3745-14-01 **General provisions.**

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

(A) This chapter establishes the provisions and requirements to implement a NOx budget trading program in the state of Ohio as a means of control and reduction of NOx emissions. The director authorizes the administrator to assist the director in implementing the state NOx budget trading program as a participant in the federal NOx budget trading program by carrying out the functions set forth for the administrator in this chapter.

(B) Definitions.

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

(2) As used in this rule and in rules 3745-14-02 to 3745-14-10 of the Administrative Code (pertaining to NOx budget trading program):

(a) "Account certificate of representation" means the completed and signed submission required by rule 3745-14-02 of the Administrative Code for certifying the designation of a NOx authorized account representative, for a NOx budget source or a group of identified NOx budget sources, who is authorized to represent the owners and operators of such source or sources and of the NOx budget units at such source or sources with regard to matters under the NOx budget trading program.

(b) "Account number" means the identification number given by the administrator to each NOx allowance tracking system account.

(c) "Acid Rain emissions limitation" means, as defined in 40 C.F.R. 72.2, a limitation on emissions of sulfur dioxide or NOx under the acid rain program under Title IV of the Clean Air Act.

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

(e) "Allocate" or "allocation" means the determination by the director of the number of NOx allowances to be initially credited to a NOx budget unit or an allocation set-aside.

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

(g) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under rule 3745-14-08 of the Administrative Code, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by rule 3745-14-08 of the Administrative Code.

(h) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium~~.~~, excluding CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.

(i) "Btu" means British thermal unit.

(j) "Clean Air Act" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. no. 101-549 (November 15, 1990).

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

(l) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(m) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in paragraph (C)(2) or (D) of this rule or rule 3745-14-09 of the Administrative Code, for a unit that is a NOx budget unit under paragraph (C)(1) of this rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in paragraph (C)(2) or (D) of this rule or rule 3745-14-09 of

the Administrative Code, for a unit that is not a NOx budget unit under paragraph (C)(1) of this rule on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under paragraph (C)(1) of this rule shall be the unit's date of commencement of commercial operation.

(n) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in paragraph (C)(2) or (D) of this rule or rule 3745-14-09 of the Administrative Code, for a unit that is a NOx budget unit under paragraph (C)(1) of this rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in paragraph (C)(2) or (D) of this rule or rule 3745-14-09 of the Administrative Code, for a unit that is not a NOx budget unit under paragraph (C)(1) of this rule on the date of commencement of operation, the date the unit becomes a NOx budget unit under paragraph (C)(1) of this rule shall be the unit's date of commencement of operation.

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

(p) "Compliance account" means a NOx allowance tracking system account, established by the administrator for a NOx budget unit under rule 3745-14-06 of the Administrative Code in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx budget emission limitation.

(q) "Continuous emission monitoring system" or "CEMS" means the equipment required under rule 3745-14-08 of the Administrative Code to sample, analyze, measure, and provide, by readings taken at least once every fifteen minutes of the measured parameters, a permanent record of NOx emissions, expressed in pounds per hour for NOx. The following systems are component parts included, to the extent consistent with rule 3745-14-08 of the Administrative Code and 40 C.F.R. part 75, in a continuous emission monitoring system:

(i) Flow monitor;

(ii) NOx pollutant concentration monitors;

(iii) Diluent gas monitor (oxygen or carbon dioxide);

(iv) A continuous moisture monitor;

(v) An automated data acquisition and handling system; and

(vi) A fuel flow monitor (optional).

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

(s) "Director" means the director of the Ohio environmental protection agency.

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

(u) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with rule 3745-14-08 of the Administrative Code.

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

(w) "Energy information administration" means the energy information administration of the United States department of energy.

(x) "Excess emissions" means any tonnage of NOx emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

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

(z) "Fossil fuel-fired" means, with regard to a unit:

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

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

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

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

(b) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty per cent of the annual heat input, on a Btu basis, during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

(aa) "General account" means a NOx allowance tracking system account, established under rule 3745-14-06 of the Administrative Code, that is not a compliance account or an overdraft account.

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

(cc) "Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in mmBtu/lb) and the fuel feed rate into a combustion device (in pounds of fuel/time), as measured, recorded, and reported to the director by the NOx authorized account representative and as determined by the director in accordance with rule 3745-14-08 of the Administrative Code, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other

sources.

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

(ee) "Innovative technology project" means any project utilizing technology that has not been adequately demonstrated in practice, but that would have a substantial likelihood of reducing NOx emissions compared to current practices. An innovative technology project could include technology to decrease electrical energy or fuel use either in stationary or mobile sources.

