

quarterly NO<sub>x</sub> mass emissions, as determined under paragraph (c)(4)(ii)(B) of this section, for all of the calendar quarters in the year to date.

(iii) *CO<sub>2</sub> Mass Emissions.* (A) The hourly CO<sub>2</sub> mass emissions (tons) for the affected low mass emission unit shall be determined using Equation LM-11 and the appropriate fuel-based CO<sub>2</sub> emission factor from Table 3 of this section for the fuel being combusted in that hour. If more than one fuel is combusted in the hour, use the highest emission factor for all of the fuels combusted in the hour. If records are missing as to which fuel was combusted in the hour, use the highest emission factor for all of the fuels capable of being combusted in the unit.

$$WCO_2 = EF_{CO_2} \times HI_{hr} \quad (\text{Eq. LM-11})$$

Where:

WCO<sub>2</sub> = Hourly CO mass emissions (tons).

EF<sub>CO<sub>2</sub></sub> = Fuel-based CO<sub>2</sub> emission factor from Table 3 of this section (ton/mmBtu).

HI<sub>hr</sub> = Either the maximum rated hourly heat input from paragraph (c)(3)(i)(A) of this section or the hourly heat input as determined under paragraph (c)(3)(ii) of this section (mmBtu).

(B) The quarterly CO<sub>2</sub> mass emissions (tons) for the low mass emission unit shall be the sum of all of the hourly CO<sub>2</sub> mass emissions in the quarter, as determined under paragraph (c)(4)(iii)(A) of this section.

(C) The year-to-date cumulative CO<sub>2</sub> mass emissions (tons) for the low mass emission unit shall be the sum of all of the quarterly CO<sub>2</sub> mass emissions, as determined under paragraph (c)(4)(iii)(B) of this section, for all of the calendar quarters in the year to date.

(d) Each unit that qualifies under this section to use the low mass emissions methodology must follow the recordkeeping and reporting requirements pertaining to low mass emissions units in subparts F and G of this part.

(e) The quality control and quality assurance requirements in § 75.21 are not applicable to a low mass emissions unit for which the low mass emissions excepted methodology under paragraph (c) of this section is being used in lieu of a continuous emission monitoring system or an excepted monitoring system under appendix D or E to this part, except for fuel flowmeters used to meet the provisions in paragraph (c)(3)(ii) of this section. However, the owner or operator of a low mass emissions unit shall implement the following quality assurance and quality control provisions:

(1) For low mass emission units or groups of units which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section and which use fuel billing records to determine fuel usage, the owner or operator shall keep, at the facility, for three years, the records of the fuel billing statements used for long term fuel flow determinations.

(2) For low mass emission units or groups of units which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section and which use American Petroleum Institute (API) standard, American Petroleum Institute (API) Petroleum Measurement Standards, Chapter 3, Tank Gauging: Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, December 1994; Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, April 1992 (reaffirmed January 1997); Section 2, Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, September 1995; Section 3, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, June 1996; Section 4, Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, April 1995; and Section 5, Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, March 1997, Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992) (incorporated by reference under § 75.6), to determine fuel usage, the owner or operator shall keep, at the facility, a copy of the standard used and shall keep records, for three years, of all measurements obtained for each quarter using the methodology.

(3) For low mass emission units or groups of units which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section and which use a certified fuel flow meter to determine fuel usage, the owner or operator shall comply with the quality control quality assurance requirements for a fuel flow meter under section 2.1.6 of appendix D of this part.

(4) For each low mass emission unit for which fuel-and-unit-specific NO<sub>x</sub> emission rates are determined in accordance with paragraph (c)(1)(iv) of this section, the owner or operator shall keep, at the facility, records which document the results of all NO<sub>x</sub> emission rate tests conducted according to appendix E to this part. If CEMS data

are used to determine the fuel-and-unit-specific NO<sub>x</sub> emission rates under paragraph (c)(1)(iv)(G) of this section, the owner or operator shall keep, at the facility, records of the CEMS data and the data analysis performed to determine a fuel-and-unit-specific NO<sub>x</sub> emission rate. The appendix E test records and historical CEMS data records shall be kept until the fuel and unit specific NO<sub>x</sub> emission rates are re-determined.

(5) For each low mass emission unit for which fuel-and-unit-specific NO<sub>x</sub> emission rates are determined in accordance with paragraph (c)(1)(iv) of this section and which have NO<sub>x</sub> emission controls of any kind, the owner or operator shall develop and keep on-site a quality assurance plan which explains the procedures used to document proper operation of the NO<sub>x</sub> emission controls. The plan shall include the parameters monitored (e.g., water-to-fuel ratio) and the acceptable ranges for each parameter used to determine proper operation of the unit's NO<sub>x</sub> controls.

TABLE 1 OF § 75.19: SO<sub>2</sub> Emission Factors (lb/mmBtu) for Various Fuel Types

Fuel type	SO <sub>2</sub> emission factors
Pipeline Natural Gas	0.0006 lb/mmBtu.
Other Natural Gas .....	0.06 lb/mmBtu.
Residual Oil .....	2.1 lb/mmBtu.
Diesel Fuel .....	0.5 lb/mmBtu.

TABLE 2 OF § 75.19: NO<sub>x</sub> Emission Rates (lb/mmBtu) for Various Boiler/Fuel Types

Boiler type	Fuel type	NO <sub>x</sub> emission rate
Turbine .....	Gas ....	0.7
Turbine .....	Oil .....	1.2
Boiler .....	Gas ....	1.5
Boiler .....	Oil .....	2

TABLE 3 OF § 75.19: CO<sub>2</sub> Emission Factors (ton/mmBtu) for Gas and Oil

Fuel type	CO <sub>2</sub> emission factors
Natural Gas .....	0.059 ton/mmBtu.
Oil .....	0.081 ton/mmBtu.

TABLE 4 OF § 75.19: IDENTICAL UNIT TESTING REQUIREMENTS

Number of identical units in the group	Number of appendix E tests required
2 .....	1
3 to 6 .....	2

TABLE 4 OF § 75.19: IDENTICAL UNIT TESTING REQUIREMENTS—Continued

Number of identical units in the group	Number of appendix E tests required
7 .....	3
>7 .....	n tests; where n = number of units divided by 3 and rounded to nearest integer.

TABLE 5 OF § 75.19: DEFAULT GROSS CALORIFIC VALUES (GCVs) FOR VARIOUS FUELS

Fuel	GCV for use in equation LM-2 or LM-3
Pipeline Natural Gas	1051 Btu/scf.
Natural Gas .....	1118 Btu/scf.
Residual Oil .....	19,708 Btu/gallon.
Diesel Fuel .....	20,500 Btu/gallon.

TABLE 6 OF § 75.19: DEFAULT SPECIFIC GRAVITY VALUES FOR FUEL OIL

Fuel	Specific gravity (lb/gal)
Residual Oil .....	8.5
Diesel Fuel .....	7.4

13. Section 75.20 is amended by adding new paragraph (h) to read as follows:

**§ 75.20 Certification and recertification procedures.**

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(h) *Initial certification and recertification procedures for low mass emission units using the excepted methodologies under § 75.19.* The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under § 75.19 shall meet the applicable general operating requirements of § 75.10, the applicable requirements of § 75.19, and the applicable certification requirements of this paragraph.

(1) *Monitoring plan.* The designated representative shall submit a monitoring plan in accordance with §§ 75.53 and 75.62. The designated representative for an owner or operator who wishes to use fuel- and unit-specific NO<sub>x</sub> emission rate testing for units with NO<sub>x</sub> controls under § 75.19(c)(1)(iv) must submit in the monitoring plan the parameters monitored which will be used to determine operation of the NO<sub>x</sub> emission controls. For units using water or steam injection to control NO<sub>x</sub>, the water-to-fuel or steam-to-fuel range of values must be documented.

(2) *Certification application.*

[reserved]

(3) *Approval of certification applications.* The provisions for the certification application formal approval process in the introductory text of paragraph (a)(4) and in paragraphs (a)(4)(i), (ii), and (iv) of this section shall apply, except that "continuous emission or opacity monitoring system" shall be replaced with "excepted methodology." The excepted methodology shall be deemed provisionally certified for use under the Acid Rain Program, as of the following dates:

(i) For a unit that commenced operation on or before January 1, 1997, from January 1 of the year following submission of the certification application until the completion of the period for the Administrator's review; or

(ii) For a unit that commenced operation after January 1, 1997, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under § 75.19 until the completion of the period for the Administrator's review, except that the methodology may be used retrospectively until the date and hour that the unit commenced operation for purposes of demonstrating that the unit qualified to use the methodology under § 75.19(b)(4)(iii).

(4) *Disapproval of certification applications.* If the Administrator determines that the certification application does not demonstrate that the unit meets the requirements of §§ 75.19(a) and (b), the Administrator shall issue a written notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and the data recorded under the excepted methodology shall not be considered valid. The owner or operator shall follow the procedures for loss of certification:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in §§ 75.21(e) (introductory paragraph) and 75.21(e)(1): the maximum potential concentration of SO<sub>2</sub>, as defined in section 2.1.1.1 of appendix A to this part to report SO<sub>2</sub> concentration; the maximum potential NO<sub>x</sub> emission rate, as defined in § 72.2 of this chapter to report NO<sub>x</sub> emission rate; the maximum potential flow rate, as defined in section 2.1 of appendix A to this part to report volumetric flow; or the maximum CO<sub>2</sub> concentration used to determine the

maximum potential concentration of SO<sub>2</sub> in section 2.1.1.1 of appendix A to this part to report CO<sub>2</sub> concentration data. For a unit subject to a State or federal NO<sub>x</sub> mass reduction program where the owner or operator intends to monitor NO<sub>x</sub> mass emissions with a NO<sub>x</sub> pollutant concentration monitor and a flow monitoring system, substitute for NO<sub>x</sub> concentration using the maximum potential concentration of NO<sub>x</sub>, as defined in section 2.1.2.1 of appendix A to this part, and substitute for volumetric flow using the maximum potential flow rate, as defined in section 2.1 of appendix A to this part. The owner or operator shall substitute these values until such time, date, and hour as a continuous emission monitoring system or excepted monitoring system, where applicable, is installed and provisionally certified;

(ii) The designated representative shall submit a notification of certification test dates, as specified in § 75.61(a)(1)(ii), and a new certification application according to the procedures in paragraph (a)(2) of this section; and

(iii) The owner or operator shall install and provisionally certify continuous emission monitoring systems or excepted monitoring systems, where applicable, two calendar quarters from the end of the quarter in which the unit no longer qualifies as a low mass emissions unit.

