the forest offset protocol. The project's risk reversal rating shall be calculated using the forest offset protocol Determination of a Forest Project's Reversal Risk Rating assessment worksheet.

(5) *Monitoring and verification requirements.* Monitoring and verification are subject to the following:

(i) Monitoring and verification reports shall include all forest offset project data reports submitted to the Department, including any additional data required by section 9.2.2 of the forest offset protocol.

(ii) The consistency application shall include a monitoring and verification plan certified by an independent verifier accredited under § 145.396 and shall consist of a forest carbon inventory program, as required by section 8.1 of the forest offset protocol.

(iii) Monitoring and verification reports shall be submitted not less than every 6 years, except that the first monitoring and verification report for reforestation projects must be submitted within 12 years of project commencement.

(6) *Forest Offset Project Data Reports.* A project sponsor shall submit a forest offset project data report to the Department for each reporting period. Each forest offset project data report must cover a single reporting period. Reporting periods must be contiguous and there must be no gaps in reporting once the first reporting period has commenced.

(7) *Conversion.* Prior to the award of CO₂ offset allowances under § 145.397 (relating to award and recordation of CO₂ offset allowances), or to any surrender of allowances under § 145.395(b)(8)(ii)(C) (relating to CO₂ emissions offset project standards), any quantity expressed in metric tons, or metric tons of CO₂e, shall be converted to tons using the conversion factor specified in § 145.302 (relating to definitions).

(8) *Carbon sequestration permanence.* The project sponsor shall meet the following requirements to address reversals of sequestered carbon.

(i) *Unintentional reversals.* The project sponsor shall address an unintentional reversal of sequestered carbon as follows:

(A) Notify the Department of the reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery.

(B) Submit to the Department a verified estimate of current carbon stocks within the offset project boundary within 1 year of the discovery of the unintentional reversal.

(ii) *Intentional reversals.* The project sponsor shall address an intentional reversal of sequestered carbon as follows:

(A) Notify the Department in writing of the intentional reversal and provide a written description and explanation of the intentional reversal within 30 calendar days of the intentional reversal.

(B) Submit to the Department a verified estimate of current carbon stocks within the offset project boundary within 1 year of the occurrence of an intentional reversal.

(C) If an intentional reversal occurs, and CO₂ offset allowances have been awarded to the offset project, the forest owner must surrender to the Department or its agent for retirement a quantity of CO₂ allowances corresponding to the quantity of CO₂e tons reversed within 6 months of notification by the Department.

(I) The Department will provide notification after the project sponsor has submitted a verified estimate of carbon stocks to the Department, or if the project sponsor fails to submit verified estimate of carbon stocks after 1 year has elapsed since the occurrence of the intentional reversal.

(II) If the forest owner does not surrender valid CO₂ allowances to the Department within 6 months of notification by the Department, the forest owner will be subject to enforcement action and each CO₂e ton of

carbon sequestration intentionally reversed will constitute a separate violation of this subchapter and the act.

(D) *Project Termination Requirements.*

(I) The project sponsor must surrender to the Department or its agent for retirement a quantity of CO₂ allowances in the amount calculated under project termination provisions in the forest offset protocol within 6 months of project termination.

(II) If the project sponsor does not surrender to the Department or its agent a quantity of CO₂ allowances in the amount calculated under project termination provisions in the forest offset protocol within 6 months of project termination, the project sponsor will be subject to enforcement action and each CO₂ offset allowance not surrendered will constitute a separate violation of this subchapter and the act.

(iii) *Disposition of Forest Sequestration Projects After a Reversal.* The Department will terminate a forest offset project if a reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks.

(9) *Timing of forest offset projects.* The Department may award CO₂ offset allowances under § 145.397 only for forest offset projects that are initially commenced on or after January 1, 2014.

(10) *Projects that Have Been Awarded Credits by a Voluntary Greenhouse Gas Reduction Program.* The provisions of §§ 145.393(c)(4) and 145.394(b)(2) (relating to general requirements; and application process) shall not apply to forest projects that have been awarded credits under a voluntary greenhouse gas reduction program. For those projects, the number of CO₂ offset allowances will be calculated under the requirements of this subsection, without regard to quantity of credits that were awarded to the project under the voluntary program, provided that the project satisfies the following:

(i) Other general requirements of §§ 145.391—145.397, including all specific requirements of this subsection, for all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO₂ offset allowances under § 145.397.

(ii) At the time of submittal of the consistency application for the project, the project sponsor submits forest offset data reports and a monitoring and verification report covering all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO₂ offset allowances under § 145.397. Forest offset data reports and monitoring and verification reports must meet all requirements of paragraphs (5) and (6).