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

(i) For the life of the unit; or

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

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

(gg) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(hh) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 C.F.R. part 75 to report heat input, this value must be calculated, in accordance with 40 C.F.R. part 75, using the maximum fuel flow rate and the maximum

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

(ii) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb/mmBtu) calculated in accordance with Section 3 of Appendix F of 40 C.F.R. part 75, using the maximum potential concentration of NOx as defined in Section 2 of Appendix A of 40 C.F.R. part 75, and either the maximum oxygen concentration (in per cent oxygen) or the minimum carbon dioxide concentration (in per cent carbon dioxide), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(jj) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(kk) "mmBtu" means million Btu.

(ll) "MWe" means megawatt electrical.

(mm) "Monitoring system" means any monitoring system that meets the requirements of rule 3745-14-08 of the Administrative Code, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(nn) "Most stringent state or federal NOx emissions limitation" means the lowest NOx emission limitation (in lb/mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

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

(pp) "Non-Title V permit" means a federally enforceable permit administered by the director pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than Title V of the Clean Air Act and

Chapter 3745-77 of the Administrative Code.

(qq) "NOx" means all oxides of nitrogen which are determined to be ozone precursors, including, but not limited to, nitrogen oxide and nitrogen dioxide, but excluding nitrous oxide.

(rr) "NOx allowance" means a limited authorization by the director or the Administrator under the NOx budget trading program to emit up to one ton of NOx during the control period of the specified year or of any year thereafter, except as provided under rule 3745-14-06(E)(6) of the Administrative Code. No provision of the NOx budget trading program, the NOx budget permit application, the NOx budget permit, or an exemption under paragraph (C)(2)(a) or (D) of this rule and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of this chapter, except paragraph (B), (C) or (D) of rule 3745-14-05 of the Administrative Code or paragraph (I) of rule 3745-14-09 of the Administrative Code, "NOx allowance" also includes an authorization to emit up to one ton of NOx during the control period of the specified year or of any year thereafter by the state or the Administrator in accordance with a state NOx budget trading program established, and approved and administered by the Administrator, pursuant to 40 C.F.R. 51.121 or in accordance with the NOx budget trading program established by the Administrator in accordance with 40 C.F.R. 52.34.

(ss) "NOx allowance deduction" or "deduct NOx allowances" means the permanent withdrawal of NOx allowances by the Administrator from a NOx allowance tracking system compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx budget unit for a control period, determined in accordance with rules 3745-14-06 and 3745-14-08 of the Administrative Code, or for any other allowance surrender obligation under this chapter.

(tt) "NOx allowances held" or "hold NOx allowances" means the NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rule 3745-14-06 of the Administrative Code, in a NOx allowance tracking system account.

(uu) "NOx allowance tracking system" means the system by which the Administrator records allocations, deductions, and transfers of NOx allowances under the NOx budget trading program.

(vv) "NOx allowance tracking system account" means an account in the NOx allowance tracking system established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NOx allowances.

(ww) "NOx allowance transfer deadline" means midnight of November thirtieth or, if November thirtieth is not a business day, midnight of the first business day thereafter and is the deadline by which NOx allowances may be submitted for recordation in a NOx budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NOx budget emissions limitation for the control period immediately preceding such deadline.

(xx) "NOx authorized account representative" means, for a NOx budget source or NOx budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOx budget units at the source, in accordance with rule 3745-14-02 of the Administrative Code, to represent and legally bind each owner and operator in matters pertaining to the NOx budget trading program or, for a general account, the natural person who is authorized, in accordance with rule 3745-14-06 of the Administrative Code, to transfer or otherwise dispose of NOx allowances held in the general account.

(yy) "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit under paragraphs (E)(1), (E)(2), (E)(5) and (E)(6) of rule 3745-14-06 of the Administrative Code in a control period adjusted by deductions of such NOx allowances to account for actual heat input under paragraph (C)(5) of rule 3745-14-05 of the Administrative Code for the control period, or to account for excess emissions for a prior control period under paragraph (E)(4) of rule 3745-14-06 of the Administrative Code, or to account for withdrawal from the NOx budget trading program or for a change in regulatory status, of a NOx budget opt-in unit under paragraph (G) or (H) of rule 3745-14-09 of the Administrative Code.

(zz) "NOx budget opt-in permit" means a NOx budget permit covering a NOx budget opt-in unit.