14. Section 75.24 is amended by revising paragraph (d) to read as follows:

**§ 75.24 Out-of-control periods.**

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(d) When the bias test indicates that an SO<sub>2</sub> monitor, a volumetric flow monitor, a NO<sub>x</sub> continuous emission monitoring system or a NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71(a)(2), is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test, or calculate and use the bias adjustment factor as specified in section 2.3.3 of appendix B to this part and in accordance with § 75.7.

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16. Subpart H is added to part 75 to read as follows:

**Subpart H—NO<sub>x</sub> Mass Emissions Provisions**

Sec.

- 75.70 NO<sub>x</sub> mass emissions provisions.
- 75.71 Specific provisions for monitoring NO<sub>x</sub> emission rate and heat input for the purpose of calculating NO<sub>x</sub> mass emissions.
- 75.72 Determination of NO<sub>x</sub> mass emissions.
- 75.73 Recordkeeping and reporting [Reserved].
- 75.74 Annual and ozone season monitoring and reporting requirements.
- 75.75 Additional ozone season calculation procedures for special circumstances.

**Subpart H—NO<sub>x</sub> Mass Emissions Provisions****§ 75.70 NO<sub>x</sub> mass emissions provisions.**

(a) *Applicability.* The owner or operator of a unit shall comply with the requirements of this subpart to the extent that compliance is required by an applicable State or federal NO<sub>x</sub> mass emission reduction program that incorporates by reference, or otherwise adopts the provisions of, this subpart.

(1) For purposes of this subpart, the term "affected unit" shall mean any unit that is subject to a State or federal NO<sub>x</sub> mass emission reduction program requiring compliance with this subpart, the term "nonaffected unit" shall mean any unit that is not subject to such a program, the term "permitting authority" shall mean the permitting authority under an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart, and the term "designated representative" shall mean the responsible party under the applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

(2) In addition, the provisions of subparts A, C, D, E, F, and G and appendices A through G of this part applicable to NO<sub>x</sub> concentration, flow rate, NO<sub>x</sub> emission rate and heat input, as set forth and referenced in this subpart, shall apply to the owner or operator of a unit required to meet the requirements of this subpart by a State or federal NO<sub>x</sub> mass emission reduction program. When applying these requirements, the term "affected unit" shall mean any unit that is subject to a State or federal NO<sub>x</sub> mass emission reduction program requiring compliance with this subpart, the term "permitting authority" shall mean the permitting authority under an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart, and the term "designated representative" shall mean the responsible party under the applicable

State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart. The requirements of this part for SO<sub>2</sub>, CO<sub>2</sub> and opacity monitoring, recordkeeping and reporting do not apply to units that are subject to a State or federal NO<sub>x</sub> mass emission reduction program only and are not affected units with an Acid Rain emission limitation.

(b) *Compliance dates.* The owner or operator of an affected unit shall meet the compliance deadlines established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

(c) *Prohibitions.* (1) No owner or operator of an affected unit or a non-affected unit under § 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with paragraph (h) of this section.

(2) No owner or operator of an affected unit or a non-affected unit under § 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged emissions of NO<sub>x</sub> to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part, except as provided in § 75.74.

(3) No owner or operator of an affected unit or a non-affected unit under § 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the provisions of this part applicable to monitoring systems under § 75.71, except as provided in § 75.74.

(4) No owner or operator of an affected unit or a non-affected unit under § 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption that is in effect under the State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart;

(ii) The owner or operator is monitoring NO<sub>x</sub> mass emissions from the affected unit with another certified

monitoring system approved, in accordance with the provisions of paragraph (d) of this section; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 75.61.

(d) *Initial certification and recertification procedures.* (1) The owner or operator of an affected unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of this part, except that the owner or operator shall meet any additional requirements set forth in an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

(2) The owner or operator of an affected unit that is not subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart. The owner or operator of an affected unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart for any additional NO<sub>x</sub>-diluent CEMS, flow monitors, diluent monitors or NO<sub>x</sub> concentration monitoring system required under the NO<sub>x</sub> mass emissions provisions of § 75.71 or the common stack provisions in § 75.72.

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for NO<sub>x</sub> mass emissions, the owner or operator shall meet the quality assurance and quality control requirements in § 75.21 that apply to NO<sub>x</sub>-diluent continuous emission monitoring systems, flow monitoring systems, NO<sub>x</sub> concentration monitoring systems, and diluent monitors under § 75.71. A NO<sub>x</sub> concentration monitoring system for determining NO<sub>x</sub> mass emissions in accordance with § 75.71 shall meet the same certification testing requirements, quality assurance requirements, and bias test requirements as are specified in this part for an SO<sub>2</sub> pollutant concentration monitor. Units using excepted methods under § 75.19 shall meet the applicable quality assurance requirements of that section, and units using excepted monitoring methods under appendix D and E to this part shall meet the applicable quality

assurance requirements of those appendices.

(f) *Missing data procedures.* Except as provided in § 75.34 and paragraph (g) of this section, the owner or operator shall provide substitute data from monitoring systems required under § 75.71 for each affected unit as follows:

(1) For an owner or operator using a continuous emissions monitoring system, substitute for missing data in accordance with the missing data procedures in subpart D of this part whenever the unit combusts fuel and:

(i) A valid quality assured hour of NO<sub>x</sub> emission rate data (in lb/mmBtu) has not been measured and recorded for a unit by a certified NO<sub>x</sub>-diluent continuous emission monitoring system or by an approved monitoring system under subpart E of this part;

(ii) A valid quality assured hour of flow data (in scfh) has not been measured and recorded for a unit from a certified flow monitor or by an approved alternative monitoring system under subpart E of this part; or

(iii) A valid quality assured hour of heat input data (in mmBtu) has not been measured and recorded for a unit from a certified flow monitor and a certified diluent (CO<sub>2</sub> or O<sub>2</sub>) monitor or by an approved alternative monitoring system under subpart E of this part or by an accepted monitoring system under appendix D to this part, where heat input is required either for calculating NO<sub>x</sub> mass or allocating allowances under the applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart; or

(iv) A valid, quality-assured hour of NO<sub>x</sub> concentration data (in ppm) has not been measured and recorded by a certified NO<sub>x</sub> concentration monitoring system, or by an approved alternative monitoring method under subpart E of this part, where the owner or operator chooses to use a NO<sub>x</sub> concentration monitoring system with a volumetric flow monitor, and without a diluent monitor, to calculate NO<sub>x</sub> mass emissions. The initial missing data procedures for determining monitor data availability and the standard missing data procedures for a NO<sub>x</sub> concentration monitoring system shall be the same as the procedures specified for a NO<sub>x</sub>-diluent continuous emission monitoring system under §§ 75.31, 75.32 and 75.33, except that the phrase "NO<sub>x</sub> concentration monitoring system" shall be substituted for the phrase "NO<sub>x</sub> continuous emission monitoring system", the phrase "NO<sub>x</sub> concentration" shall be substituted for "NO<sub>x</sub> emission rate"; and the phrase "maximum potential NO<sub>x</sub>

concentration, as defined in section 2.1.2.1 of appendix A of this part" shall be substituted for the phrase "maximum potential NO<sub>x</sub> emission rate, as defined in § 72.2 of this chapter".

(2) For an owner or operator using an excepted monitoring system under appendix D or E of this part, substitute for missing data in accordance with the missing data procedures in section 2.4 of appendix D to this part or in section 2.5 of appendix E to this part whenever the unit combusts fuel and:

(i) A valid, quality-assured hour of fuel flow rate data has not been measured and recorded by a certified fuel flowmeter that is part of an excepted monitoring system under appendix D or E of this part; or

(ii) A fuel sample value for gross calorific value, or if necessary, density or specific gravity, from a sample taken and analyzed in accordance with appendix D of this part is not available; or

(iii) A valid, quality-assured hour of NO<sub>x</sub> emission rate data has not been obtained according to the procedures and specifications of appendix E to this part.

(g) *Reporting data prior to initial certification.* If the owner or operator of an affected unit has not successfully completed all certification tests required by the State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart by the applicable date required by that program, he or she shall determine, record and report hourly data prior to initial certification using one of the following procedures, consistent with the monitoring equipment to be certified:

(1) For units that the owner or operator intends to monitor for NO<sub>x</sub> mass emissions using NO<sub>x</sub> emission rate and heat input, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit, as defined in § 72.2 of this chapter.

(2) For units that the owner or operator intends to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration monitoring system and a flow monitoring system, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate of the unit under section 2.1 of Appendix A of this part;

(3) For any unit, the reference methods under § 75.22 of this part.

(4) For any unit using the low mass emission excepted monitoring methodology under § 75.19, the procedures in paragraphs (g)(1) or (2) of this section.

(5) Any unit using the procedures in paragraph (g)(2) of this section that is

required to report heat input for purposes of allocating allowances shall also report the maximum potential hourly heat input of the unit, as defined in § 72.2 of this chapter.

(h) *Petitions.* (1) The designated representative of an affected unit that is subject to an Acid Rain emissions limitation may submit a petition to the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart and with such State or federal NO<sub>x</sub> mass emission reduction program only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (h)(1) of this section, petitions requesting an alternative to a requirement concerning any additional CEMS required solely to meet the common stack provisions of § 75.72 shall be submitted to the permitting authority and the Administrator and shall be governed by paragraph (h)(3)(ii) of this section. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

(3)(i) The designated representative of an affected unit that is not subject to an Acid Rain emissions limitation may submit a petition to the permitting authority and the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

(ii) Use of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that it is approved by the Administrator and by the permitting authority if required by an applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart.