(iii) The voluntary greenhouse gas program has published information to allow the Department to verify the information included in the consistency application and the consistency application includes information sufficient to allow the Department to determine the following:

(A) The offset project has met all legal and contractual requirements to allow it to terminate its relationship with the voluntary greenhouse gas program and the termination has been completed.

(B) The project sponsor or voluntary greenhouse gas program has cancelled or retired all credits that were awarded for carbon sequestration that occurred during the time periods for which the project intends to be awarded CO₂ offset allowances under § 145.397, and the credits were cancelled or retired for the sole purpose of allowing the project to be awarded CO₂ offset allowances under § 145.397.

(c) *Avoided methane emissions from agricultural manure management operations.* To qualify for the award of CO₂ offset allowances under §§ 145.391—145.397, an offset project that captures and destroys methane from animal manure and organic food waste using anaerobic digesters shall meet the requirements of this subsection and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* To be eligible for CO₂ offset allowances, an offset project under this subsection shall:

(i) Consist of the destruction of that portion of methane generated by an anaerobic digester that would have been generated in the absence of the offset project through the uncontrolled anaerobic storage of manure or organic food waste.

(ii) Employ only manure-based anaerobic digester systems using livestock manure as the majority of digester feedstock, defined as more than 50% of the mass input into the digester on an annual basis. Organic food waste used by an anaerobic digester shall only be that which would have been stored in anaerobic conditions in the absence of the offset project.

(2) *Exceptions to the general requirements.* The provisions of § 145.393(c)(2) and (3) shall not apply to an agricultural manure management offset project that meets the following:

(i) The offset project is located in a participating state that has a market penetration rate for anaerobic digester projects of 5% or less. The market penetration determination shall utilize the most recent market data available at the time of submission of the consistency application under § 145.394 and shall be determined as follows:

$$MP (\%) = MG_{AD} / MG_{STATE}$$

Where:

MG_{AD} = Average annual manure generation for the number of dairy cows and swine serving all anaerobic digester projects in the applicable state at the time of submission of a consistency application under § 145.394.

MG_{STATE} = Average annual manure production of all dairy cows and swine in the participating state at the time of submission of a consistency application under § 145.394.

(ii) The offset project is located at a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows in pounds per cow of 1,400 pounds, or, if the project is a regional-type anaerobic digester, total annual manure input to the

digester is designed to be less than the average annual manure produced by a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows in pounds per cow of 1,400 pounds.

(3) *Offset project description.* The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1). The offset project narrative shall include the following:

- (i) Identification of the owner or operator of the offset project.
- (ii) Location and specifications of the facility where the offset project will occur.
- (iii) Identification of the owner or operator of the facility where the offset project will occur.
- (iv) Specifications of the equipment to be installed and a technical schematic of the offset project.
- (v) Location and specifications of the facilities from which anaerobic digester influent will be received, if different from the facility where the offset project will occur.

(4) *Emissions baseline determination.* The emissions baseline shall represent the potential emissions of the CH₄ that would have been produced in a baseline scenario under uncontrolled anaerobic storage conditions and released directly to the atmosphere in the absence of the offset project.

- (i) Baseline CH₄ emissions shall be calculated as follows:

$$E_b = (V_m \times M) / 2000 \times \text{GWP}$$

Where:

E_b = Potential CO₂e emissions due to calculated CH₄ production under site-specific anaerobic storage and weather conditions (tons).

V_m = Volume of CH₄ produced each month from decomposition of volatile solids in a baseline uncontrolled anaerobic storage scenario under site-specific storage and weather conditions for the facility at which the manure or organic food waste is generated (ft³).

M = Mass of CH₄ per cubic foot (0.04246 lb/ft³ default value at one atmosphere and 20°C).

GWP = Global warming potential of CH₄ (28).

- (ii) The estimated amount of volatile solids decomposed each month under the uncontrolled anaerobic storage baseline scenario in kilograms (kg) shall be calculated as follows:

$$\text{VS}_{\text{dec}} = \text{VS}_{\text{avail}} \times f$$

Where:

VS = Volatile solids as determined from the equation:

$$\text{VS} = M_m \times \text{TS}\% \times \text{VS}\%$$

Where:

M_m = Mass of manure or organic food waste produced per month (kg).

TS% = Concentration (%) of total solids in manure or organic food waste as determined through EPA 160.3 testing method (EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (EPA/600/4-79/020)).

VS% = Concentration (%) of volatile solids in total solids as determined through EPA 160.4 testing method (EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (EPA/600/4-79/020)).

VS_{avail} = Volatile solids available for decomposition in manure or organic food waste storage each month as determined from the equation:

$$VS_{avail} = VS_p + 1/2 VS_{in} - VS_{out}$$

Where:

VS_p = Volatile solids present in manure or organic food waste storage at beginning of month (left over from previous month) (kg).