(aaa) "NOx budget opt-in unit" means a unit that has been elected to become a NOx budget unit under the NOx budget trading program and whose NOx budget opt-in permit has been issued and is in effect under rule

3745-14-09 of the Administrative Code.

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

(ccc) "NOx budget source" means a source that includes one or more NOx budget units.

(ddd) "NOx budget trading program" means a multi-state NOx air pollution control and emission reduction program approved and administered by the Administrator pursuant to 40 C.F.R. 51.121 or established by the Administrator pursuant to 40 C.F.R. 52.34, as a means of mitigating the interstate transport of ozone and NOx.

(eee) "NOx budget unit" means a unit that is subject to the NOx emissions limitation under paragraph (C) of this rule or paragraph (A) of rule 3745-14-09 of the Administrative Code.

(fff) "Operating" means, with regard to a unit under paragraph (C)(1)(d)(ii) of rule 3745-14-03 or paragraph (A) of rule 3745-14-09 of the Administrative Code, having documented heat input for more than eight hundred seventy-six hours in the six months immediately preceding the submission of an application for an initial NOx budget permit under paragraph (D)(1) of rule 3745-14-09 of the Administrative Code. The unit's documented heat input shall be determined in accordance with 40 C.F.R. part 75 if the unit was otherwise subject to the requirements of 40 C.F.R. part 75 during that six-month period or shall be based on the best available data reported to the director for the unit if the unit was not otherwise subject to the requirements of 40 C.F.R. part 75 during that six-month period.

(ggg) "Operator" means any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit under paragraph (D) of rule 3745-14-09 of the Administrative Code is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(hhh) "Opt-in" means to be elected to become a NOx budget unit under the NOx budget trading program through a final, effective NOx budget opt-in permit under rule 3745-14-09 of the Administrative Code.

(iii) "Overdraft account" means the NOx allowance tracking system account, established by the Administrator under rule 3745-14-06 of the Administrative Code, for each NOx budget source where there are two or more NOx budget units.

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

(i) Any holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under paragraph (D) of rule 3745-14-09 of the Administrative Code submitted and not denied or withdrawn; or

(ii) Any holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under paragraph (D) of rule 3745-14-09 of the Administrative Code is submitted and not denied or withdrawn; or

(iii) Any purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under paragraph (D) of rule 3745-14-09 of the Administrative Code is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement (however, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under paragraph (D) of rule 3745-14-09 of the Administrative Code is submitted and not denied or withdrawn); or

(iv) With respect to any general account, any person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to the NOx allowances.

(kkk) "Per cent monitor data availability" means, for purposes of paragraph

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

(lll) "Potential electrical output capacity" means thirty three per cent of a units maximum design heat input.

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

(nnn) "Recordation," "record," or "recorded" means, with regard to NOx allowances, the movement of NOx allowances by the Administrator from one NOx allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(ooo) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 C.F.R. part 60.

(ppp) "Serial number" means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under paragraph (D)(3) of rule 3745-14-06 of the Administrative Code.

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

(rrr) "State" means one of the forty-eight contiguous states or a portion thereof or the District of Columbia that is subject to a NOx budget trading program under section 110(c) or section 126 of the Clean Air Act.

(sss) "State trading program budget" means the total number of NOx tons apportioned to all NOx budget units in the state, in accordance with the NOx budget trading program, for use in a given control period.

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

(i) In person;

(ii) By United States postal service; or

(iii) By other means of dispatch or transmission and delivery.

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

(uuu) "Title V operating permit" means a permit issued under Chapter 3745-77 of the Administrative Code.

(vvv) "Title V operating permit regulations" means Chapters 3745-77 and 3745-78 of the Administrative Code.

(www) "Ton" or "tonnage" means any "short ton" (i.e., two thousand pounds). For the purpose of determining compliance with the NOx budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with rule 3745-14-08 of the Administrative Code, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(xxx) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

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

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

(aaaa) "Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year shall be determined in accordance with 40 C.F.R. part 75 if the NOx budget unit was otherwise subject to the requirements of 40 C.F.R. part 75 for the year, or shall be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of 40 C.F.R. part 75 for the year.

(3) As used in rule 3745-14-11 of the Administrative Code (pertaining to NOx budget program requirements for portland cement manufacturing):

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

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

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

(d) "Low-NOx burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion.

(e) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(f) "Mid-kiln system firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln system using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

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

(ii) Reducing conditions at the solid fuel injection point that may destroy some of the NOx formed upstream in the kiln burning

zone.

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

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

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

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

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

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

(C) Applicability.