**§ 75.71 Specific provisions for monitoring NO<sub>x</sub> emission rate and heat input for the purpose of calculating NO<sub>x</sub> mass emissions.**

(a) *Coal-fired units.* The owner or operator of a coal-fired affected unit shall either:

(1) Meet the general operating requirements in § 75.10 for a NO<sub>x</sub>-diluent continuous emission monitoring system (consisting of a NO<sub>x</sub> pollutant concentration monitor, an O<sub>2</sub>- or CO<sub>2</sub>-diluent gas monitor, and a data acquisition and handling system) to measure NO<sub>x</sub> emission rate and for a flow monitoring system and an O<sub>2</sub>- or CO<sub>2</sub>-diluent gas monitor to measure heat input, except as provided in accordance with subpart E of this part; or

(2) Meet the general operating requirements in § 75.10 for a NO<sub>x</sub> concentration monitoring system (consisting of a NO<sub>x</sub> pollutant concentration monitor and a data acquisition and handling system) to measure NO<sub>x</sub> concentration and for a flow monitoring system. In addition, if heat input is required to be reported under the applicable State or federal NO<sub>x</sub> mass emission reduction program that adopts the requirements of this subpart, the owner or operator also must meet the general operating requirements for a flow monitoring system and an O<sub>2</sub>- or CO<sub>2</sub>-diluent gas monitor to measure heat input, or, if applicable, use the procedures in appendix D to this part. These requirements must be met, except as provided in accordance with subpart E of this part.

(b) *Moisture correction.* If a correction for the stack gas moisture content is needed to properly calculate the NO<sub>x</sub> emission rate in lb/mmBtu (i.e., if the NO<sub>x</sub> pollutant concentration monitor measures on a different moisture basis from the diluent monitor) or NO<sub>x</sub> mass emissions in tons (i.e., if the NO<sub>x</sub> concentration monitoring system or diluent monitor measures on a different moisture basis from the flow rate monitor), the owner or operator of an affected unit shall account for the moisture content of the flue gas on a continuous basis in accordance with § 75.11(b) except that the term "SO<sub>2</sub>" shall be replaced by the term "NO<sub>x</sub>".

(c) *Gas-fired nonpeaking units or oil-fired nonpeaking units.* The owner or operator of an affected unit that, based on information submitted by the designated representative in the monitoring plan, qualifies as a gas-fired or oil-fired unit but not as a peaking unit, as defined in § 72.2 of this chapter, shall either:

(1) Meet the requirements of paragraph (a) of this section and, if applicable, paragraph (b) of this section; or

(2) Meet the general operating requirements in § 75.10 for a NO<sub>x</sub>-diluent continuous emission monitoring system, except as provided in accordance with subpart E of this part, and use the procedures specified in

appendix D to this part for determining hourly heat input. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO<sub>x</sub> mass reporting provisions of this subpart, except as provided in § 75.72(a); or

(3) Meet the requirements of the low mass emission excepted methodology under paragraph (e)(2) of this section and under § 75.19, if applicable.

(d) *Gas-fired or oil-fired peaking units.* The owner or operator of an affected unit that qualifies as a peaking unit and as either gas-fired or oil-fired, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan, shall either:

(1) Meet the requirements of paragraph (c) of this section; or

(2) Use the procedures in appendix D to this part for determining hourly heat input and the procedures specified in appendix E to this part for estimating hourly NO<sub>x</sub> emission rate. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO<sub>x</sub> mass reporting provisions of this subpart except for units using an excepted monitoring system under appendix E to this part and except as provided in § 75.72(a). In addition, if after certification of an excepted monitoring system under appendix E to this part, a unit's operations exceed a capacity factor of 20.0 percent in any calendar year or exceed a capacity factor of 10.0 percent averaged over three years, the owner or operator shall meet the requirements of paragraph (c) of this section or, if applicable, paragraph (e) of this section, by no later than December 31 of the following calendar year.

(e) *Low mass emissions units.* Notwithstanding the requirements of paragraphs (c) and (d) of this section, the owner or operator of an affected unit that qualifies as a low mass emissions unit under § 75.19(a) shall comply with one of the following:

(1) Meet the applicable requirements specified in paragraphs (c) or (d) of this section; or

(2) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly emission rate, hourly heat input, and hourly NO<sub>x</sub> mass emissions.

(f) *Other units.* The owner or operator of an affected unit that combusts wood, refuse, or other materials shall comply with the monitoring provisions specified in paragraph (a) of this section and, where applicable, paragraph (b) of this section.

#### § 75.72 Determination of NO<sub>x</sub> mass emissions.

Except as provided in paragraphs (e) and (f) of this section, the owner or operator of an affected unit shall calculate hourly NO<sub>x</sub> mass emissions (in lbs) by multiplying the hourly NO<sub>x</sub> emission rate (in lbs/mmBtu) by the hourly heat input (in mmBtu/hr) and the hourly operating time (in hr). The owner or operator shall also calculate quarterly and cumulative year-to-date NO<sub>x</sub> mass emissions and cumulative NO<sub>x</sub> mass emissions for the ozone season (in tons) by summing the hourly NO<sub>x</sub> mass emissions according to the procedures in section 8 of appendix F to this part.

(a) *Unit utilizing common stack with other affected unit(s).* When an affected unit utilizes a common stack with one or more affected units, but no nonaffected units, the owner or operator shall either:

(1) Record the combined NO<sub>x</sub> mass emissions for the units exhausting to the common stack, install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emissions monitoring system in the common stack, and either:

(i) Install, certify, operate, and maintain a flow monitoring system at the common stack. The owner or operator also shall provide heat input values for each unit, either by monitoring each unit individually using a flow monitor and a diluent monitor or by apportioning heat input according to the procedures in § 75.16(e)(5); or

(ii) If any of the units using the common stack are eligible to use the procedures in appendix D to this part,

(A) Use the procedures in appendix D to this part to determine heat input for that unit; and

(B) Install, certify, operate, and maintain a flow monitoring system in the duct to the common stack for each remaining unit; or

(2) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emissions monitoring system in the duct to the common stack from each unit and either:

(i) Install, certify, operate, and maintain a flow monitoring system in the duct to the common stack from each unit; or

(ii) For any unit using the common stack and eligible to use the procedures in appendix D to this part,

(A) Use the procedures in appendix D to determine heat input for that unit; and

(B) Install, certify, operate, and maintain a flow monitoring system in the duct to the common stack for each remaining unit.

(b) *Unit utilizing common stack with nonaffected unit(s).* When one or more affected units utilizes a common stack with one or more nonaffected units, the owner or operator shall either:

(1) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emission monitoring system in the duct to the common stack from each affected unit; and

(i) Install, certify, operate, and maintain a flow monitoring system in the duct to the common stack from each affected unit; or

(ii) For any affected unit using the common stack and eligible to use the procedures in appendix D to this part,

(A) Use the procedures in appendix D to determine heat input for that unit; however, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO<sub>x</sub> mass reporting provisions of this subpart; and

(B) Install, certify, operate, and maintain a flow monitoring system in the duct to the common stack for each remaining affected unit that exhausts to the common stack; or

(2) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emission monitoring system in the common stack; and

(i) Designate the nonaffected units as affected units in accordance with the applicable State or federal NO<sub>x</sub> mass emissions reduction program and meet the requirements of paragraph (a)(1) of this section; or

(ii) Install, certify, operate, and maintain a flow monitoring system in the common stack and a NO<sub>x</sub>-diluent continuous emission monitoring system in the duct to the common stack from each nonaffected unit. The designated representative shall submit a petition to the permitting authority and the Administrator to allow a method of calculating and reporting the NO<sub>x</sub> mass emissions from the affected units as the difference between NO<sub>x</sub> mass emissions measured in the common stack and NO<sub>x</sub> mass emissions measured in the ducts of the nonaffected units, not to be reported as an hourly value less than zero. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the NO<sub>x</sub> mass emissions from the affected units are not underestimated. In addition, the owner or operator shall also either:

(A) Install, certify, operate, and maintain a flow monitoring system in the duct from each nonaffected unit or,

(B) For any nonaffected unit exhausting to the common stack and otherwise eligible to use the procedures in appendix D to this part, determine heat input using the procedures in appendix D for that unit. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO<sub>x</sub> mass reporting provisions of this subpart. For any remaining nonaffected unit that exhausts to the common stack, install, certify, operate, and maintain a flow monitoring system in the duct to the common stack; or

(iii) Install a flow monitoring system in the common stack and record the combined emissions from all units as the combined NO<sub>x</sub> mass emissions for the affected units for recordkeeping and compliance purposes; or

(iv) Submit a petition to the permitting authority and the Administrator to allow use of a method for apportioning NO<sub>x</sub> mass emissions measured in the common stack to each of the units using the common stack and for reporting the NO<sub>x</sub> mass emissions. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the NO<sub>x</sub> mass emissions from the affected units are not underestimated.

(c) *Unit with bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed to avoid the installed NO<sub>x</sub>-diluent continuous emissions monitoring system or NO<sub>x</sub> concentration monitoring system, the owner and operator shall either:

(1) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emissions monitoring system and a flow monitoring system on the bypass flue, duct, or stack gas stream and calculate NO<sub>x</sub> mass emissions for the unit as the sum of the emissions recorded by all required monitoring systems; or

(2) Monitor NO<sub>x</sub> mass emissions on the bypass flue, duct, or stack gas stream using the reference methods in § 75.22(b) for NO<sub>x</sub> concentration, flow, and diluent, or NO<sub>x</sub> concentration and flow, and calculate NO<sub>x</sub> mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems.

(d) *Unit with multiple stacks.* Notwithstanding § 75.17(c), when the flue gases from an affected unit discharge to the atmosphere through more than one stack, or when the flue gases from a unit subject to a NO<sub>x</sub> mass emission

reduction program utilize two or more ducts feeding into two or more stacks (which may include flue gases from other affected or nonaffected unit(s)), or when the flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emission monitoring system and a flow monitoring system in each duct feeding into the stack or stacks and determine NO<sub>x</sub> mass emissions from each affected unit using the stack or stacks as the sum of the NO<sub>x</sub> mass emissions recorded for each duct; or

(2) Install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emissions monitoring system and a flow monitoring system in each stack, and determine NO<sub>x</sub> mass emissions from the affected unit using the sum of the NO<sub>x</sub> mass emissions recorded for each stack, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable requirements of paragraphs (a) and (b) of this section to determine and record NO<sub>x</sub> mass emissions from the units using that stack; or

(3) If the unit is eligible to use the procedures in appendix D to this part, install, certify, operate, and maintain a NO<sub>x</sub>-diluent continuous emissions monitoring system in one of the ducts feeding into the stack or stacks and use the procedures in appendix D to this part to determine heat input for the unit, provided that:

(i) There are no add-on NO<sub>x</sub> controls at the unit;

(ii) The unit is not capable of emitting solely through an unmonitored stack (e.g., has no dampers); and

(iii) The owner or operator of the unit demonstrates to the satisfaction of the permitting authority and the Administrator that the NO<sub>x</sub> emission rate in the monitored duct or stack is representative of the NO<sub>x</sub> emission rate in each duct or stack.

