

3745-14-06

The NOx allowance tracking system.**(A) NOx allowance tracking system accounts.**

- (1) Consistent with paragraph (B)(1) of this rule, the administrator shall establish one compliance account for each NOx budget unit and one overdraft account for each source with two or more NOx budget units. Allocations of NOx allowances pursuant to rule 3745-14-05 or 3745-14-09 of the Administrative Code and deductions or transfers of NOx allowances pursuant to paragraphs (E) and (G) of this rule, paragraph (B) of rule 3745-14-04, and rules 3745-14-07 and 3745-14-09 of the Administrative Code shall be recorded in the compliance accounts or overdraft accounts in accordance with this rule.
- (2) Consistent with paragraph (B)(2) of this rule, the administrator shall establish, upon request, a general account for any person. Transfers of allowances pursuant to rule 3745-14-07 of the Administrative Code shall be recorded in the general account in accordance with this rule.

(B) Establishment of accounts.

- (1) Upon receipt of a complete account certificate of representation, the administrator shall establish:
 - (a) A compliance account for each NOx budget unit for which the account certificate of representation was submitted; and
 - (b) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NOx budget units.

(2) General accounts.

- (a) Any person may apply to open a general account for the purpose of holding and transferring allowances. An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the

administrator:

- (i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative;
- (ii) At the option of the NOx authorized account representative, organization name and type of organization;
- (iii) A list of all persons subject to a binding agreement for the NOx authorized account representative or any alternate NOx authorized account representative to represent their ownership interest with respect to the allowances held in the general account;
- (iv) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative:

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

- (v) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

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

- (b) Upon receipt by the administrator of a complete application for a general

account under paragraph (B)(2)(a) of this rule:

- (i) The administrator shall establish a general account for the person or persons for whom the application is submitted.
- (ii) The NOx authorized account representative and any alternate NOx 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 NOx allowances held in the general account in all matters pertaining to the NOx budget trading program, notwithstanding any agreement between the NOx authorized account representative or any alternate NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOx authorized account representative or any alternate NOx authorized account representative by the administrator or a court regarding the general account.
- (iii) Any representation, action, inaction or submission by an alternate NOx authorized account representative shall be deemed to be a representation, action, inaction or submission by the NOx authorized account representative.
- (iv) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx authorized account representative for the persons having an ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative:

"I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx 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."

- (v) The administrator shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (B)(2)(b)(iv) of this rule.
- (c) Change of NOx authorized account representative or alternate NOx authorized account representative.
- (i) The NOx authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (B)(2)(b) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
 - (ii) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (B)(2)(b) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
- (d) Change in owners.
- (i) In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account

representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

- (ii) Within thirty days following any change in the persons having an ownership interest with respect to NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx 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 NOx allowances in the general account to include the change.

(e) Administrator's reliance on general account application.

- (i) Once a complete application for a general account has been submitted and received, the administrator shall rely on the application unless and until a superseding complete application for a general account is received by the administrator.

- (ii) Except as provided in paragraph (B)(2)(d) of this rule, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative or the finality of any decision or order by the administrator under the NOx budget trading program.

- (iii) The administrator shall not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account, including private legal disputes concerning the proceeds of NOx allowance transfers.

- (3) The administrator shall assign a unique identifying number to each account established under paragraph (B)(1) or (B)(2) of this rule.

(C) NOx allowance tracking system responsibilities of the NOx authorized account

representative.

- (1) Following the establishment of a NOx allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NOx allowances in the account, shall be made only by the NOx authorized account representative for the account.
- (2) The administrator shall assign a unique identifying number to each NOx authorized account representative.

(D) Recording NOx allowance allocations.

- (1) The administrator shall record the NOx allowances for 2004 in the NOx budget units' compliance accounts and the allocation set-asides, as allocated under rule 3745-14-05 of this chapter. The administrator shall also record the NOx allowances allocated under paragraph (I)(1)(a) of rule 3745-14-09 of the Administrative Code for each NOx budget opt-in unit in its compliance account.
- (2) Each year, after the administrator has made all deductions from a NOx budget unit's compliance account and the overdraft account pursuant to paragraph (E) of rule 3745-14-06 of the Administrative Code, the administrator shall record NOx allowances, as allocated to the unit under rule 3745-14-05 of the Administrative Code or paragraph (I)(1)(b) of rule 3745-14-09 of the Administrative Code, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the administrator shall also record NOx allowances, as allocated under rule 3745-14-05 of the Administrative Code, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.
- (3) When allocating NOx allowances to and recording them in an account, the administrator shall assign each NOx allowance a unique identification number that shall include digits identifying the year for which the NOx allowance is allocated.

(E) Compliance.

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

- (a) Were allocated for a control period in a prior year or the same year; and
- (b) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recording under paragraph (A) of rule 3745-14-07 of the Administrative Code by the NOx allowance transfer deadline for that control period.

(2) Deductions for compliance.

