

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

AIR AND RADIATION DIVISION

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DATE:

SUBJECT: Submission of a Revision to the State
Implementation Plan (SIP) for the State of
Indiana for Incorporation by Reference

FROM: Regulation Management Staff, EPA

TO: Office of the Federal Register

Please add this document to the "Indiana Plan for Implementation of Air Pollution Control": file and tab it in the appropriate sequence.

Identification of Document

Subpart P--Indiana

1. Section 52.770 is amended by adding paragraph (c)(163) to read as follows:

§52.770 Identification of plan.

* * * * *

(c) * * *

(163) On June 26, 2003, the Indiana Department of Environmental Management (IDEM) submitted revisions to 326 IAC 10-3 (NOx Reduction Program for Specific Source Categories) and 326 IAC 10-4 (NOx Budget Trading Program) of the Indiana Administrative Code (IAC). Also, on August 4, 2003, IDEM submitted a letter containing the Legislative Service Agency Document #00-54(F) as

published in the **Indiana Register** on August 1, 2003, 26 IR 3550, containing the legal and approving signatures. The revised rules change the Indiana Phase I NOx budget to 233,548 tons per ozone season for 2007.

(i) Incorporation by reference.

(A) Indiana Pollution Control Board rules: 326 IAC 10-3-1 and 326 IAC 10-4-1, 10-4-2, 10-4-9, 10-4-10, 10-4-13, 10-4-14 and 10-4-15. Adopted by the Indiana Pollution Control Board on May 7, 2003. Filed with the Secretary on July 7, 2003. Published at Indiana Register Volume 26, Number 11, August 1, 2003 (26 IR 3550). Effective August 6, 2003.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-54(F)

DIGEST

Amends 326 IAC 10-3-1 to delete emission limits for Ispat Inland and U.S. Steel in Lake County. Amends 326 IAC 10-4 to change compliance dates, amend emission trading allowances, and add formulas for energy efficiency programs. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2002, Indiana Register (25 IR 2045).

Second Notice of Comment Period and Notice of First Public Hearing: August 1, 2002, Indiana Register (25 IR 3886).

Change in Notice of Public Hearing: December 1, 2002, Indiana Register (26 IR 810).

First Public Hearing: December 4, 2002.

Proposed Rule and Notice of Second Public Hearing: January 1, 2003, Indiana Register (26 IR 1132).

Change in Notice of Public Hearing: April 1, 2003, Indiana Register (26 IR 2391).

Second Public Hearing: May 7, 2003.

326 IAC 10-3-1	326 IAC 10-4-10
326 IAC 10-4-1	326 IAC 10-4-13
326 IAC 10-4-2	326 IAC 10-4-14
326 IAC 10-4-9	326 IAC 10-4-15

SECTION 5. 326 IAC 10-4-10 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-10 NO_x allowance tracking system

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

Affected: IC 13-15; IC 13-17

Sec. 10. (a) The U.S. EPA will establish compliance and overdraft accounts consistent with subsection (c). NO_x allowances shall be recorded in the compliance accounts or overdraft accounts according to the following:

- (1) Allocations of NO_x allowances pursuant to section 9 or 13(i) of this rule.
- (2) Deductions or transfers of NO_x allowances pursuant to one (1) of the following:
 - (A) Section 8(d), 8(e), 11, 13, or 14 of this rule.
 - (B) Subsection (j), (k), or (m).

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

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

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

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

- (1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:
 - (A) The following information concerning the NO_x authorized account representative and any alternate NO_x authorized account representative:
 - (i) Name.
 - (ii) Mailing address.
 - (iii) E-mail address, if any.
 - (iv) Telephone number.
 - (v) Facsimile transmission number, if any.
 - (B) At the option of the NO_x authorized account representative, organization name, and type of organization.
 - (C) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account.
 - (D) The following certification statement by the NO_x

authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of persons and that each person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account."

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

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

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

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

(B) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and the person. Any person having an ownership interest with respect to NO_x allowances shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the U.S. EPA or a court regarding the general account.

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

Final Rules

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.⁷

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

(3) The following shall apply to the designation of a NO_x authorized account representative, alternate NO_x authorized account representative, or persons having an ownership interest with respect to NO_x allowances in the general account:

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

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

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

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

(B) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(C) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(D) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subdivision (1). Notwithstanding the change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate NO_x autho-

rized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(E) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of persons having an ownership interest with respect to the NO_x allowances in the account certificate of representation, the new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the U.S. EPA, as if the new person were included in the list.

(F) Within thirty (30) days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

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

(5) Except as provided in subdivision (3)(C) through (3)(F), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the U.S. EPA under the NO_x budget trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

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

(f) Following the establishment of a NO_x allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account. The U.S. EPA will assign a

unique identifying number to each NO_x authorized account representative.