(e) *Units using a NO<sub>x</sub> concentration monitoring system and a flow monitoring system to determine NO<sub>x</sub> mass.* The owner or operator may use a NO<sub>x</sub> concentration monitoring system and a flow monitoring system to determine NO<sub>x</sub> mass emissions in paragraphs (a) through (d) of this section (in place of a NO<sub>x</sub>-diluent continuous emission monitoring system and a flow monitoring system). When using this approach, calculate NO<sub>x</sub> mass according to sections 8.2 and 8.3 in appendix F of this part. In addition, if an applicable

State or federal NO<sub>x</sub> mass reduction program requires determination of a unit's heat input, the owner or operator must either:

(1) Install, certify, operate, and maintain a CO<sub>2</sub> or O<sub>2</sub> diluent monitor in the same location as each flow monitoring system. In addition, the owner or operator must provide heat input values for each unit utilizing a common stack by either:

(i) Apportion heat input from the common stack to each unit according to § 75.16(e)(5), where all units utilizing the common stack are affected units, or

(ii) Measure heat input from each affected unit, using a flow monitor and a CO<sub>2</sub> or O<sub>2</sub> diluent monitor in the duct from each affected unit; or

(2) For units that are eligible to use appendix D to this part, use the procedures in appendix D to this part to determine heat input for the unit.

However, the use of a fuel flowmeter in a common pipe header in the provisions of sections 2.1.2.1 and 2.1.2.2 of appendix D of this part are not applicable to any unit that is using the provisions of this subpart to monitor, record, and report NO<sub>x</sub> mass emissions under a State or federal NO<sub>x</sub> mass emission reduction program and that shares a common pipe or a common stack with a nonaffected unit.

(f) *Units using the low mass emitter excepted methodology under § 75.19.* For units that are using the low mass emitter excepted methodology under § 75.19, calculate ozone season NO<sub>x</sub> mass emissions by summing all of the hourly NO<sub>x</sub> mass emissions in the ozone season, as determined under paragraph § 75.19(c)(4)(ii)(A) of this section, divided by 2000 lb/ton.

(g) *Procedures for apportioning heat input to the unit level.* If the owner or operator of a unit using the common stack monitoring provisions in paragraphs (a) or (b) of this section does not monitor and record heat input at the unit level and the owner or operator is required to do so under an applicable State or federal NO<sub>x</sub> mass emission reduction program, the owner or operator should apportion heat input from the common stack to each unit according to § 75.16(e)(5).

**§ 75.73 Recordkeeping and reporting.**  
[Reserved]

**§ 75.74 Annual and ozone season monitoring and reporting requirements.**

(a) *Annual monitoring requirement.*  
(1) The owner or operator of an affected unit subject both to an Acid Rain emission limitation and to a State or federal NO<sub>x</sub> mass reduction program that adopts the provisions of this part

must meet the requirements of this part during the entire calendar year.

(2) The owner or operator of an affected unit subject to a State or federal NO<sub>x</sub> mass reduction program that adopts the provisions of this part and that requires monitoring and reporting of hourly emissions on an annual basis must meet the requirements of this part during the entire calendar year.

(b) *Ozone season monitoring requirements.* The owner or operator of an affected unit that is not required to meet the requirements of this subpart on an annual basis under paragraph (a) of this section may either:

(1) Meet the requirements of this subpart on an annual basis; or

(2) Meet the requirements of this part during the ozone season, except as specified in paragraph (c) of this section.

(c) If the owner or operator of an affected unit chooses to meet the requirements of this subpart on less than an annual basis in accordance with paragraph (b)(2) of this section, then:

(1) The owner or operator of a unit that uses continuous emissions monitoring systems to meet any of the requirements of this subpart must perform recertification testing of all continuous emission monitoring systems under § 75.20(b). If the owner or operator has not successfully completed all recertification tests by the first hour of unit operation during the ozone season each year, the owner or operator must substitute for data following the procedures of § 75.20(b).

(2) The owner or operator is required to operate and maintain continuous emission monitoring systems and perform quality assurance and quality control procedures under § 75.21 and appendix B of this part each year from the time the continuous emission monitoring system is initially certified or is recertified under paragraph (c)(1) of this section through September 30. Records related to the quality assurance/quality control program must be kept in a form suitable for inspection on a year-round basis.

(3) The owner or operator of a unit using the procedures in appendix D of this part to determine heat input is required to operate or maintain fuel flowmeters only during the ozone season, except that for purposes of determining the deadline for the next periodic quality assurance test on the fuel flowmeter, the owner or operator shall count all quarters during the year when the fuel flowmeter is used, not just quarters in the ozone season. The owner or operator shall record and the designated representative shall report

the number of quarters when a fuel is combusted for each fuel flowmeter.

(4) The owner or operator of a unit using the procedures in appendix D of this part to determine heat input is only required to sample fuel during the ozone season, except that:

(i) The owner or operator of a diesel-fired unit that performs sampling from the fuel storage tank upon delivery must sample the tank between the date and hour of the most recent delivery before the first date and hour that the unit operates in the ozone season and the first date and hour that the unit operates in the ozone season.

(ii) The owner or operator of a diesel-fired unit that performs sampling upon delivery from the delivery vehicle must ensure that all shipments received during the calendar year are sampled.

(iii) The owner or operator of a unit that performs sampling on each day the unit combusts fuel oil or that performs oil sampling continuously must sample the fuel oil starting on the first day the unit operates during the ozone season. The owner or operator then shall use that sampled value for all hours of combustion during the first day of unit operation, continuing until the date and hour of the next sample.

(5) The owner or operator is required to record and report the hourly data required by this subpart for the longer of:

(i) The period of time that the owner or operator of the unit is required to perform the quality assurance and quality control procedures of § 75.21 and appendix B of this part under paragraph (c)(2) of this section; or

(ii) The period of time of May 1 through September 30.

(6) The owner or operator shall use quality-assured data, in accordance with paragraph (c)(2) or (c)(3) of this section, in the substitute data procedures under subpart D of this part and section 2.4 of appendix D of this part.

(i) The lookback periods (e.g., 2160 quality-assured monitor operating hours for a NO<sub>x</sub>-diluent continuous emission monitoring system, a NO<sub>x</sub> concentration monitoring system, or a flow monitoring system) used to calculate missing data must include only data from periods when the monitors were quality assured under paragraph (c)(2) or (c)(3) of this section.

(ii) If the NO<sub>x</sub> emission rate or NO<sub>x</sub> concentration of the unit was consistently lower in the previous ozone season because the unit combusted a fuel that produces less NO<sub>x</sub> than the fuel currently being combusted or because the unit's add-on emission controls are not operating properly, then the owner or operator shall not use the

missing data procedures of §§ 75.31 through 75.33. Instead, the owner or operator shall substitute the maximum potential NO<sub>x</sub> emission rate, as defined in § 72.2 of this chapter, from a NO<sub>x</sub>-diluent continuous emission monitoring system, or the maximum potential concentration of NO<sub>x</sub>, as defined in section 2.1.2.1 of appendix A to this part, from a NO<sub>x</sub> concentration monitoring system. The owner or operator shall substitute these maximum potential values for each hour of missing NO<sub>x</sub> data, from completion of recertification testing until the earliest of:

(A) 720 quality-assured monitor operating hours after the completion of recertification testing (not to go beyond September 30 of that ozone season), or

(B) For a unit that changed fuels, the first hour when the unit combusts a fuel that produces the same or less NO<sub>x</sub> than the fuel combusted in the previous ozone season, or

(C) For a unit with add-on emission controls that are not operating properly, the first hour when the add-on emission controls operate properly.

(7) The owner or operator of a unit with NO<sub>x</sub> add-on emission controls or a unit capable of combusting more than one fuel shall keep records during ozone season in a form suitable for inspection to demonstrate that the typical NO<sub>x</sub> emission rate or NO<sub>x</sub> concentration during the prior ozone season(s) included in the missing data lookback period is representative of the ozone season in which missing data are substituted and that use of the missing data procedures will not systematically underestimate NO<sub>x</sub> mass emissions. These records shall include:

(i) For units that can combust more than one fuel, the fuel or fuels combusted each hour; and

(ii) For units with add-on emission controls, the range of operating parameters for add-on emission controls, as described in § 75.34(a) and information for verifying proper operation of the add-on emission controls, as described in § 75.34(d).

(8) The designated representative shall certify with each quarterly report that NO<sub>x</sub> emission rate values or NO<sub>x</sub> concentration values substituted for missing data under subpart D of this part are calculated using only values from an ozone season, that substitute values measured during the prior ozone season(s) included in the missing data lookback period are representative of the ozone season in which missing data are substituted, and that NO<sub>x</sub> emissions are not systematically underestimated.

(9) Units may qualify to use the low mass emission excepted monitoring

methodology in § 75.19 on an ozone season basis. In order to be allowed to use this methodology, a unit may not emit more than 25 tons of NO<sub>x</sub> per ozone season. The owner or operator of the unit shall meet the requirements of § 75.19, with the following exceptions:

(i) The phrase "50 tons of NO<sub>x</sub> annually" shall be replaced by the phrase "25 tons of NO<sub>x</sub> during the ozone season."

(ii) If any low mass emission unit fails to provide a demonstration that its ozone season NO<sub>x</sub> mass emissions are less than 25 tons, than the unit is disqualified from using the methodology. The owner or operator must install and certify any equipment needed to ensure that the unit is monitoring using an acceptable methodology by May 1 of the following year.

(10) Units may qualify to use the optional NO<sub>x</sub> mass emissions estimation protocol for gas-fired peaking units and oil-fired peaking units in appendix E to this part on an ozone season basis. In order to be allowed to use this methodology, the unit must meet the definition of peaking unit in § 72.2 of this part, except that the word "calendar year" shall be replaced by the word "ozone season" and the word "annual in the definition of the term "capacity factor" in § 72.2 of this part, shall be replaced by the word "ozone season".

**§ 75.75 Additional ozone season calculation procedures for special circumstances.**

(a) The owner or operator of a unit that is required to calculate ozone season heat input for purposes of providing data needed for determining allocations, shall do so by summing the unit's hourly heat input determined according to the procedures in this part for all hours in which the unit operated during the ozone season.