- (a) Following the recording, in accordance with paragraph (B) of rule 3745-14-07 of the Administrative Code, of NOx allowance transfers submitted for recording in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the administrator shall deduct NOx allowances available under paragraph (E)(1) of this rule to cover the unit's NOx emissions, as determined in accordance with rule 3745-14-08 of the Administrative Code, or to account for actual utilization under paragraph (C)(5) of rule 3745-14-05 of the Administrative Code, for the control period as follows:

- (i) From the compliance account; and
 - (ii) Only if no more NOx allowances available under paragraph (E)(1) of this rule remain in the compliance account, from the overdraft account. [In deducting allowances for units at the source from the overdraft account, the administrator shall begin with the unit having the compliance account with the lowest NOx allowance tracking system account number and end with the unit having the compliance account with the highest NOx allowance tracking system account number. Account numbers shall be sorted beginning with the leftmost character and ending with the rightmost character and the letter characters assigned values in alphabetical order and less than all numeric characters.]
- (b) The administrator shall deduct NOx allowances first under paragraph (E)(2)(a)(i) of this rule and then under paragraph (E)(2)(a)(ii) of this rule:
 - (i) Until the number of NOx allowances deducted for the control period

equals the number of tons of NOx emissions, determined in accordance with rule 3745-14-08 of the Administrative Code, from the unit for the control period for which compliance is being determined, plus the number of NOx allowances required for deduction to account for actual utilization under paragraph (C)(5) of rule 3745-14-05 of the Administrative Code for the control period; or

(ii) Until no more NOx allowances available under paragraph (E)(1) of this rule remain in the respective account.

(3) Identification of NOx allowances by serial number.

(a) The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (E)(2), (E)(4), (E)(5) or (E)(6) of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (A) of rule 3745-14-04 of the Administrative Code.

(b) The administrator shall deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under paragraph (E)(3)(a) of this rule, or the overdraft account on a first-in-first-out accounting basis in the following order:

(i) Those NOx allowances that were allocated for the control period to the unit under rule 3745-14-05 or 3745-14-09 of the Administrative Code;

(ii) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to rule 3745-14-07 of the Administrative Code, in order of their recorded date;

(iii) Those NOx allowances that were allocated for a prior control period to the unit under rule 3745-14-05 or 3745-14-09 of the Administrative Code; and

(iv) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to rule 3745-14-07 of the Administrative Code, in order

of their recorded date.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under paragraph (E)(2) of this rule, the administrator shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx 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.

(b) If the compliance account or overdraft account does not contain sufficient NOx allowances, the administrator shall deduct the required number of NOx allowances (i.e., three times the number of the unit's excess emissions) regardless of the control period for which they were allocated whenever NOx allowances are recorded in either account.

(c) Any allowance deduction required under paragraph (E)(4)(a) or (E)(4)(b) of this rule shall not affect the liability of the owners and operators of the NOx 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 Clean Air Act or applicable state law. The following guidelines shall be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NOx budget unit has excess emissions for a control period, each day in the control period 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.

(5) In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with rule 3745-14-08 of the Administrative Code:

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

paragraph (A) of rule 3745-14-04 of the Administrative Code.

- (b) Notwithstanding paragraph (E)(2)(b)(i) of this rule, the administrator shall deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage, under paragraph (E)(5)(a) of this rule, of the number of tons of NOx emissions, as determined in accordance with rule 3745-14-08 of the Administrative Code, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under paragraph (C)(5) of rule 3745-14-05 of the Administrative Code for the control period.
- (6) Each year starting in ~~2006~~2005, after the administrator has completed the designation of banked NOx allowances under paragraph (F)(1)(b) of this rule and before May 1 of the year, the administrator shall determine the extent to which banked NOx allowances otherwise available under paragraph (E)(1) of this rule are available for compliance in the control period for the current year, as follows:
- (a) The administrator shall determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.
 - (b) If the total number of banked NOx allowances determined to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten per cent of the sum of the state trading program budgets for the control period, any banked NOx allowance may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule.
 - (c) If the total number of banked NOx allowances determined to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten per cent of the sum of the state trading program budgets for the control period, any banked allowance may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule, except as follows:
 - (i) The administrator shall determine the following ratio: 0.10 multiplied by the sum of the state trading program budgets for the control period divided by the total number of banked NOx allowances determined to be held in compliance accounts,

overdraft accounts, or general accounts.

- (ii) The administrator shall multiply the number of banked NOx allowances in each compliance account or overdraft account by the ratio determined under paragraph (E)(6)(c)(i) of this rule. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with paragraphs (E)(1) to (E)(5) of this rule, except that, if such NOx allowances are used to make a deduction under paragraphs (E)(2) to (E)(5) of this rule, two (rather than one) such NOx allowances shall authorize one ton of NOx emissions during the control period and must be deducted for each deduction of one NOx allowance required under paragraph (E)(2) to (E)(5) of this rule.

- (7) The administrator shall record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (E)(2), (E)(4), (E)(5) and (E)(6) of this rule.

(F) Banking.

- (1) NOx allowances shall be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:
 - (a) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account shall remain in such account unless and until the NOx allowance is deducted or transferred pursuant to paragraphs (E) and (G) of this rule, paragraph (B) of rule 3745-14-04, and rules 3745-14-07 and 3745-14-09 of the Administrative Code.
 - (b) The administrator shall designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (E) of this rule (except deductions pursuant to paragraph (E)(4)(b) of this rule) and that were allocated for that control period or a control period in a prior year.
- (G) The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NOx allowance tracking system account. Within ten business days of making such correction, the administrator shall notify the NOx

authorized account representative for the account.

(H) Closing of general accounts.

- (1) The NOx authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NOx allowance tracking system and by correctly submitting for recording, under paragraph (A) of rule 3745-14-07 of the Administrative Code, an allowance transfer of all NOx allowances in the account to one or more other NOx allowance tracking system accounts.
- (2) If a general account shows no activity for a period of a year or more and does not contain any NOx allowances, the administrator shall notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx allowance tracking system following twenty business days after the notice is sent. The account shall be closed after the twenty-day period unless, before the end of the twenty-day period, the administrator receives a correctly submitted transfer of NOx allowances into the account under paragraph (A) of rule 3745-14-07 of the Administrative Code or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

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