

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

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[~~Vintage or vintage year—The calendar year assigned to an allowance by the issuing authority that designates the first year in which it is valid to be applied against emissions.~~]

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ADDITIONAL NO_x REQUIREMENTS

§ 129.201. Boilers.

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(c) The owner or operator shall calculate allowable emissions by multiplying the unit’s cumulative heat input for the period by the applicable emission rate **SET FORTH** in paragraph (1) or (2).

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(2) The emission rate for a boiler with a nameplate rated capacity of greater than 250 million Btu/hour that is not subject to [~~§ 145.8(c) or (d) (relating to transition to CAIR NO_x trading programs)~~] §§ 145.1-- 145.7, 145.10—145.14, 145.30, 145.31, 145.40—145.43, 145.50—145.57, 145.60—145.62 AND 145.70—145.76 shall be 0.17 pounds NO_x per million Btu heat input. **THE OWNER OR OPERATOR OF A BOILER MAY DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH THROUGH THE PROVISIONS OF §§ 145.80-145.88 (RELATING TO OPT-IN PROCESS).**

§ 129.202. Stationary combustion turbines.

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(c) The owner or operator shall calculate allowable emissions by multiplying the unit's cumulative heat input for the period by the applicable emission rate set forth in paragraph (1) or (2).

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(2) The emission rate for a stationary combustion turbine with a nameplate rated capacity of greater than 250 million Btu/hour heat input that is not subject to [~~§ 145.8(e) or (d) (relating to transition to CAIR NO_x trading programs)~~] §§ 145.1-- 145.7, 145.10—145.14, 145.30, 145.31, 145.40—145.43, 145.50—145.57, 145.60—145.62 AND 145.70—145.76 is 0.17 pounds NO_x per million Btu heat input. THE OWNER OR OPERATOR OF A STATIONARY COMBUSTION TURBINE MAY DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH THROUGH THE PROVISIONS OF §§ 145.80-145.88 (RELATING TO OPT-IN PROCESS).

§ 129.204. Emission accountability.

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(c) The owner or operator of a unit subject to this section shall surrender to the Department one [~~CAIR~~] NO_x allowance [~~and one CAIR NO_x Ozone Season allowance~~], as defined in [~~40 CFR 96.102 and 96.302~~] § 145.2 (relating to definitions), for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the units subject to this section at a facility from May 1 through September 30. The surrendered NO_x allowances shall be of current year vintage. For the purpose of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

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CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION

Subchapter A. NO_x BUDGET TRADING PROGRAM

GENERAL PROVISIONS

§ 145.8. [~~Transition to CAIR NO_x trading programs.~~

~~(a) Allowances. The final year for NO_x allowance allocations to be made by the Department under §§ 145.41 and 145.42 (relating to timing requirements for NO_x allowance allocations; and NO_x allowance allocations) will be 2008. Allocations in 2009 will be made in accordance with the Federal CAIR Ozone Season Trading Program, 40 CFR Part 97 (relating to Federal NO_x Budget Trading Program and~~

~~CAIR NO_x and SO₂ Trading Programs). CAIR NO_x Ozone Season allowance allocations for the control period starting May 1, 2010, and for each control period thereafter, will be distributed in accordance with Subchapter D (relating to CAIR NO_x and SO₂ Trading Programs).~~

~~(b) Termination and retirement of allowances. NO_x allowances already allocated under this subchapter for 2009 or later are terminated and may not be used for compliance with the CAIR NO_x Annual Trading Program or the CAIR NO_x Ozone Season Trading Program, as those terms are defined in 40 CFR 96.102 and 96.302 (relating to definitions). By January 1, 2009, the Department will permanently retire the Commonwealth's non-EGU NO_x Trading Program Budget of 3,619 allowances established in § 145.40 (relating to State Trading Program budget).~~

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

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

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

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

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

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

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

~~Allowable emission rate X each unit's heat input~~

~~Where "Allowable emission rate" =~~

~~3,438 tons of NO_x~~

~~Combined heat input of all units during
the most recent ozone season~~

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

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

~~—(i) The serial number of each allowance surrendered.~~

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

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

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

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

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

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

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

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

Subchapter B. EMISSIONS OF NO_x FROM STATIONARY INTERNAL COMBUSTION ENGINES

§ 145.113. Standard requirements.