(b) The owner or operator of a unit that is required to determine ozone season NO<sub>x</sub> emission rate (in lbs/mmBtu) shall do so by dividing ozone season NO<sub>x</sub> mass emissions (in lbs) determined in accordance with this subpart, by heat input determined in accordance with paragraph (a) of this section.

17. Section 3 of appendix A to part 75 is amended by revising the title of section 3.3.2 and by adding and reserving section 3.3.6, by adding new section 3.3.7 and by revising section 3.4.1 to read as follows:

**APPENDIX A TO PART 75— SPECIFICATIONS AND TEST PROCEDURES**

\* \* \* \* \*

3. PERFORMANCE SPECIFICATIONS

\* \* \* \* \*

3.3.2 RELATIVE ACCURACY FOR NO<sub>x</sub> DILUENT CONTINUOUS EMISSION MONITORING SYSTEMS

\* \* \* \* \*

3.3.6 [Reserved]

3.3.7 RELATIVE ACCURACY FOR NO<sub>x</sub> CONCENTRATION MONITORING SYSTEMS

The following requirement applies only to NO<sub>x</sub> concentration monitoring systems (i.e., NO<sub>x</sub> pollutant concentration monitors) that are used to determine NO<sub>x</sub> mass emissions, where the owner or operator elects to monitor and report NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration monitoring system and a flow monitoring system.

The relative accuracy for NO<sub>x</sub> concentration monitoring systems shall not exceed 10.0 percent.

\* \* \* \* \*

3.4.1 SO<sub>2</sub> POLLUTANT CONCENTRATION MONITORS, NO<sub>x</sub> CONCENTRATION MONITORING SYSTEMS AND NO<sub>x</sub>-DILUENT CONTINUOUS EMISSION MONITORING SYSTEMS

SO<sub>2</sub> pollutant concentration monitors and NO<sub>x</sub> emission rate continuous emissions monitoring systems shall not be biased low as determined by the test procedure in section 7.6 of this appendix. NO<sub>x</sub> concentration monitoring systems used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71, shall not be biased low as determined by the test procedure in section 7.6 of this appendix. The bias specification applies to all SO<sub>2</sub> pollutant concentration monitors, including those measuring an average SO<sub>2</sub> concentration of 250.0 ppm or less, and to all NO<sub>x</sub>-diluent continuous emission monitoring systems, including those measuring an average NO<sub>x</sub> emission rate of 0.20 lb/mmBtu or less.

\* \* \* \* \*

18. Section 6 of appendix A to part 75 is amended by revising the first sentence of the introductory text of section 6.5 and by adding a new sentence after the first sentence, to read as follows:

\* \* \* \* \*

6.5 Relative Accuracy and Bias Tests

Perform relative accuracy test audits for each CO<sub>2</sub> and SO<sub>2</sub> pollutant concentration monitor; each NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions; each O<sub>2</sub> monitor used to calculate heat input or CO<sub>2</sub> concentration; each SO<sub>2</sub>-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO<sub>2</sub> emission removal efficiency, from January 1, 1997 through December 31, 1999; each flow monitor; and each NO<sub>x</sub>-diluent continuous emission monitoring system. Perform relative accuracy test audits for each NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71(a)(2), using the same general procedures as for CO<sub>2</sub> and

SO<sub>2</sub> pollutant concentration monitors; however, use the reference methods for NO<sub>x</sub> concentration listed in section 6.5.10 of this appendix. \* \* \*

\* \* \* \* \*

19. Section 7 of appendix A is amended by revising the introductory text of section 7.6 and by adding three sentences to the end of section 7.6.5 to read as follows:

\* \* \* \* \*

**7.6 Bias Test and Adjustment Factor**

Test the relative accuracy test audit data sets for bias for SO<sub>2</sub> pollutant concentration monitors; flow monitors; NO<sub>x</sub> concentration monitoring systems used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71 (a)(2); and NO<sub>x</sub>-diluent continuous emission monitoring systems using the procedures outlined below.

\* \* \* \* \*

**7.6.5 Bias Adjustment**

\* \* \* In addition, use the adjusted NO<sub>x</sub> concentration and flow rate values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the NO<sub>x</sub> concentration and the flow rate when used to calculate NO<sub>x</sub> mass emissions, as specified in subpart H of this part. Do not use an adjusted NO<sub>x</sub> concentration value to calculate NO<sub>x</sub> emission rate using Equations F-5 or F-6 of Appendix F of this part. When monitoring NO<sub>x</sub> emission rate and heat input, use the adjusted NO<sub>x</sub> emission rate and flow rate values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the NO<sub>x</sub> emission rate and the heat input.

\* \* \* \* \*

20. Appendix C to part 75 is amended by revising sections 2.1, 2.2.2, 2.2.3, 2.2.5, and 2.2.6 to read as follows:

**APPENDIX C TO PART 75—MISSING DATA ESTIMATION PROCEDURES**

\* \* \* \* \*

**2.1 Applicability**

This procedure is applicable for data from all affected units for use in accordance with the provisions of this part to provide substitute data for volumetric flow rate (scfh), NO<sub>x</sub> emission rate (in lb/mmBtu), and NO<sub>x</sub> concentration data (in ppm) from NO<sub>x</sub> concentration monitoring systems used to determine NO<sub>x</sub> mass emissions.

**2.2 Procedure**

**2.2.1 \* \* \***

2.2.2 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO<sub>x</sub> continuous emission monitoring system (or a NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71, for each hour of unit operation record a number, 1 through 10 (or 1 through 20 for flow at common stacks), that identifies the operating load range corresponding to the

integrated hourly gross load of the unit(s) recorded for each unit operating hour.

2.2.3 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO<sub>x</sub> continuous emission monitoring system (or a NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71 and continuing thereafter, the data acquisition and handling system must be capable of calculating and recording the following information for each unit operating hour of missing flow or NO<sub>x</sub> data within each identified load range during the shorter of: (1) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (2) all previous quality assured monitor operating hours.

2.2.3.1 Average of the hourly flow rates reported by a flow monitor, in scfh.

2.2.3.2 The 90th percentile value of hourly flow rates, in scfh.

2.2.3.3 The 95th percentile value of hourly flow rates, in scfh.

2.2.3.4 The maximum value of hourly flow rates, in scfh.

2.2.3.5 Average of the hourly NO<sub>x</sub> emission rate, in lb/mmBtu, reported by a NO<sub>x</sub> continuous emission monitoring system.

2.2.3.6 The 90th percentile value of hourly NO<sub>x</sub> emission rates, in lb/mmBtu.

2.2.3.7 The 95th percentile value of hourly NO<sub>x</sub> emission rates, in lb/mmBtu.

2.2.3.8 The maximum value of hourly NO<sub>x</sub> emission rates, in lb/mmBtu.

2.2.3.9 Average of the hourly NO<sub>x</sub> pollutant concentration, in ppm, reported by a NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71.

2.2.3.10 The 90th percentile value of hourly NO<sub>x</sub> pollutant concentration, in ppm.

2.2.3.11 The 95th percentile value of hourly NO<sub>x</sub> pollutant concentration, in ppm.

2.2.3.12 The maximum value of hourly NO<sub>x</sub> pollutant concentration, in ppm.

2.2.4 \* \* \*  
2.2.5 When a bias adjustment is necessary for the flow monitor or the NO<sub>x</sub> continuous emission monitoring system (or the NO<sub>x</sub> concentration monitoring system used to determine NO<sub>x</sub> mass emissions, as defined in § 75.71), apply the adjustment factor to all monitor or continuous emission monitoring system data values placed in the load ranges.

2.2.6 Use the calculated monitor or monitoring system data averages, maximum values, and percentile values to substitute for missing flow rate and NO<sub>x</sub> emission rate data (and where applicable, NO<sub>x</sub> concentration data) according to the procedures in subpart D of this part.

\* \* \* \* \*

21. Section 2 of appendix D to part 75 is amended by revising the introductory text of section 2.1.2 to read as follows:

**APPENDIX D TO PART 75—OPTIONAL SO<sub>2</sub> EMISSIONS DATA PROTOCOL FOR GAS-FIRED AND OIL-FIRED UNITS**

\* \* \* \* \*

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in

a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (i.e., a pipe carrying fuel for multiple units). However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of this appendix are not applicable to any unit that is using the provisions of subpart H of this part to monitor, record, and report NO<sub>x</sub> mass emissions under a State or federal NO<sub>x</sub> mass emission reduction program, except as provided in § 75.72(a) for units with a NO<sub>x</sub> CEMS installed in a common stack or except as provided for units monitored with an excepted monitoring system under appendix E to this part. For all other units, if the fuel flowmeter is installed in a common pipe header, do one of the following:

\* \* \* \* \*

22. Section 8 of appendix F to part 75 is added to read as follows:

**APPENDIX F TO PART 75—CONVERSION PROCEDURES**

\* \* \* \* \*

**8. Procedures for NO<sub>x</sub> Mass Emissions**

The owner or operator of a unit that is required to monitor, record, and report NO<sub>x</sub> mass emissions under a State or federal NO<sub>x</sub> mass emission reduction program must use the procedures in section 8.1 to account for hourly NO<sub>x</sub> mass emissions, and the procedures in section 8.2 to account for quarterly, seasonal, and annual NO<sub>x</sub> mass emissions to the extent that the provisions of subpart H of this part are adopted as requirements under such a program.

8.1 Use the following procedures to calculate hourly NO<sub>x</sub> mass emissions in lbs for the hour using hourly NO<sub>x</sub> emission rate and heat input.

8.1.1 If both NO<sub>x</sub> emission rate and heat input are monitored at the same unit or stack level (e.g. the NO<sub>x</sub> emission rate value and heat input value both represent all of the units exhausting to the common stack), use the following equation:

$$M_{(NO_x)_h} = E_{(NO_x)_h} HI_h t_h \quad (\text{Eq. F-24})$$

where:

$M_{(NO_x)_h}$  = NO<sub>x</sub> mass emissions in lbs for the hour.

$E_{(NO_x)_h}$  = Hourly average NO<sub>x</sub> emission rate for hour h, lb/mmBtu, from section 3 of this appendix, from method 19 of appendix A to part 60 of this chapter, or from section 3.3 of appendix E to this part. (Include bias-adjusted NO<sub>x</sub> emission rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

$HI_h$  = Hourly average heat input rate for hour h, mmBtu/hr. (Include bias-adjusted flow rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

$t_h$  = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). If the combined NO<sub>x</sub> emission rate and heat input are monitored for all of the units in a common stack, the monitoring location operating time is equal to the total time when any of those units was exhausting through the common stack.