VS_{in} = Volatile solids added to manure or organic food waste storage during the course of the month (kg). The factor of 1/2 is multiplied by this number to represent the average mass of volatile solids available for decomposition for the entire duration of the month.

VS_{out} = Volatile solids removed from the manure or organic food waste storage for land application or export (assumed value based on standard farm practice).

f = van't Hoff-Arrhenius factor for the specific month as determined using the equation below. Using a base temperature of 30°C, the equation is as follows:

$$f = \exp \{ [E(T_2 - T_1)] / [(GC \times T_1 \times T_2)] \}$$

Where:

f = Conversion efficiency of VS to CH₄ per month.

E = Activation energy constant (15,175 cal/mol).

T₂ = Average monthly ambient temperature for facility where manure or organic food waste is generated (converted from degrees Celsius to degrees Kelvin) as determined from the nearest National Weather Service certified weather station (if reported temperature °C > 5 °C; if reported temperature °C < 5 °C, then f = 0.104).

T₁ = 303.15 (30°C converted to °K).

GC = Ideal gas constant (1.987 cal/K mol).

(iii) The volume of CH₄ produced in cubic feet (ft³) from decomposition of volatile solids shall be calculated as follows:

$$V_m = (VS_{dec} \times B_o) \times 35.3147$$

Where:

V_m = Volume of CH₄ (ft³).

VS_{dec} = Volatile solids decomposed (kg).

B_o = Manure or organic food waste type-specific maximum methane generation constant (m³ CH₄/kg VS decomposed). For dairy cow manure, B_o = 0.24 m³ CH₄/kg VS decomposed. The methane generation constant for other types of manure shall be those cited at the EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990—2010, Annex 3, Table A 180 (EPA, February 2017), unless the project sponsor proposes an alternate methane generation constant and that alternate is approved by the Department. If the project sponsor proposes to use a methane generation constant other than the ones found in the previously-cited reference, the project sponsor must provide justification and documentation to the Department.

(5) *Calculating emissions reductions.* Emissions reductions shall be calculated as follows:

$$ER_t = E_b - E_p$$

Where:

ER_t = CO₂e emissions reductions due to project activities (tons).

E_b = Potential CO₂e emissions due to calculated CH₄ production under site-specific anaerobic storage and weather conditions (tons).

E_p = CO₂e emissions due to project activities additional to baseline (tons), including manure transportation, flaring, venting and effluent management.

(6) *Transport CO₂ emissions.* Emissions reductions may not exceed the potential emissions of the anaerobic digester, as represented by the annual volume of CH₄ produced by the anaerobic digester, as monitored under paragraph (5). CO₂ emissions due to transportation of manure and organic food waste from the site where the manure and organic food waste was generated to the anaerobic digester shall be subtracted from the emissions calculated under paragraph (4)(i)—(iii). Transport CO₂ emissions shall be determined through one of the following methods:

(i) Documentation of transport fuel use for all shipments of manure and organic food waste from off-site to the anaerobic digester during each reporting year and a log of transport miles for each shipment. Off-site is defined as a location that is not contiguous with the property where the anaerobic digester is located. CO₂ emissions shall be determined through the application of an emissions factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate:

(A) Diesel fuel: 22.912 lbs. CO₂/gallon.

(B) Gasoline: 19.878 lbs. CO₂/gallon.

(C) Other fuel: submitted emissions factor approved by the Department.

(ii) Documentation of total tons of manure and organic food waste transported from off-site for input into the anaerobic digester during each reporting year, as monitored under paragraph (7)(i), and a log of transport miles and fuel type used for each shipment. CO₂ emissions shall be determined through the application of a ton-mile transport emission factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate for each ton of manure delivered and multiplied by the number of miles transported:

(A) Diesel fuel: 0.131 lb. CO₂ per ton-mile.

(B) Gasoline: 0.133 lb. CO₂ per ton-mile.

(C) Other fuel: submitted emissions factor approved by the Department.

(7) *Monitoring and verification requirements.* An offset project shall employ a system that provides metering of biogas volumetric flow rate and determination of CH₄ concentration. Annual monitoring and verification reports shall include monthly biogas volumetric flow rate and CH₄ concentration determination. Monitoring and verification shall also meet the following:

(i) If the offset project is a regional-type anaerobic digester, manure and organic food waste from each distinct source supplying to the anaerobic digester shall be sampled monthly to determine the amount of volatile solids present. Any emissions reduction will be calculated according to mass of manure and organic food waste in kilograms (kg) being digested and percentage of volatile solids present before anaerobic digestion, consistent with the requirements under subparagraph (iii) and paragraph (4) and apportioned accordingly among sources. The project sponsor shall provide supporting material and receipts tracking the monthly receipt of manure and organic food waste in kilograms (kg) used to supply the anaerobic digester from each supplier.