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

(a) For electric generating units:

(i) for units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a 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 during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid; and

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

(b) For non-electric 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 a 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 a firm contract to the electric grid;

(iii) for units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

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

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

(2) The following units shall be exempt from the requirements of the NOx budget trading program:

(a) A unit under paragraph (C)(1) of this rule that has a federally enforceable permit that includes a NOx emission limitation restricting NOx emissions during a control period to twenty-five tons or less and restricts the unit to burning only natural gas or fuel oil during a control period in 2004 or later and that includes the special provisions in

paragraph (C)(2)(d) of this rule shall be exempt from the requirements of the NOx budget trading program, except for the provisions of this paragraph, paragraphs (B), (C)(1) and (F) of this rule and rules 3745-14-05 through 3745-14-07 of the Administrative Code. The NOx emission limitation under this paragraph shall restrict NOx emissions during the control period by one of the following methods:

(i) a restriction on unit operating hours calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(a) of this rule, by the unit's maximum potential hourly NOx mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NOx emission rate applicable to the unit under 40 C.F.R. 75.19(c), Table LM-2; or

(ii) a restriction on unit fuel usage calculated by dividing the federally enforceable emission limitation, in tons, determined in accordance with paragraph (C)(2)(a) of this rule, by the product of the heat value of the fuel to be used multiplied by the default NOx emission rate for the fuel to be used as specified in 40 C.F.R. 75.19(c), Table LM-2.

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

(i) the exemption shall become effective on the date on which the NOx emission limitation and the special provisions in the permit under paragraph (C)(2)(a) of this rule become final; or

(ii) if the NOx emission limitation and the special provisions in the permit under paragraph (C)(2)(a) of this rule become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May first of such control period, provided that such NOx emission limitation and the special provisions apply to the unit as of such first date of operation. If such NOx emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (C)(2)(a) of this rule shall become effective on October first of the year during which such NOx emission limitation and the special provisions become final.

(c) The director shall provide the Administrator written notice of the issuance

of any permit under paragraph (C)(2)(a) of this rule and, upon request, a copy of the permit.

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

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

(ii) NOx allowances shall be allocated to the unit in accordance with paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule 3745-14-05 of the Administrative Code. For each control period for which the unit is allocated NOx allowances under this paragraph:

(a) The owners and operators of the unit must specify a general account, in which the administrator will record the NOx allowances; and

(b) After the administrator records a NOx allowance allocation under paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule 3745-14-05 of the Administrative Code, the administrator will deduct, from the general account under paragraph (C)(2)(d)(ii)(a) of this rule, NOx allowances that are allocated for the same or a prior control period as the NOx allowances allocated to the unit under paragraphs (B)(1) to (B)(3) and (C)(1) to (C)(3) of rule 3745-14-05 of the Administrative Code and that equal the NOx emission limitation (in tons of NOx) on which the unit's exemption under paragraph (C)(2)(a) of this rule is based. The NOx authorized account representative shall ensure that such general account contains the NOx allowances necessary for completion of such deduction.

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

(iv) For a period of five years from the date the records are created, the owners and operators of a unit exempt under paragraph (C)(2)(a) of this rule shall retain, at the source that includes the unit,

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

(v) The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under paragraph (C)(2)(a) of this rule shall comply with the requirements of the NOx budget trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

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

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

(b) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on unit operating hours and fuel use described in paragraph (C)(2)(a) of this rule during any control period starting in 2004.

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

(viii) A unit that is exempt under paragraph (C)(2)(a) of this rule is not eligible to be a NOx budget opt-unit under rule 3745-14-09 of the Administrative Code.

(D) Retired unit exemption.

(1) This rule applies to any NOx budget unit, other than a NOx budget opt-in unit, that is permanently retired.

(2) Standard provisions.

(a) Any NOx budget unit, other than a NOx budget opt-in unit, that is permanently retired shall be exempt from the NOx budget trading program, except for the provisions of this rule and rules 3745-14-05 to 3745-14-07 of the Administrative Code.

(b) The exemption under paragraph (D)(2)(a) of this rule shall become effective the day on which the unit is permanently retired. Within thirty days of permanent retirement, the NOx authorized account representative of the unit shall submit a statement to the director. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the director) that the unit is permanently retired and will comply with the requirements of paragraph (D)(3) of this rule.

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

(3) Special provisions.

(a) A unit exempt under paragraph (D) of this rule shall not emit any NOx, starting on the date that the exemption takes effect.