8.1.2 If NO<sub>x</sub> emission rate is measured at a common stack and heat input is measured at the unit level, sum the hourly heat inputs at the unit level according to the following formula:

$$HI_{CS} = \frac{\sum_{u=1}^p HI_u t_u}{t_{CS}} \quad (\text{Eq. F-25})$$

where:

$HI_{CS}$  = Hourly average heat input rate for hour h for the units at the common stack, mmBtu/hr.

$t_{CS}$  = Common stack operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator) (e.g., total time when any of the units which exhaust through the common stack are operating).

$HI_u$  = Hourly average heat input rate for hour h for the unit, mmBtu/hr.

$t_u$  = Unit operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

Use the hourly heat input rate at the common stack level and the hourly average NO<sub>x</sub> emission rate at the common stack level and the procedures in section 8.1.1 of this appendix to determine the hourly NO<sub>x</sub> mass emissions at the common stack.

8.1.3 If a unit has multiple ducts and NO<sub>x</sub> emission rate is only measured at one duct, use the NO<sub>x</sub> emission rate measured at the duct, the heat input measured for the unit, and the procedures in section 8.1.1 of this appendix to determine NO<sub>x</sub> mass emissions.

8.1.4 If a unit has multiple ducts and NO<sub>x</sub> emission rate is measured in each duct, heat input shall also be measured in each duct and the procedures in section 8.1.1 of this appendix shall be used to determine NO<sub>x</sub> mass emissions.

8.2 If a unit calculates NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration monitoring system and a flow monitoring system, calculate hourly NO<sub>x</sub> mass rate during unit (or stack) operation, in lb/hr, using Equation F-1 or F-2 in this appendix (as applicable to the moisture basis of the monitors). When using Equation F-1 or F-2, replace "SO<sub>2</sub>" with "NO<sub>x</sub>" and replace the value of K with  $1.194 \times 10^{-7}$  (lb NO<sub>x</sub> /scf)/ppm. (Include bias-adjusted flow rate or NO<sub>x</sub> concentration values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

8.3 If a unit calculates NO<sub>x</sub> mass emissions using a NO<sub>x</sub> concentration monitoring system and a flow monitoring system, calculate NO<sub>x</sub> mass emissions for the hour (lb) by multiplying the hourly NO<sub>x</sub> mass emission rate during unit operation (lb/hr) by the unit operating time during the hour, as follows:

$$M_{(NO_x)_h} = E_h t_h \quad (\text{Eq. F-26})$$

Where:

$M_{(NO_x)_h}$  = NO<sub>x</sub> mass emissions in lbs for the hour.

$E_h$  = Hourly NO<sub>x</sub> mass emission rate during unit (or stack) operation, lb/hr, from section 8.2 of this appendix.

$t_h$  = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). If the NO<sub>x</sub> mass emission rate is monitored for all of the units in a common stack, the monitoring location operating time is equal to the total time when any of those units was exhausting through the common stack.

8.4 Use the following procedures to calculate quarterly, cumulative ozone season, and cumulative yearly NO<sub>x</sub> mass emissions, in tons:

$$M_{(NO_x)_{\text{time period}}} = \frac{\sum_{h=1}^p M_{(NO_x)_h}}{2000} \quad (\text{Eq. F-27})$$

Where:

$M_{(NO_x)_{\text{time period}}}$  = NO<sub>x</sub> mass emissions in tons for the given time period (quarter, cumulative ozone season, cumulative year-to-date).

$M_{(NO_x)_h}$  = NO<sub>x</sub> mass emissions in lbs for the hour. p = The number of hours in the given time period (quarter, cumulative ozone season, cumulative year-to-date).

8.5 *Specific provisions for monitoring NO<sub>x</sub> mass emissions from common stacks.* The owner or operator of a unit utilizing a common stack may account for NO<sub>x</sub> mass emissions using either of the following methodologies, if the provisions of subpart H are adopted as requirements of a State or federal NO<sub>x</sub> mass reduction program:

8.5.1 The owner or operator may determine both NO<sub>x</sub> emission rate and heat input at the common stack and use the procedures in section 8.1.1 of this appendix to determine hourly NO<sub>x</sub> mass emissions at the common stack.

8.5.2 The owner or operator may determine the NO<sub>x</sub> emission rate at the common stack and the heat input at each of the units and use the procedures in section 8.1.2 of this appendix to determine the hourly NO<sub>x</sub> mass emissions at each unit.

23. Part 96 is added to read as follows:

## PART 96—NO<sub>x</sub> Budget Trading Program for State Implementation Plans

### Subpart A—NO<sub>x</sub> Budget Trading Program General Provisions

Sec.

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96.4 Applicability.

96.5 Retired unit exemption.

96.6 Standard requirements.

96.7 Computation of time.

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96.10 Authorization and responsibilities of the NO<sub>x</sub> authorized account representative.

96.11 Alternate NO<sub>x</sub> authorized account representative.

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96.13 Account certificate of representation.

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### Subpart C—Permits

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96.21 Submission of NO<sub>x</sub> Budget permit applications.

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### Subpart D—Compliance Certification

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### Subpart F—NO<sub>x</sub> Allowance Tracking System

96.50 NO<sub>x</sub> Allowance Tracking System accounts.

96.51 Establishment of accounts.

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**Subpart G—NO<sub>x</sub> Allowance Transfers**

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 96.61 EPA recordation.  
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 96.71 Initial certification and recertification procedures.  
 96.72 Out of control periods.  
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- 96.80 Applicability.  
 96.81 General.  
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 96.83 Applying for NO<sub>x</sub> Budget opt-in permit.  
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 96.86 Withdrawal from NO<sub>x</sub> Budget Trading Program.  
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 96.88 NO<sub>x</sub> allowance allocations to opt-in units.

**Subpart J—Mobile and Area Sources [Reserved]**

**Authority:** 42 U.S.C. 7401, 7403, 7410, and 7601

**Subpart A—NO<sub>x</sub> Budget Trading Program General Provisions****§ 96.1 Purpose.**

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO<sub>x</sub> Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for § 96.4(b)), subparts B through D, subpart F (except for § 96.55(c)), and subparts G

and H of this part, the State authorizes the Administrator to assist the State in implementing the NO<sub>x</sub> Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

**§ 96.2 Definitions.**

The terms used in this part shall have the meanings set forth in this section as follows:

*Account certificate of representation* means the completed and signed submission required by subpart B of this part for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget source or a group of identified NO<sub>x</sub> Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO<sub>x</sub> Budget units at such source or sources with regard to matters under the NO<sub>x</sub> Budget Trading Program.

*Account number* means the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.

*Acid Rain emissions limitation* means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

*Allocate or allocation* means the determination by the permitting authority or the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> Budget unit or an allocation set-aside.

*Automated data acquisition and handling system or DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this part.

*Boiler* means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

*CAA* means the CAA, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).

*Combined cycle system* means a system comprised of one or more combustion turbines, heat recovery

steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

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

*Commence commercial operation* means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.5, for a unit that is a NO<sub>x</sub> Budget unit under § 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under § 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> Budget unit under § 96.4 shall be the unit's date of commencement of commercial operation.

*Commence operation* means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 96.5, for a unit that is a NO<sub>x</sub> Budget unit under § 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under § 96.4 on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> Budget unit under § 96.4 shall be the unit's date of commencement of operation.

*Common stack* means a single flue through which emissions from two or more units are exhausted.

*Compliance account* means a NO<sub>x</sub> Allowance Tracking System account, established by the Administrator for a NO<sub>x</sub> Budget unit under subpart F of this part, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose of meeting the unit's NO<sub>x</sub> Budget emissions limitation.

*Compliance certification* means a submission to the permitting authority

or the Administrator, as appropriate, that is required under subpart D of this part to report a NO<sub>x</sub> Budget source's or a NO<sub>x</sub> Budget unit's compliance or noncompliance with this part and that is signed by the NO<sub>x</sub> authorized account representative in accordance with subpart B of this part.

*Continuous emission monitoring system* or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:

- (1) Flow monitor;
- (2) Nitrogen oxides pollutant concentration monitors;
- (3) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;
- (4) A continuous moisture monitor when such monitoring is required by subpart H of this part; and
- (5) An automated data acquisition and handling system.

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

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

*Energy Information Administration* means the Energy Information Administration of the United States Department of Energy.

*Excess emissions* means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> Budget unit during a control period that exceeds the NO<sub>x</sub> Budget emissions limitation for the unit.

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

*Fossil fuel-fired* means, with regard to a unit:

- (1) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

- (2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

*General account* means a NO<sub>x</sub> Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

*Generator* means a device that produces electricity.

*Heat input* means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

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

*Maximum potential hourly heat input* means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow

rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).

*Maximum potential NO<sub>x</sub> emission rate* means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

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

*Monitoring system* means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

*Most stringent State or Federal NO<sub>x</sub> emissions limitation* means, with regard to a NO<sub>x</sub> Budget opt-in source, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

*Non-title V permit* means a federally enforceable permit administered by the permitting authority pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and part 70 or 71 of this chapter.

*NO<sub>x</sub> allowance* means an authorization by the permitting authority or the Administrator under the NO<sub>x</sub> Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

*NO<sub>x</sub> allowance deduction* or *deduct NO<sub>x</sub> allowances* means the permanent withdrawal of NO<sub>x</sub> allowances by the

Administrator from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

*NO<sub>x</sub> allowances held or hold NO<sub>x</sub> allowances* means the NO<sub>x</sub> allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NO<sub>x</sub> Allowance Tracking System account.

*NO<sub>x</sub> Allowance Tracking System* means the system by which the Administrator records allocations, deductions, and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Trading Program.

*NO<sub>x</sub> Allowance Tracking System account* means an account in the NO<sub>x</sub> Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO<sub>x</sub> allowances.

*NO<sub>x</sub> allowance transfer deadline* means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO<sub>x</sub> allowances may be submitted for recordation in a NO<sub>x</sub> Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO<sub>x</sub> Budget emissions limitation for the control period immediately preceding such deadline.