(ii) If the offset project includes the anaerobic digestion of organic food waste eligible under paragraph (1)(ii), organic food waste shall be sampled monthly to determine the amount of volatile solids present before anaerobic digestion, consistent with the requirements under subparagraph (iii) and paragraph (4), and apportioned accordingly.

(iii) The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine biogas volumetric flow rate and CH₄ composition. The monitoring and verification plan shall be specified in accordance with the applicable monitoring requirements listed in Table 3. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated and calibrated based on manufacturer's recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an independent verifier accredited under § 145.396.

Table 3. Monitoring requirements

<i>Parameter</i>	<i>Measurement Unit</i>	<i>Frequency of Sampling</i>	<i>Sampling Methods</i>
Influent flow (mass) into the digester	Kilograms (kg) per month (wet mass)	Monthly total into the digester	In descending order of preference: 1) Recorded mass 2) Digester influent pump flow 3) Livestock population and application of American Society of Agricultural and Biological Engineers (ASABE) standard (ASAE D384.2, March 2005)
Influent total solids concentration (TS)	Percent (of sample)	Monthly, depending upon recorded variations	EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (EPA/600/4-79/020)

<i>Parameter</i>	<i>Measurement Unit</i>	<i>Frequency of Sampling</i>	<i>Sampling Methods</i>
Influent volatile solids (VS) concentration	Percent (of TS)	Monthly, depending upon recorded variations	EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (EPA/600/4-79/020)
Average monthly ambient temperature	Temperature °C	Monthly (based on farm averages)	Closest National Weather Service—certified weather station
Volume of biogas produced by digester	Standard cubic feet (scf)	Continuous, totalized monthly	Flow meter
Methane composition of biogas produced by digester	Percent (of sample)	Quarterly	Bag sampling and third party laboratory analysis using applicable EPA test methods

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.396 (relating to accreditation of independent verifiers); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.396. Accreditation of independent verifiers.

(a) *Standards for accreditation.* An independent verifier may be accredited by the Department to provide verification services as required of a project sponsor under this subchapter, provided that an independent verifier meets all the requirements of this section.

(1) *Verifier minimum requirements.* Each accredited independent verifier shall demonstrate knowledge of the following:

- (i) Utilizing engineering principles.
- (ii) Quantifying greenhouse gas emissions.
- (iii) Developing and evaluating air emissions inventories.
- (iv) Auditing and accounting principles.
- (v) Information management systems.
- (vi) The requirements of this subchapter.

(vii) Such other qualifications as may be required by the Department to provide competent verification services as required for individual offset categories under § 145.395 (relating to CO₂ emissions offset project standards).

(2) *Organizational qualifications.* An accredited independent verifier shall demonstrate that they meet the following:

(i) No direct or indirect financial relationship, beyond a contract for provision of verification services, with any offset project developer or project sponsor.

(ii) Employ staff with professional licenses, knowledge and experience appropriate to the specific category of offset projects under § 145.395 that they seek to verify.

(iii) Hold a minimum of \$1 million of professional liability insurance. If the insurance is in the name of a related entity, the verifier shall disclose the financial relationship between the verifier and the related entity, and provide documentation supporting the description of the relationship.

(iv) Implementation of an adequate management protocol to identify potential conflicts of interest with regard to an offset project, offset project developer or project sponsor, or any other party with a direct or indirect financial interest in an offset project that is seeking or has been granted approval of a consistency application under § 145.394(e) (relating to application process), and remedy any conflicts of interest prior to providing verification services.

(3) *Pre-qualification of verifiers.* The Department may require prospective verifiers to successfully complete a training course, workshop or test developed by the Department or its agent, prior to submitting an application for accreditation.

(b) *Application for accreditation.* An application for accreditation shall not contain any proprietary information and shall include the following:

(1) The applicant's name, address, e-mail address, telephone number and facsimile transmission number.

(2) Documentation that the applicant has at least 2 years of experience in each of the knowledge areas specified at subsection (a)(1)(i)—(v), and as may be required under subsection (a)(1)(vii).

(3) Documentation that the applicant has successfully completed the requirements at subsection (a)(3), as applicable.

(4) A sample of at least one work product that provides supporting evidence that the applicant meets the requirements at subsection (a)(1) and (2). The work product shall have been produced, in whole or part, by the applicant and shall consist of a final report or other material provided to a client under contract in previous work. For a work product that was jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained.

(5) Documentation that the applicant holds professional liability insurance as required under subsection (a)(2)(iii).

(6) Documentation that the applicant has implemented an adequate management protocol to address and remedy any conflict of interest issues that may arise, as required under subsection (a)(2)(iv).

(c) *Department action on applications for accreditation.* The Department will approve or deny a complete application for accreditation within 45 days after

submission. Upon approval of an application for accreditation, the independent verifier shall be accredited for a period of 3 years from the date of application approval.