(b) The director shall allocate NOx allowances under rule 3745-14-05 of the Administrative Code to a unit exempt under paragraph (D) of this rule. For each control period for which the unit is allocated one or more NOx allowances, the owners and operators of the unit shall specify a general account, in which the administrator will record such NOx allowances.

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

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

(e) Returning retired units to service.

(i) A unit exempt under paragraph (D) of this rule and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx budget permit application for the unit not less than twelve months before the later of May 1, 2004 or the date on which the unit resumes operation.

(ii) A unit exempt under paragraph (D) of this rule and located at a source that is required, or but for this exemption would be required, to have a non-Title V permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx budget permit application for the unit not less than twelve months before the later of May 1, 2004 or the date on which the unit is to first resume operation.

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

(i) The date on which the NOx authorized account representative submits a NOx budget permit application under paragraph (D)(3)(e) of this rule;

(ii) The date on which the NOx authorized account representative is required under paragraph (D)(3)(e) of this rule to submit a NOx

budget permit application; or

(iii) The date on which the unit resumes operation, if the unit is not required to submit a NOx budget permit application.

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

(h) A unit that is exempt under paragraph (D) of this rule is not eligible to be a NOx budget opt-in unit under rule 3745-14-09 of the Administrative Code.

(E) Standard requirements.

(1) Permit requirements.

(a) The NOx authorized account representative of each NOx budget unit or NOx budget source required to have a federally enforceable permit for the unit or source shall:

(i) Submit to the director a complete NOx budget permit application in accordance with the deadlines specified in paragraphs (B)(2) and (B)(3) of rule 3745-14-03 of the Administrative Code;

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

(b) The owners and operators of each NOx budget unit or source required to have a federally enforceable permit shall have a NOx budget permit issued by the director and operate the unit in compliance with such NOx budget permit.

(c) The owners and operators of a NOx budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOx budget permit application, and to have a NOx budget permit for such NOx budget source.

(2) Monitoring requirements.

(a) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx budget source and each NOx budget unit at the source shall comply with the monitoring requirements of rule 3745-14-08 of the Administrative Code.

(b) The emissions measurements recorded and reported in accordance with rule 3745-14-08 of the Administrative Code shall be used to determine compliance by the unit with the NOx budget emissions limitation under paragraph (E)(3) of this rule.

(3) NOx allowances.

(a) The owners and operators of each NOx budget source and each NOx budget unit at the source shall hold NOx allowances available for compliance deductions under paragraph (E) of rule 3745-14-06 of the Administrative Code, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with rule 3745-14-08 of the Administrative Code, plus any amount necessary to account for actual utilization under paragraph (C)(5) of rule 3745-14-05 of the Administrative Code for the control period.

(b) Each ton of NOx emitted in excess of the NOx budget emissions limitation shall constitute a separate violation of this chapter, the Clean Air Act, and applicable Ohio law.

(c) A NOx budget unit shall be subject to the requirements under paragraph (E)(3)(a) of this rule starting on the later of May 31, 2004 or the date on which the unit commences operation.

(d) NOx allowances shall be held in, deducted from, or transferred among NOx allowance tracking system accounts in accordance with rules 3745-14-05, 3745-14-06, 3745-14-07 and 3745-14-09 of the Administrative Code.

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

(f) A NOx allowance allocated by the director under the NOx budget trading program is a limited authorization to emit one ton of NOx in accordance with the NOx budget trading program. No provision of the NOx budget trading program, the NOx budget permit application, the NOx budget permit, or an exemption under paragraph (C)(2) or (D) of this rule and no provision of law shall be construed to limit the authority of the United States or the state of Ohio to terminate or limit such authorization.

(g) A NOx allowance allocated by the director under the NOx budget trading program does not constitute a property right.

(h) Upon recordation by the Administrator under rules 3745-14-06 and 3745-14-07 of the Administrative Code, every allocation, transfer, or deduction of a NOx allowance to or from a NOx budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOx budget permit of the NOx budget unit by operation of law without any further review.

(4) The owners and operators of a NOx budget unit that has excess emissions in any control period shall:

(a) Surrender the NOx allowances required for deduction under paragraph (E)(4)(a) of rule 3745-14-06 of the Administrative Code; and

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

(5) Record keeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of a NOx budget source and each NOx budget unit at the source shall keep on site at the source, or at a central location in Ohio for unattended sources, each of the following documents for a period of five years from the date the document is created: (This period may be extended for cause, at any time prior to the end of five years, in writing by the director or the administrator. Records for unattended sources retained at a central location shall be available immediately at the central location upon the request of the director or administrator and within three days following receipt of a written request from the director or administrator.)