*NO<sub>x</sub> authorized account representative* means, for a NO<sub>x</sub> Budget source or NO<sub>x</sub> Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

*NO<sub>x</sub> Budget emissions limitation* means, for a NO<sub>x</sub> Budget unit, the tonnage equivalent of the NO<sub>x</sub> allowances available for compliance deduction for the unit and for a control period under § 96.54(a) and (b), adjusted by any deductions of such NO<sub>x</sub> allowances to account for actual utilization under § 96.42(e) for the control period or to account for excess emissions for a prior control period under § 96.54(d) or to account for withdrawal from the NO<sub>x</sub> Budget

Program, or for a change in regulatory status, for a NO<sub>x</sub> Budget opt-in source under § 96.86 or § 96.87.

*NO<sub>x</sub> Budget opt-in permit* means a NO<sub>x</sub> Budget permit covering a NO<sub>x</sub> Budget opt-in source.

*NO<sub>x</sub> Budget opt-in source* means a unit that has been elected to become a NO<sub>x</sub> Budget unit under the NO<sub>x</sub> Budget Trading Program and whose NO<sub>x</sub> Budget opt-in permit has been issued and is in effect under subpart I of this part.

*NO<sub>x</sub> Budget permit* means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO<sub>x</sub> Budget Trading Program requirements applicable to a NO<sub>x</sub> Budget source, to each NO<sub>x</sub> Budget unit at the NO<sub>x</sub> Budget source, and to the owners and operators and the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit.

*NO<sub>x</sub> Budget source* means a source that includes one or more NO<sub>x</sub> Budget units.

*NO<sub>x</sub> Budget Trading Program* means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to § 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

*NO<sub>x</sub> Budget unit* means a unit that is subject to the NO<sub>x</sub> Budget Trading Program emissions limitation under § 96.4 or § 96.80.

*Operating* means, with regard to a unit under §§ 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO<sub>x</sub> Budget permit under § 96.83(a).

*Operator* means any person who operates, controls, or supervises a NO<sub>x</sub> Budget unit, a NO<sub>x</sub> Budget source, or unit for which an application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

*Opt-in* means to be elected to become a NO<sub>x</sub> Budget unit under the NO<sub>x</sub> Budget Trading Program through a final, effective NO<sub>x</sub> Budget opt-in permit under subpart I of this part.

*Overdraft account* means the NO<sub>x</sub> Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO<sub>x</sub>

Budget source where there are two or more NO<sub>x</sub> Budget units.

*Owner* means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> Budget unit or in a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a NO<sub>x</sub> Budget unit or in a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a NO<sub>x</sub> Budget unit or from a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> Budget unit or the unit for which an application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person's ownership interest with respect to NO<sub>x</sub> allowances.

*Permitting authority* means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NO<sub>x</sub> Budget Trading Program in accordance with subpart C of this part.

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

*Recordation, record, or recorded* means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the Administrator from one NO<sub>x</sub> Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

*Reference method* means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of part 60 of this chapter.

*Serial number* means, when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the Administrator, under § 96.53(c).

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

*State* means one of the 48 contiguous States and the District of Columbia specified in § 51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NO<sub>x</sub> Budget Trading Program pursuant to § 51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.

*State trading program budget* means the total number of NO<sub>x</sub> tons apportioned to all NO<sub>x</sub> Budget units in a given State, in accordance with the NO<sub>x</sub> Budget Trading Program, for use in a given control period.

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

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

*Title V operating permit* means a permit issued under title V of the CAA and part 70 or part 71 of this chapter.

*Title V operating permit regulations* means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and part 70 or 71 of this chapter.

*Ton or tonnage* means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO<sub>x</sub> Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly

emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

*Unit* means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

*Unit load* means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

- (1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or
- (2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

*Unit operating day* means a calendar day in which a unit combusts any fuel.

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

*Utilization* means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NO<sub>x</sub> Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

### § 96.3 Measurements, abbreviations, and acronyms.

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

- Btu—British thermal unit.
- hr—hour.
- Kwh—kilowatt hour.
- lb—pounds.
- mmBtu—million Btu.
- MWe—megawatt electrical.
- ton—2000 pounds.
- CO<sub>2</sub>—carbon dioxide.
- NO<sub>x</sub>—nitrogen oxides.
- O<sub>2</sub>—oxygen.

### § 96.4 Applicability.

(a) The following units in a State shall be NO<sub>x</sub> Budget units, and any source that includes one or more such units shall be a NO<sub>x</sub> Budget source, subject to the requirements of this part:

- (1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25

MWe and sells any amount of electricity; or

(2) Any unit that is not a unit under paragraph (a) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

(b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NO<sub>x</sub> mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NO<sub>x</sub> Budget unit.

(1) For each control period under paragraph (b) of this section, the federally enforceable permit must:

- (i) Restrict the unit to burning only natural gas or fuel oil.
- (ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO<sub>x</sub> mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions.
- (iii) Require that the unit's potential NO<sub>x</sub> mass emissions shall be calculated as follows:

(A) Select the default NO<sub>x</sub> emission rate in Table 2 of § 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NO<sub>x</sub> emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1)(i) of this section; and

(B) Multiply the default NO<sub>x</sub> emission rate under paragraph (b)(1)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under § 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because

modifications have been made to the unit, limiting its capacity permanently.

(iv) Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

(v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.

(2) The permitting authority that issues the federally enforceable permit with the fuel use restriction under paragraph (b)(1)(i) and the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section will notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

(3) If, for any control period under paragraph (b) of this section, the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section, the unit shall be a NO<sub>x</sub> Budget unit, subject to the requirements of this part. Such unit shall be treated as commencing operation and, for a unit under paragraph (a)(1) of this section, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

#### § 96.5 Retired unit exemption.

(a) This section applies to any NO<sub>x</sub> Budget unit, other than a NO<sub>x</sub> Budget opt-in source, that is permanently retired.

(b)(1) Any NO<sub>x</sub> Budget unit, other than a NO<sub>x</sub> Budget opt-in source, that is permanently retired shall be exempt from the NO<sub>x</sub> Budget Trading Program, except for the provisions of this section, §§ 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO<sub>x</sub> authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO<sub>x</sub> Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.* (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.

(2)(i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> Budget permit application under § 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO<sub>x</sub> authorized account representative of the source submits a complete NO<sub>x</sub> Budget permit application under § 96.22 for the unit not less than 18 months (or

such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a unit exempt under this section shall comply with the requirements of the NO<sub>x</sub> Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NO<sub>x</sub> Budget opt-in source under subpart I of this part.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) *Loss of exemption.* (i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(A) The date on which the NO<sub>x</sub> authorized account representative submits a NO<sub>x</sub> Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NO<sub>x</sub> authorized account representative is required under paragraph (c)(2) of this section to submit a NO<sub>x</sub> Budget permit application.

(ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

#### § 96.6 Standard requirements.

(a) *Permit Requirements.* (1) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> Budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete NO<sub>x</sub> Budget permit application under § 96.22 in accordance

with the deadlines specified in § 96.21(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO<sub>x</sub> Budget permit application and issue or deny a NO<sub>x</sub> Budget permit.

(2) The owners and operators of each NO<sub>x</sub> Budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> Budget permit issued by the permitting authority and operate the unit in compliance with such NO<sub>x</sub> Budget permit.

(3) The owners and operators of a NO<sub>x</sub> Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO<sub>x</sub> Budget permit application, and to have a NO<sub>x</sub> Budget permit, under subpart C of this part for such NO<sub>x</sub> Budget source.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.

(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NO<sub>x</sub> Budget emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides requirements.* (1) The owners and operators of each NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under § 96.54, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under § 96.42(e) for the control period.

(2) Each ton of nitrogen oxides emitted in excess of the NO<sub>x</sub> Budget emissions limitation shall constitute a separate violation of this part, the CAA, and applicable State law.

(3) A NO<sub>x</sub> Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.

(4) NO<sub>x</sub> allowances shall be held in, deducted from, or transferred among NO<sub>x</sub> Allowance Tracking System

accounts in accordance with subparts E, F, G, and I of this part.

(5) A NO<sub>x</sub> allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NO<sub>x</sub> allowance was allocated.

(6) A NO<sub>x</sub> allowance allocated by the permitting authority or the Administrator under the NO<sub>x</sub> Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO<sub>x</sub> Budget Trading Program. No provision of the NO<sub>x</sub> Budget Trading Program, the NO<sub>x</sub> Budget permit application, the NO<sub>x</sub> Budget permit, or an exemption under § 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(7) A NO<sub>x</sub> allowance allocated by the permitting authority or the Administrator under the NO<sub>x</sub> Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from a NO<sub>x</sub> Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO<sub>x</sub> Budget permit of the NO<sub>x</sub> Budget unit by operation of law without any further review.

(d) *Excess emissions requirements.* (1) The owners and operators of a NO<sub>x</sub> Budget unit that has excess emissions in any control period shall:

(i) Surrender the NO<sub>x</sub> allowances required for deduction under § 96.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.54(d)(3).

(e) *Recordkeeping and Reporting requirements.*

(1) Unless otherwise provided, the owners and operators of the NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation for the NO<sub>x</sub> authorized account representative for the source and each NO<sub>x</sub> Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in

accordance with § 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO<sub>x</sub> authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO<sub>x</sub> Budget Trading Program.

(iv) Copies of all documents used to complete a NO<sub>x</sub> Budget permit application and any other submission under the NO<sub>x</sub> Budget Trading Program or to demonstrate compliance with the requirements of the NO<sub>x</sub> Budget Trading Program.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source shall submit the reports and compliance certifications required under the NO<sub>x</sub> Budget Trading Program, including those under subparts D, H, or I of this part.

(f) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the NO<sub>x</sub> Budget Trading Program, a NO<sub>x</sub> Budget permit, or an exemption under § 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO<sub>x</sub> Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO<sub>x</sub> Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit shall meet the requirements of the NO<sub>x</sub> Budget Trading Program.

(5) Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> Budget source (including a provision applicable to the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget source) shall also apply to the owners and operators of such source and of the NO<sub>x</sub> Budget units at the source.

(6) Any provision of the NO<sub>x</sub> Budget Trading Program that applies to a NO<sub>x</sub> Budget unit (including a provision applicable to the NO<sub>x</sub> authorized

account representative of a NO<sub>x</sub> budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the NO<sub>x</sub> authorized account representative of one NO<sub>x</sub> Budget unit shall not be liable for any violation by any other NO<sub>x</sub> Budget unit of which they are not owners or operators or the NO<sub>x</sub> authorized account representative and that is located at a source of which they are not owners or operators or the NO<sub>x</sub> authorized account representative.