(d) *Reciprocity.* Independent verifiers accredited in other participating states may be deemed to be accredited in this Commonwealth, at the discretion of the Department.

(e) *Conduct of an accredited verifier.*

(1) Prior to engaging in verification services for an offset project sponsor, the accredited verifier shall disclose all relevant information to the Department to allow for an evaluation of potential conflict of interest with respect to an offset project, offset project developer or project sponsor. The accredited verifier shall disclose information concerning its ownership, past and current clients, related entities, as well as any other facts or circumstances that have the potential to create a conflict of interest.

(2) An accredited verifier shall have an ongoing obligation to disclose to the Department any facts or circumstances that may give rise to a conflict of interest with respect to an offset project, offset project developer or project sponsor.

(3) The Department may reject a verification report and certification statement from an accredited verifier, submitted as part of a consistency application required under § 145.394(b) or submitted as part of a monitoring and verification report submitted under § 145.397(b) (relating to award and recordation of CO₂ offset allowances), if the Department determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer or project sponsor.

(4) The Department may revoke the accreditation of a verifier at any time for the following:

(i) Failure to fully disclose any issues that may lead to a conflict of interest situation with respect to an offset project, offset project developer or project sponsor.

(ii) The verifier is no longer qualified due to changes in staffing or other criteria.

(iii) Negligence or neglect of responsibilities pursuant to the requirements of this subchapter.

(iv) Intentional misrepresentation of data or other intentional fraud.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); and 25 Pa. Code § 145.397 (relating to award and recordation of CO₂ offset allowances).

§ 145.397. Award and recordation of CO₂ offset allowances.

(a) *Award of CO₂ offset allowances.* Following the issuance of a consistency determination under § 145.394(e)(2) (relating to application process) and the approval of a monitoring and verification report under the provisions of subsec-

tion (f), the Department will award one CO₂ offset allowance for each ton of demonstrated reduction in CO₂ or CO₂e emissions or sequestration of CO₂.

(b) *Recordation of CO₂ offset allowances.* After CO₂ offset allowances are awarded under subsection (a), the Department will record the CO₂ offset allowances in the project sponsor's general account.

(c) *Deadlines for submittal of monitoring and verification reports.*

(1) For an offset project undertaken prior to April 23, 2022, the project sponsor shall submit the monitoring and verification report covering the pre-2022 period by October 20, 2022.

(2) For an offset project undertaken on or after April 23, 2022, the project sponsor shall submit the monitoring and verification report within 6 months following the completion of the last calendar year during which the offset project achieved CO₂e reductions or sequestration of CO₂ for which the project sponsor seeks the award of CO₂ offset allowances.

(d) *Contents of monitoring and verification reports.* For an offset project, the monitoring and verification report must include the following:

(1) The project sponsor's name, address, e-mail address, telephone number, facsimile transmission number and account number.

(2) The CO₂ emissions reduction or CO₂ sequestration determination as required by the relevant provisions of § 145.395 (relating to CO₂ emissions offset project standards), including a demonstration that the project sponsor complied with the required quantification, monitoring and verification procedures under § 145.395, as well as those outlined in the consistency application approved under § 145.394(e)(2).

(3) A signed certification statement that reads "The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of §§ 145.391—145.397. The project sponsor holds the legal rights to the offset project or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO₂ offset allowances under §§ 145.391—145.397 is contingent on meeting the requirements of §§ 145.391—145.397. I authorize the Department or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the Department. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the Department or its agent any and all documentation relating to the offset project at the Department's request. I submit to the legal jurisdiction of the Commonwealth of Pennsylvania."

(4) A certification signed by the project sponsor certifying that all offset projects for which the sponsor has received CO₂ offset allowances under this subchapter or similar provisions in the rules of other participating states, under the sponsor's ownership or control or under the ownership or control of any entity which controls, is controlled by, or has common control with the spon-

sor are in compliance with all applicable requirements of the CO₂ Budget Trading Program in all participating states.

(5) A verification report and certification statement signed by an independent verifier accredited under § 145.396 (relating to accreditation of independent verifiers) that documents that the independent verifier has reviewed the monitoring and verification report and evaluated the following in relation to the applicable requirements at § 145.395, and any applicable guidance issued by the Department:

(i) The adequacy and validity of information supplied by the project sponsor to determine CO₂ emissions reductions or CO₂ sequestration under the applicable requirements at § 145.395.

(ii) The adequacy and consistency of methods used to quantify, monitor and verify CO₂ emissions reductions and CO₂ sequestration in accordance with the applicable requirements at § 145.395 and as outlined in the consistency application approved under § 145.394(e)(2).

(iii) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements under § 145.395.

(iv) Other evaluations and verification reviews as may be required by the Department.

(6) Disclosure of any voluntary or mandatory programs, other than the CO₂ Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been or will be reported.