(i) The account certificate of representation for the NOx authorized account representative for the source and each NOx budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with paragraph (D) of rule 3745-14-02 of the Administrative Code, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative;

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

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx budget trading program; and

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

(b) The NOx authorized account representative of a NOx budget source and each NOx budget unit at the source shall submit the reports and compliance certifications required under the NOx budget trading program, including those under rules 3745-14-04, 3745-14-08 and 3745-14-09 of the Administrative Code.

(6) Liability.

(a) Any person who knowingly violates any requirement or prohibition of the NOx budget trading program, a NOx budget permit, or an exemption under paragraph (C)(2) or (D) of this rule shall be subject to enforcement pursuant to applicable state and federal law.

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

(c) No permit revision shall excuse any violation of the requirements of the

NOx budget trading program that occurs prior to the date that the revision takes effect.

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

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

(f) Any provision of the NOx budget trading program that applies to a NOx budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under rule 3745-14-08 of the Administrative Code, the owners and operators and the NOx authorized account representative of one NOx budget unit shall not be liable for any violation by any other NOx budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.

(7) No provision of the NOx budget trading program, a NOx budget permit application, a NOx budget permit, or an exemption under paragraph (C)(2) or (D) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NOx authorized account representative of a NOx budget source or NOx budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the Clean Air Act.

(F) Computation of time.

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

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

(3) Unless otherwise stated, if the final day of any time period under the NOx budget trading program, except for the control period defined in paragraph (B)(2)(r) of this rule, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

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

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

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

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

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

(2) Incorporated materials.

(a) 40 CFR 52.34; "Action on petitions submitted under section 126 relating to emissions of nitrogen oxides;" 64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65

FR 2726, Jan. 18, 2000.

(b) 40 CFR 51.121; "Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen;"63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000.

(c) 40 CFR Part 60, Appendix A; "Test Methods 1 through 29;" as published in the July 1, 2003 Code of Federal Regulations.

(d) 40 CFR 72.2; "Definitions;" 58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15647, Mar. 23, 1993; 58 FR 33770, June 21, 1993; 58 FR 40747, July 30, 1993; 60 FR 17111, Apr. 4, 1995; 60 FR 18468, Apr. 11, 1995; 60 FR 26514, May 17, 1995; 62 FR 55475, Oct. 24, 1997; 63 FR 57498, Oct. 27, 1998; 63 FR 68404, Dec. 11, 1998; 64 FR 25842, May 13, 1999; 64 FR 28586, May 26, 1999; 67 FR 40420, June 12, 2002; 67 FR 53504, Aug. 16, 2002.

(e) 40 CFR Part 75; "Continuous Emission Monitoring;" as published in the July 1, 2003 Code of Federal Regulations.

(f) 40 CFR 75.19; "Optional SO2, NOX, and CO2 emissions calculation for low mass emissions (LME) units;" 63 FR 57500, Oct. 27, 1998, as amended at 64 FR 28592, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40424, 40425, June 12, 2002; 67 FR 53504, Aug. 16, 2002.

(g) 40 CFR Part 75, Appendix A; "Specifications and Test Procedures;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26541-26546, 26569-26570, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 20, 1996; 63 FR 57512, Oct. 27, 1998; 64 FR 28631-28643, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40448, 40449, 40452, 40453, 40455, June 12, 2002; 67 FR 53505, Aug. 16, 2002.

(h) 40 CFR Part 75, Appendix D; "Optional SO2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units;" 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26548, 26551, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28652-28663, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40460, 40472, June 12, 2002; 67 FR 53505, Aug. 16, 2002.

(i) 40 CFR Part 75, Appendix F; "Conversion Procedures;" 58 FR 3701, Jan. 11, 1993; Redesignated and amended at 60 FR 26553-26556, 26571, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28666-28671, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40474, 40475, June 12, 2002; 67

FR 53505, Aug. 16, 2002.

(j) Clean Air Act, as amended November 15, 1990, 42 U.S.C. 7401 et seq.

(k) Clean Air Act, "TITLE IV - ACID DEPOSITION CONTROL;" July 14, 1955, ch. 360, title IV, Sec. 401 through 416, as added Pub. L. 101-549, title IV, Secs. 401-416, Nov. 15, 1990, 104 Stat. 2584, 2585, 2589, 2592, 2605, 2613, 2616, 2619, 2621, 2623, 2624, 2625, 2626.

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