* * * * *

(d) The owner or operator of a unit subject to this section shall surrender to the Department one [CAIR] NO_x allowance [and one CAIR NO_x Ozone Season allowance], as defined in [40 CFR 96.102 and 96.302] § 145.2 (relating to definitions), for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the units subject to this section at a facility from May 1 through September 30. The surrendered NO_x allowances shall be of current year vintage. For the purposes of

determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

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Subchapter C. EMISSIONS OF NO_x FROM CEMENT MANUFACTURING

§ 145.143. Standard requirements.

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(d) The owner or operator of a Portland cement kiln subject to this section shall surrender to the Department one ~~[CAIR]~~ NO_x allowance ~~[and one CAIR NO_x Ozone Season allowance]~~, as defined in ~~[40 CFR 96.102 and 96.302]~~ § 145.2 (relating to definitions), for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the Portland cement kilns subject to this section at a facility from May 1 through September 30. The surrendered NO_x allowances shall be of current year vintage. For the purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

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Subchapter D. CAIR NO_x AND SO₂ TRADING PROGRAMS

GENERAL PROVISIONS

- [145.201.](#) ~~[Purpose.]~~ [Reserved].
- [145.202.](#) ~~[Definitions.]~~ [Reserved].
- [145.203.](#) ~~[Applicability.]~~ [Reserved].
- [145.204.](#) ~~[Incorporation of Federal regulations by reference.]~~ [Reserved].

ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION REDUCTION CREDIT PROVISIONS

- [145.205.](#) ~~[Emission reduction credit provisions.]~~ [Reserved].

ADDITIONAL REQUIREMENTS FOR CAIR NO_x ANNUAL TRADING PROGRAM

- [145.211.](#) ~~[Timing requirements for CAIR NO_x allowance allocations.]~~ [Reserved].
- [145.212.](#) ~~[CAIR NO_x allowance allocations.]~~ [Reserved].
- [145.213.](#) ~~[Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR~~

96.170—96.175.] [Reserved].

ADDITIONAL REQUIREMENTS FOR CAIR NO_x OZONE SEASON TRADING PROGRAM

145.221. [~~Timing requirements for CAIR NO_x Ozone Season allowance allocations.~~] [Reserved].

145.222. [~~CAIR NO_x Ozone Season allowance allocations.~~] [Reserved].

145.223. [~~Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.~~] [Reserved].

GENERAL PROVISIONS

§ 145.201. [~~Purpose.~~

~~This subchapter incorporates by reference the CAIR NO_x Annual Trading Program and CAIR NO_x Ozone Season Trading Program as a means of mitigating the interstate transport of fine particulates and NO_x, and the CAIR SO₂ Trading Program as a means of mitigating the interstate transport of fine particulates and SO₂. This subchapter also establishes general provisions and the applicability, allowance and supplemental monitoring, recordkeeping and reporting provisions.] [Reserved].~~

§ 145.202. [~~Definitions.~~

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

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

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

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

~~(iii) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or~~

~~other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.~~

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

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

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

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

~~—Renewable energy—~~

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

~~(A) Solar photovoltaic or solar thermal energy.~~

~~(B) Wind energy.~~

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

~~(D) Ocean thermal, wave or tidal energy.~~

~~(E) Low-impact hydro energy.~~

~~(F) Geothermal energy.~~

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

~~—Renewable energy certificate—The tradable alternative energy credit instrument generated under, and used to establish, verify and monitor compliance with, the Pennsylvania Alternative Energy Portfolio Standard. A unit of credit shall equal 1 megawatt-hour of electricity from an alternative energy source.~~

~~—Renewable energy qualifying resource—A renewable energy measure that generates renewable energy certificates.] [Reserved].~~

§ 145.203. [Applicability.

~~This subchapter applies to CAIR NO_x units, CAIR NO_x Ozone Season units and CAIR SO₂ units.] [Reserved].~~

§ 145.204. [Incorporation of Federal regulations by reference.

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

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

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

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

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

§ 145.205. [Emission reduction credit provisions.

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

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

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

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

ADDITIONAL REQUIREMENTS FOR CAIR NO_x ANNUAL TRADING PROGRAM

§ 145.211. [Timing requirements for CAIR NO_x allowance allocations.]

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

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

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

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

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

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

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

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

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

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

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

~~—(1) To new units under § 145.212(e).~~

~~—(2) To units under § 145.212(f)(2).~~

~~—(3) To units under § 145.212(e).] [Reserved].~~

§ 145.212. [CAIR NO_x allowance allocations.