(e) *Prohibition against filing monitoring and verification reports in more than one participating state.* The Department will only accept a monitoring and verification report for an offset project that has received a consistency determination under § 145.394(e)(2) and will not accept a monitoring and verification report for an offset project that has received a consistency determination in other participating states.

(f) *Department action on monitoring and verification reports.*

(1) A complete monitoring and verification report is one that is in an approved form and is determined by the Department to be complete for the purpose of commencing review of the monitoring and verification report. In no event shall a completeness determination prevent the Department from requesting additional information needed by the Department to approve or deny a monitoring and verification report.

(2) Within 45 days following receipt of a complete report, the Department will approve or deny a complete monitoring and verification report, in a format approved by the Department, filed with the Department under subsections (c) and (d).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.391 (relating to purpose); 25 Pa. Code § 145.392 (relating to definitions); 25 Pa. Code § 145.393 (relating to general requirements); 25 Pa. Code § 145.394 (relating to application process); 25 Pa. Code § 145.395 (relating to CO₂ emissions offset project standards); and 25 Pa. Code § 145.396 (relating to accreditation of independent verifiers).

CO₂ ALLOWANCE AUCTIONS**§ 145.401. Auction of CO₂ allowances.**

(a) Except as provided under subsection (b), the Department will participate in a multistate CO₂ allowance auction in coordination with other participating states based on the following:

(1) A multistate auction capability and process is in place for the participating states.

(2) The multistate auction can provide benefits to this Commonwealth that meet or exceed the benefits conferred on Pennsylvania through its own Pennsylvania-run auction process.

(3) The multistate auction process is consistent with the process described in §§ 145.401—145.409 (relating to CO₂ allowance auctions).

(4) The multistate auction process includes monitoring of each CO₂ allowance auction by an independent monitor to identify any collusion, market power or price manipulation.

(b) Should the Department find that the conditions in subsection (a) are no longer met, the Department may determine to conduct a Pennsylvania-run auction in accordance with §§ 145.341—145.343 (relating to Pennsylvania CO₂ Budget Trading Program base budget; CO₂ allowance allocations; and distribution of CO₂ allowances in the air pollution reduction account) and 145.401—145.409.

(c) The Department may delegate the implementation and administrative support functions for any CO₂ allowance auction conducted under §§ 145.401—145.409 to an agent qualified to conduct auctions, including a regional entity, provided that the agent shall perform all functions under the direction and oversight of the Department.

(d) The Department will retain its authority to enforce compliance with all sections of this subchapter and will retain control over the proceeds associated with the sale of Pennsylvania CO₂ allowances, whether sold in a multistate or Pennsylvania CO₂ allowance auction, and will credit the proceeds to the Clean Air Fund established under the act.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.402. Auction format.

(a) The format of a CO₂ allowance auction will be one or more of the following:

(1) Uniform-price sealed-bid.

(2) Discriminatory price sealed-bid.

(3) Ascending price, multiple-round.

(4) Descending price, multiple-round.

(b) CO₂ allowances will be auctioned in lots of 1,000 CO₂ allowances, unless the volume of CO₂ allowances auctioned requires an individual lot size smaller than 1,000.

(c) The Department will establish a reserve price for each CO₂ allowance auction, which will be either the minimum reserve price or the CCR trigger price,

as specified under § 145.382 (relating to general requirements), Table 1 (relating to CO₂ CCR trigger price) and §§ 145.381 (relating to purpose) and 145.382.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.403. Auction timing and CO₂ allowance submission schedule.

(a) A CO₂ allowance auction will be held no less frequently than annually, and as frequently as the Department determines is necessary and practical to ensure the availability of CO₂ allowances to CO₂ budget units and CO₂ budget sources and to support the effective functioning of the CO₂ allowance market.

(b) Prior to the end of each control period or interim control period, the Department will make available for sale by auction, all CO₂ allowances held in the air pollution reduction account that are designated for the allocation years associated with that control period or interim control period. This will not include CO₂ allowances set aside in the waste coal set-aside account under § 145.342(i) (relating to CO₂ allowance allocations), the strategic use set-aside account under § 145.342(j) or the combined heat and power set-aside account under § 145.342(k).

(c) The number of CO₂ allowances to be made available for sale in an auction will be disclosed in the notice of CO₂ allowance auction issued under § 145.404 (relating to auction notice).

(d) An auction of CO₂ allowances will include a CO₂ cost containment reserve and a CCR trigger price, as provided under § 145.342.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.404. Auction notice.

(a) A notice of each CO₂ allowance auction will be provided no later than 45 days prior to the date upon which the auction will be conducted.