(g) The U.S. EPA will record the NO_x allowances for 2004 **and each year thereafter** in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under section 9 of this rule. The U.S. EPA will also record the NO_x allowances allocated under section 13(i)(1) of this rule for each NO_x budget opt-in source in its compliance account.

(h) Each year, after the U.S. EPA has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to subsection (k), the U.S. EPA will record NO_x allowances, as allocated to the unit under section 9 or 13(i)(2) of this rule, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the U.S. EPA will also record NO_x allowances, as allocated under section 9 of this rule, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(i) When allocating NO_x allowances to and recording them in an account, the U.S. EPA will assign each NO_x allowance a unique identification number that shall include digits identifying the year for which the NO_x allowance is allocated.

(j) The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for an ozone control period in a given year only if the NO_x allowances:

- (1) were allocated for an ozone control period in a prior year or the same year; and
- (2) are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that ozone control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under section 11(a) of this rule by the NO_x allowance transfer deadline for that ozone control period.

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

- (1) Following the recordation, in accordance with section 11(b) or 11(c) of this rule, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for an ozone control period, the U.S. EPA will deduct NO_x allowances available under subsection (j) to cover the unit's NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*:

- (A) from the compliance account; and
- (B) only if no more NO_x allowances available under subsection (j) remain in the compliance account, from the overdraft account.

In deducting allowances for units at the source from the overdraft account, the U.S. EPA will begin with the unit

having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number, with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters.

(2) The U.S. EPA will deduct NO_x allowances first under subdivision (1)(A) and then under subdivision (1)(B) until:

- (A) the number of NO_x allowances deducted for the ozone control period equals the number of tons of NO_x emissions, determined in accordance with 40 CFR 75, Subpart H*, from the unit for the ozone control period for which compliance is being determined; or
- (B) no more NO_x allowances available under subsection (j) remain in the respective account.

(3) The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under this section. The identification shall be made in the compliance certification report submitted in accordance with section 8(a) through 8(c) of this rule.

(4) The U.S. EPA will deduct NO_x allowances for an ozone control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subdivision (3), or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

- (A) Those NO_x allowances that were allocated for the ozone control period to the unit under section 9 or 13 of this rule.
- (B) Those NO_x allowances that were allocated for the ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.
- (C) Those NO_x allowances that were allocated for a prior ozone control period to the unit under section 9 or 13 of this rule.
- (D) Those NO_x allowances that were allocated for a prior ozone control period to any unit and transferred and recorded in the account pursuant to section 11 of this rule, in order of their date of recordation.

(5) After making the deductions for compliance under subdivisions (1) and (2), the U.S. EPA will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for an ozone control period after the ozone control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(6) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

Final Rules

(7) Any allowance deduction required under subdivision (5) shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable state law. The following guidelines shall be followed in assessing fines, penalties, or other obligations:

(A) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for an ozone control period, each day in the ozone control period, one hundred fifty-three (153) days, constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

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

(A) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each unit's compliance account to cover the unit's share of NO_x emissions from the common stack for an ozone control period. The identification shall be made in the compliance certification report submitted in accordance with section 8(a) through 8(c) of this rule.

(B) Notwithstanding subdivision (2)(A), the U.S. EPA will deduct NO_x allowances for each unit, in accordance with subdivision (1), until the number of NO_x allowances deducted equals either of the following:

(i) The unit's identified percentage of the number of tons of NO_x emissions, as determined in accordance with 40 CFR 75, Subpart H*, from the common stack for the ozone control period for which compliance is being determined.

(ii) If no percentage is identified, an equal percentage for each unit.

(9) The U.S. EPA will record in the appropriate compliance account or overdraft account all deductions from an account pursuant to this section.

(l) The U.S. EPA may at its own discretion and on its own motion correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making the correction, the U.S. EPA will notify the NO_x authorized account representative for the account.

(m) The NO_x authorized account representative of a general account may instruct the U.S. EPA to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under section 11(a) of this rule, an allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

(n) If a general account shows no activity for a period of one

(1) year or more and does not contain any NO_x allowances, the U.S. EPA may notify the NO_x authorized account representative for the account that the account shall be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account shall be closed after the twenty (20) business day period unless before the end of the twenty (20) business day period the U.S. EPA receives a correctly submitted transfer of NO_x allowances into the account under section 11(a) of this rule or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

***These documents are *This document is incorporated by reference. and Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20402 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Air Pollution Control Board; 326 IAC 10-4-10; filed Aug 17, 2001, 3:45 p.m.: 25 IR 38; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3565)**

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LSA Document #02-54(F)

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Approved by Governor: July 3, 2003

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Incorporated Documents Filed with Secretary of State: None