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

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

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

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

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

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

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

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

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

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

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

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

~~(c) Existing unit, new unit and subsection (f)(1) qualifying resource allocation baseline. For each control period beginning with January 1, 2010, and each year thereafter, the Department will allocate to qualifying resources and CAIR NO_x~~

~~units, including CAIR NO_x units issued allowances under subsection (e), a total amount of CAIR NO_x allowances equal to the number of CAIR NO_x allowances remaining in the Commonwealth's CAIR NO_x trading budget under 40 CFR 96.140 (relating to State trading budgets) for those control periods using summed baseline heat input data as determined under subsections (b) and (f)(1) from a baseline year that is 6 calendar years before the control period.~~

~~(d) *Proration of allowance allocations.* The Department will allocate CAIR NO_x allowances to each existing CAIR NO_x unit and qualifying resource in an amount determined by multiplying the amount of CAIR NO_x allowances in the Commonwealth's CAIR NO_x trading budget available for allocation under subsection (e) by the ratio of the baseline heat input of the existing CAIR NO_x unit or qualifying resource to the sum of the baseline heat input of existing CAIR NO_x units and of the qualifying resources, rounding to the nearest whole allowance as appropriate.~~

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

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

~~—(1) The Department will allocate CAIR NO_x allowances to a renewable energy qualifying resource or demand side management energy efficiency qualifying resource in accordance with subsections (e) and (d) upon receipt by the Department of an application, in writing, on or before June 30 of the year following the control period, except for vintage year 2011 and 2012 NO_x allowance allocations whose application deadline will be prescribed by the Department, meeting the requirements of this paragraph. The number of allowances allocated to the~~

~~qualifying resource will be determined by converting the certified quantity of electric energy production, useful thermal energy, and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. Equivalent thermal energy is a unit's baseline heat input for allocation purposes. The conversion rate for converting electrical energy to equivalent thermal energy is 3,413 Btu/kWh. To receive allowances under this subsection, the qualifying resource must have commenced operation after January 1, 2005, must be located in this Commonwealth and may not be a CAIR NO_x unit. The following procedures apply:~~

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

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

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

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

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

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

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

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

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

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

~~where,~~

~~A_A is the unit's prorated allocation,~~

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

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

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

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

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

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

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

~~—(5) Notwithstanding the provisions of paragraphs (2)–(4), the Department may extend, terminate or otherwise modify the allocation of NO_x allowances made available under this subsection for units exempted under section 405(g)(6)(a) of the~~

Clean Air Act after providing notice in the *Pennsylvania Bulletin* and at least a 30-day public comment period.

~~(g) The Department will correct any errors in allocations made by the Department and discovered after final allocations are made but before the next allocation cycle, in the subsequent allocation cycle using future allowances that have not yet been allocated.] [Reserved].~~

§ 145.213. [Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170—96.175.

~~(a) By January 1, 2009, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NO_x unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).~~

~~(b) By September 1, 2008, for a CAIR NO_x unit that is a cogeneration unit, and for a CAIR NO_x unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit, and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NO_x unit that produces useful thermal energy but uses an energy transfer medium other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.~~

~~(c) Beginning with 2009, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.~~

~~(d) The owner or operator of a CAIR NO_x unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NO_x unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NO_x unit shall provide the Department with a written copy of the monitoring plan~~

by January 1, 2009, and thereafter within 3 calendar months of making updates to the plan.

~~(c) The owner or operator of a CAIR NO_x unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).] [Reserved].~~

ADDITIONAL REQUIREMENTS FOR CAIR NO_x OZONE SEASON TRADING PROGRAM

~~§ 145.221. [Timing requirements for CAIR NO_x Ozone Season allowance allocations.~~

~~(a) Provisions not incorporated by reference. The requirements of 40 CFR 96.341 (relating to timing requirements for CAIR NO_x Ozone Season allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.341, the requirements in this section apply.~~

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

~~—(1) Except for allocations made under subsection (c), by April 30, 2008, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222 (relating to CAIR NO_x Ozone Season allowance allocations) for the control periods in 2010-2012 in a format prescribed by the Administrator.~~

~~—(2) Except for allocations made under subsection (c), by April 30, 2009, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222 for the control period in 2013 in a format prescribed by the Administrator. By April 30 every year after 2009, the Department will submit the allocations for the next consecutive control period.~~

~~(c) New CAIR NO_x unit allowance allocations. By April 30, 2011, and by April 30 every year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations made in accordance with § 145.222(e). The Department will base the allocations on actual emissions in the ozone season in the calendar year preceding the year of the submission.~~