(b) In addition to the information specified under § 145.382(a) (relating to general requirements), the notice of a CO₂ allowance auction will include the following:

- (1) The date, time and location of the CO₂ allowance auction.
- (2) The format for the CO₂ allowance auction.
- (3) The categories of bidders who will be eligible to bid.
- (4) The number and allocation years of Pennsylvania CO₂ allowances to be auctioned.
- (5) The minimum reserve price.
- (6) All information regarding the CO₂ cost containment reserve, required to be in the notice under § 145.382(a).

- (7) The procedures for conducting the CO₂ allowance auction, including the required bid submission format and process, and information regarding financial settling of CO₂ allowance payments.
- (8) All CO₂ allowance auction participation requirements.
- (9) The amount and type of financial security required and instructions for submitting acceptable financial surety.
- (10) Participation limits, including bidding limits that may apply to an individual bidder or a group of related bidders.
- (11) Application instructions for applying to participate in the CO₂ allowance auction.
- (12) Identification of a Pennsylvania auction contact person for further information.
- (13) Other pertinent rules or procedures of the auction as may be required to ensure a transparent, fair and competitive auction.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); 25 Pa. Code § 145.403 (relating to auction timing and CO₂ allowance submission schedule); 25 Pa. Code § 145.405 (relating to auction participant requirements); 25 Pa. Code § 145.408 (relating to bid submittal requirements); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.405. Auction participant requirements.

- (a) To be classified by the Department as a bidder eligible to participate in a specific CO₂ allowance auction, a qualified participant must meet the following:
 - (1) Be a member of a category of those eligible to participate in the specified CO₂ allowance auction as indicated by the notice of CO₂ allowance auction issued under § 145.404(b) (relating to auction notice).
 - (2) Open and maintain a compliance account or general account, established under § 145.351 (relating to CO₂ allowance tracking system (COATS) accounts).
 - (3) Submit financial security, such as a bond, cash, certified funds or an irrevocable stand-by letter of credit, in a manner and form acceptable to the Department, as specified in the notice of CO₂ allowance auction issued under § 145.404(b).
- (b) The Department will announce the categories of parties that are eligible to participate in a specific CO₂ allowance auction as part of the notice of the CO₂ allowance auction, provided that an owner or operator of a CO₂ budget unit located in this Commonwealth is always eligible to participate in a CO₂ allowance auction.
- (c) For a CO₂ allowance auction, the following categories of parties may be eligible to participate:
 - (1) The owner or operator of a CO₂ budget unit located in this Commonwealth.
 - (2) The owner or operator of a CO₂ budget unit located in a participating state.
 - (3) A broker.
 - (4) An environmental organization.

- (5) A financial or investment institution.
- (6) Any other market participant, as may be specified in the notice of the CO₂ allowance auction.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); 25 Pa. Code § 145.406 (relating to auction participant qualification); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.406. Auction participant qualification.

(a) A person who intends to participate in a CO₂ allowance auction shall submit a qualification application to the Department, in the form and manner specified in the notice of the CO₂ allowance auction.

(b) The deadline for submitting a qualification application will be established in the notice of the CO₂ allowance auction.

(c) As part of a qualification application, an applicant shall provide information and documentation relating to the ability and authority of the applicant to execute bids and honor contractual obligations, including the following:

(1) Identification by the applicant of either a compliance account or general account established under § 145.351 (relating to CO₂ allowance tracking system (COATS) accounts) and identification of the CO₂ authorized account representative for the compliance account or general account.

(2) Information and documentation regarding the corporate identity, ownership, affiliations and capital structure of the entity represented by the applicant.

(3) Identification of any indictment or felony conviction of the applicant or any member, director, principal, partner or officer of the entity represented by the applicant or any affiliate or related entity.

(4) Identification of any previous or pending investigation of the applicant or the entity represented by the applicant or any affiliate or related entity, with respect to any alleged violation of any rule, regulation or law associated with any commodity market or exchange.

(5) Other information and declarations as the Department determines may be required of an applicant to ensure the integrity of the CO₂ allowance auction process.

(d) The Department will determine whether a qualification application is complete, or incomplete, or otherwise deficient. If the Department determines that an application is incomplete or otherwise deficient, the applicant will be given 10 business days to provide additional information to the Department to complete the application or remedy any application deficiency.

(e) The Department will review a complete qualification application, make a determination as to whether the applicant is qualified to participate in the CO₂ allowance auction and notify the applicant in writing not later than 15 days before the CO₂ allowance auction.

(f) The Department may deny qualification to an applicant based on information submitted in a qualification application to ensure the integrity of the CO₂ allowance auction process in accordance with the requirements and procedures

for auctions established under §§ 145.405, 145.407 and 145.408 (relating to auction participant requirements; submission of financial security; and bid submittal requirements).

(g) The Department may revoke the qualification status of a qualified participant, if the participant fails to comply with the applicable requirements of this subchapter, or if the Department determines that they have knowingly provided false or misleading information or withheld pertinent information from the qualification application submitted under subsection (a). The Department may also prohibit the qualified participant from participating in a future CO₂ allowance auction where the Department determines that the prior conduct could compromise the integrity of a subsequent CO₂ allowance auction.

(h) A qualified participant will remain qualified to participate in future CO₂ allowance auctions after the Department's qualification determination, provided that there has been no material change to the information supplied to the Department in the qualification application submitted under subsection (a). If there is a material change to the information in the qualification application submitted under subsection (a), the qualification status will expire as of the date of the change, pending the submission of a new qualification application under subsection (a) and a determination by the Department that the applicant is qualified to participate in a CO₂ allowance auction.

(i) Prior to each CO₂ allowance auction, a qualified participant who intends to participate in the auction shall notify the Department, through a notice of intent to bid, that they intend to participate in the upcoming CO₂ allowance auction. The notice shall be submitted to the Department by the same date as that required for submitting a qualification application established in the notice of the CO₂ allowance auction.

(j) As part of a notice of intent to bid submitted to the Department under subsection (i), a qualified participant shall notify the Department whether there has been a material change to the information supplied in the qualification application submitted under subsection (a).

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.407. Submission of financial security.

(a) To participate in a CO₂ allowance auction, a qualified participant shall provide financial security to the Department, including a bond, cash, certified funds or an irrevocable stand-by letter of credit, in a form and manner prescribed by the Department in the notice of the CO₂ allowance auction.

(b) The Department will approve the qualified participant to participate as a bidder in the specified CO₂ allowance auction after the Department has approved the financial security submitted under subsection (a). The eligibility to bid in any auction shall be limited to the level of financial security provided.

(c) A qualified participant who submits financial security may request return of the financial security at any time prior to or following a CO₂ allowance auction, subject to the following limitations:

(1) A request for the return of financial security prior to a CO₂ allowance auction will result in the Department revoking approval to participate in the CO₂ allowance auction, as of the date of the request.

(2) The Department will not return the financial security if the Department has a current or pending claim to the financial security as a result of the failure of the bidder to abide by the requirements of this subchapter or to pay the full amount of a submitted bid when payment is due.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); 25 Pa. Code § 145.406 (relating to auction participant qualification); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.408. Bid submittal requirements.

(a) A bidder shall submit a bid, in a form and manner prescribed by the Department, in an amount that does not exceed the amount of financial security provided to the Department.

(b) A bidder, including any affiliate or agent of the bidder, or any combination of bidders with related beneficial interests, shall purchase no more than 25% of the CO₂ allowances offered for sale in a CO₂ allowance auction. The limitation, which will not be increased by CCR allowances, will be published in the auction notice under § 145.404(b) (relating to auction notice).

(c) A bidder shall not use or employ any manipulative, misleading or deceptive practice in connection with its prequalification application or purchase of CO₂ allowances from the Department, including, any practice that contravenes or violates any applicable Federal or participating state law, rules or regulation.

(d) A bid submitted at a CO₂ allowance auction is a binding offer for the purchase of CO₂ allowances.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances); 25 Pa. Code § 145.406 (relating to auction participant qualification); and 25 Pa. Code § 145.409 (relating to approval of auction results).

§ 145.409. Approval of auction results.

(a) An independent monitor, such as a certified public accounting firm or similar entity, shall observe the conduct and outcome of each auction and issue a report to the Department in accordance with professional auditing standards addressing whether the auction was conducted in accordance with the procedures and requirements under §§ 145.341—145.343 and 145.401—145.408 (relating to CO₂ allowance allocations; and CO₂ allowance auctions) and this section and whether there was any indication of collusive behavior among auction participants or attempts at market manipulation that impacted the results of the auction.

(b) The independent monitor shall monitor allowance market data and information known to the Department, including CO₂ allowance transactions and associated pricing reported in COATS, and other relevant data and information to ensure fair competition, efficient pricing and protection against collusive or manipulative behavior in the CO₂ allowance auctions and the CO₂ Budget Trading Program.

(c) The Department may approve the outcome of a CO₂ allowance auction following the completion of the auction, based on an evaluation of the report from the independent monitor.

(d) Upon receipt and approval by the Department of the report and upon payment in full by successful bidders, the Department or its agent shall transfer and record the corresponding CO₂ allowances to the compliance or general account of each successful bidder.

(e) After the Department has approved the results of a CO₂ allowance auction, the Department will make available the auction clearing price and the number of CO₂ allowances sold in the auction.

Cross References

This section cited in 25 Pa. Code § 145.302 (relating to definitions); and 25 Pa. Code § 145.401 (relating to auction of CO₂ allowances).

[Next page is 151-1.]

145-184

(409708) No. 572 Jul. 22

Copyright © 2022 Commonwealth of Pennsylvania