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

~~additional information. The Department will publish notice according to the following schedule:~~

- ~~—(1) For allocations made under subsection (b)(1), by April 1, 2008.~~
- ~~—(2) For allocations made under subsection (b)(2), by April 1, 2009, and by April 1 every year thereafter.~~
- ~~—(3) For allocations made under subsection (c), by March 1 each year, beginning in 2011.~~

~~(c) *Order of budget allowance withdrawal.* The Department will issue CAIR NO_x Ozone Season allowances from the CAIR NO_x Ozone Season trading budget established in 40 CFR 96.240 (relating to State trading budgets) in the following order:~~

- ~~—(1) To new units under § 145.222(e).~~
- ~~—(2) To units under § 145.222(e).] [Reserved].~~

~~§ 145.222. [CAIR NO_x Ozone Season allowance allocations.~~

~~(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.342 (relating to CAIR NO_x Ozone Season allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.342, the requirements in this section apply.~~

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

- ~~—(1) A unit's control period heat input and a unit's status as coal-fired or oil-fired for the ozone season portion of a calendar year under this paragraph will be determined in one of the following two ways:
 - ~~—(i) In accordance with 40 CFR Part 75 (relating to continuous emission monitoring), to the extent that the unit was otherwise subject to the requirements of 40 CFR Part 75 for the control period.~~
 - ~~—(ii) Based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.~~~~
- ~~—(2) Except as provided in subparagraphs (iv) and (v), a unit's converted control period heat input for the ozone season portion of a calendar year shall be determined as follows:~~

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

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

~~—(iii) If a generator is served by 2 or more units, the gross electrical output of the generator will be attributed to each unit in proportion to the share of the total control period heat input from each of the units for the ozone season control period.~~

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

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

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

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

~~(d) Proration of allowance allocations. The Department will allocate CAIR NO_x Ozone Season allowances to each existing CAIR NO_x Ozone Season unit and qualifying resource in an amount determined by multiplying the amount of CAIR~~

~~NO_x Ozone Season allowances in the Commonwealth's CAIR NO_x Ozone Season trading budget available for allocation under subsection (c) by the ratio of the baseline heat input of the existing CAIR NO_x Ozone Season unit or qualifying resource to the sums of the baseline heat input of existing CAIR NO_x Ozone Season units and of the qualifying resources, rounding to the nearest whole allowance as appropriate.~~

~~(e) *Allocations to new CAIR NO_x Ozone Season units.* By March 31, 2011, and March 31 each year thereafter, the Department will allocate CAIR NO_x Ozone Season allowances under § 145.221(c) (relating to timing requirements for CAIR NO_x Ozone Season allowance allocations) to CAIR NO_x Ozone Season units equal to the previous year's emissions at each unit, unless the unit has been issued allowances of the previous year's vintage in a regular allocation under § 145.221(b). The Department will allocate CAIR NO_x allowances under this subsection of a vintage year that is 5 years later than the year in which the emissions were generated. The number of CAIR NO_x Ozone Season allowances allocated shall not exceed the actual emission of the year preceding the year in which the Department makes the allocation. The allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under another provision of this subchapter.~~

~~(f) *Allocations to qualifying resources.* For each control period beginning with the 2010 control period, and thereafter, the Department will allocate CAIR NO_x Ozone Season allowances to qualifying resources in this Commonwealth that are not also allocated CAIR NO_x Ozone Season allowances under another provision of this subchapter, as follows:~~

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

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

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

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

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

~~-(g) The Department will correct any errors in allocations made by the Department and discovered after final allocations are made but before the next allocation cycle, in the subsequent allocation cycle using future allowances that have not yet been allocated.] [Reserved].~~

§ 145.223. [Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.

~~-(a) By January 1, 2009, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NO_x Ozone Season unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).~~

~~-(b) By September 1, 2008, for a CAIR NO_x Ozone Season unit that is a cogeneration unit, and for a CAIR NO_x Ozone Season unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NO_x Ozone Season unit that produces useful thermal energy but uses an energy transfer medium other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or~~

~~operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.~~

~~(c) Beginning with 2009, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.~~

~~(d) The owner or operator of a CAIR NO_x Ozone Season unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NO_x Ozone Season unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NO_x Ozone Season unit shall provide the Department with a written copy of the monitoring plan by January 1, 2009, and thereafter within 3 calendar months of making updates to the plan.~~

~~(e) The owner or operator of a CAIR NO_x Ozone Season unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).] [Reserved].~~