(g) *Effect on other authorities.* No provision of the NO<sub>x</sub> Budget Trading Program, a NO<sub>x</sub> Budget permit application, a NO<sub>x</sub> Budget permit, or an exemption under § 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget source or NO<sub>x</sub> Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.

#### § 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO<sub>x</sub> Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO<sub>x</sub> Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

#### Subpart B—NO<sub>x</sub> Authorized Account Representative for NO<sub>x</sub> Budget Sources

##### § 96.10 Authorization and responsibilities of the NO<sub>x</sub> authorized account representative.

(a) Except as provided under § 96.11, each NO<sub>x</sub> Budget source, including all NO<sub>x</sub> Budget units at the source, shall have one and only one NO<sub>x</sub> authorized account representative, with regard to all matters under the NO<sub>x</sub> Budget Trading Program concerning the source or any NO<sub>x</sub> Budget unit at the source.

(b) The NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> Budget source shall be selected by an agreement binding on the owners and operators of

the source and all NO<sub>x</sub> Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, the NO<sub>x</sub> authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO<sub>x</sub> Budget source represented and each NO<sub>x</sub> Budget unit at the source in all matters pertaining to the NO<sub>x</sub> Budget Trading Program, not withstanding any agreement between the NO<sub>x</sub> authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO<sub>x</sub> authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NO<sub>x</sub> Budget permit shall be issued, and no NO<sub>x</sub> Allowance Tracking System account shall be established for a NO<sub>x</sub> Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 96.13 for a NO<sub>x</sub> authorized account representative of the source and the NO<sub>x</sub> Budget units at the source.

(e)(1) Each submission under the NO<sub>x</sub> Budget Trading Program shall be submitted, signed, and certified by the NO<sub>x</sub> authorized account representative for each NO<sub>x</sub> Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO<sub>x</sub> Budget sources or NO<sub>x</sub> Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO<sub>x</sub> Budget source or a NO<sub>x</sub> Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

##### § 96.11 Alternate NO<sub>x</sub> authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, any representation, action, inaction, or submission by the alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO<sub>x</sub> authorized account representative.

(c) Except in this section and §§ 96.10(a), 96.12, 96.13, and 96.51, whenever the term "NO<sub>x</sub> authorized account representative" is used in this part, the term shall be construed to include the alternate NO<sub>x</sub> authorized account representative.

##### § 96.12 Changing the NO<sub>x</sub> authorized account representative and the alternate NO<sub>x</sub> authorized account representative; changes in the owners and operators.

(a) *Changing the NO<sub>x</sub> authorized account representative.* The NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO<sub>x</sub> authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> Budget source and the NO<sub>x</sub> Budget units at the source.

(b) Changing the alternate NO<sub>x</sub> authorized account representative. The alternate NO<sub>x</sub> authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO<sub>x</sub> authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be

binding on the new alternate NO<sub>x</sub> authorized account representative and the owners and operators of the NO<sub>x</sub> Budget source and the NO<sub>x</sub> Budget units at the source.

(c) *Changes in the owners and operators.* (1) In the event a new owner or operator of a NO<sub>x</sub> Budget source or a NO<sub>x</sub> Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NO<sub>x</sub> Budget source or a NO<sub>x</sub> Budget unit, including the addition of a new owner or operator, the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

#### **§ 96.13 Account certificate of representation.**

(a) A complete account certificate of representation for a NO<sub>x</sub> authorized account representative or an alternate NO<sub>x</sub> authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative.

(3) A list of the owners and operators of the NO<sub>x</sub> Budget source and of each NO<sub>x</sub> Budget unit at the source.

(4) The following certification statement by the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as the NO<sub>x</sub> authorized account representative or alternate NO<sub>x</sub> authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source. I

certify that I have all the necessary authority to carry out my duties and responsibilities under the NO<sub>x</sub> Budget Trading Program on behalf of the owners and operators of the NO<sub>x</sub> Budget source and of each NO<sub>x</sub> Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."

(5) The signature of the NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

#### **§ 96.14 Objections concerning the NO<sub>x</sub> authorized account representative.**

(a) Once a complete account certificate of representation under § 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 96.13 is received by the Administrator.

(b) Except as provided in § 96.12(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative shall affect any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NO<sub>x</sub> Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO<sub>x</sub> authorized account representative, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

### **Subpart C—Permits**

#### **§ 96.20 General NO<sub>x</sub> Budget trading program permit requirements.**

(a) For each NO<sub>x</sub> Budget source required to have a federally enforceable permit, such permit shall include a NO<sub>x</sub> Budget permit administered by the permitting authority.

(1) For NO<sub>x</sub> Budget sources required to have a title V operating permit, the NO<sub>x</sub> Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.

(2) For NO<sub>x</sub> Budget sources required to have a non-title V permit, the NO<sub>x</sub> Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the Administrator.

(b) Each NO<sub>x</sub> Budget permit (including a draft or proposed NO<sub>x</sub> Budget permit, if applicable) shall contain all applicable NO<sub>x</sub> Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

#### **§ 96.21 Submission of NO<sub>x</sub> Budget permit applications.**

(a) *Duty to apply.* The NO<sub>x</sub> authorized account representative of any NO<sub>x</sub> Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NO<sub>x</sub> Budget permit application under § 96.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For NO<sub>x</sub> Budget sources required to have a title V operating permit:

(i) For any source, with one or more NO<sub>x</sub> Budget units under § 96.4 that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 covering such NO<sub>x</sub> Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO<sub>x</sub> Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 covering such NO<sub>x</sub> Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO<sub>x</sub> Budget unit commences operation.

(2) For NO<sub>x</sub> Budget sources required to have a non-title V permit:

(i) For any source, with one or more NO<sub>x</sub> Budget units under § 96.4 that commence operation before January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 covering such NO<sub>x</sub> Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO<sub>x</sub> Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 covering such NO<sub>x</sub> Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO<sub>x</sub> Budget unit commences operation.

(c) *Duty to reapply.* (1) For a NO<sub>x</sub> Budget source required to have a title V operating permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 for the NO<sub>x</sub> Budget source covering the NO<sub>x</sub> Budget units at the source in accordance with

the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NO<sub>x</sub> Budget source required to have a non-title V permit, the NO<sub>x</sub> authorized account representative shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 for the NO<sub>x</sub> Budget source covering the NO<sub>x</sub> Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

#### § 96.22 Information requirements for NO<sub>x</sub> Budget permit applications.

A complete NO<sub>x</sub> Budget permit application shall include the following elements concerning the NO<sub>x</sub> Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NO<sub>x</sub> Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each NO<sub>x</sub> Budget unit at the NO<sub>x</sub> Budget source and whether it is a NO<sub>x</sub> Budget unit under § 96.4 or under subpart I of this part;

(c) The standard requirements under § 96.6; and

(d) For each NO<sub>x</sub> Budget opt-in unit at the NO<sub>x</sub> Budget source, the following certification statements by the NO<sub>x</sub> authorized account representative:

(1) "I certify that each unit for which this permit application is submitted under subpart I of this part is not a NO<sub>x</sub> Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect."

(2) If the application is for an initial NO<sub>x</sub> Budget opt-in permit, "I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2."

#### § 96.23 NO<sub>x</sub> Budget permit contents.

(a) Each NO<sub>x</sub> Budget permit (including any draft or proposed NO<sub>x</sub> Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NO<sub>x</sub> Budget permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO<sub>x</sub> Budget permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> Budget

units covered by the permit or the overdraft account of the NO<sub>x</sub> Budget source covered by the permit.

#### § 96.24 Effective date of initial NO<sub>x</sub> Budget permit.

The initial NO<sub>x</sub> Budget permit covering a NO<sub>x</sub> Budget unit for which a complete NO<sub>x</sub> Budget permit application is timely submitted under § 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NO<sub>x</sub> Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NO<sub>x</sub> Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NO<sub>x</sub> Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

#### § 96.25 NO<sub>x</sub> Budget permit revisions.

(a) For a NO<sub>x</sub> Budget source with a title V operating permit, except as provided in § 96.23(b), the permitting authority will revise the NO<sub>x</sub> Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NO<sub>x</sub> Budget source with a non-title V permit, except as provided in § 96.23(b), the permitting authority will revise the NO<sub>x</sub> Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

### Subpart D—Compliance Certification

#### § 96.30 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more NO<sub>x</sub> Budget units at a source are subject to the NO<sub>x</sub> Budget emissions limitation, the NO<sub>x</sub> authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The NO<sub>x</sub> authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO<sub>x</sub> Budget emissions limitation for the control period covered by the report:

(1) Identification of each NO<sub>x</sub> Budget unit;

(2) At the NO<sub>x</sub> authorized account representative's option, the serial numbers of the NO<sub>x</sub> allowances that are to be deducted from each unit's compliance account under § 96.54 for the control period;

(3) At the NO<sub>x</sub> authorized account representative's option, for units sharing a common stack and having NO<sub>x</sub> emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under § 96.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under paragraph (a) of this section, the NO<sub>x</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO<sub>x</sub> Budget units at the source in compliance with the NO<sub>x</sub> Budget Trading Program, whether each NO<sub>x</sub> Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO<sub>x</sub> Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NO<sub>x</sub> Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO<sub>x</sub> emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

#### **§ 96.31 Permitting authority's and Administrator's action on compliance certifications.**

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

#### **Subpart E—NO<sub>x</sub> Allowance Allocations**

##### **§ 96.40 State trading program budget.**

The State trading program budget allocated by the permitting authority under § 96.42 for a control period will equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> Budget units under § 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.

##### **§ 96.41 Timing requirements for NO<sub>x</sub> allowance allocations.**

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for the control periods in 2003, 2004, and 2005.

(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the NO<sub>x</sub> allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding control period.

(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for any NO<sub>x</sub> allowances remaining in the allocation set-aside for the prior control period.

##### **§ 96.42 NO<sub>x</sub> allowance allocations.**

(a)(1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> Budget unit under § 96.4 will be:

(i) For a NO<sub>x</sub> allowance allocation under § 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under § 96.4(a)(1) or the control period in 1995 if the unit is under § 96.4(a)(2); and

(ii) For a NO<sub>x</sub> allowance allocation under § 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NO<sub>x</sub> allocation is being calculated.

(2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NO<sub>x</sub> Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(b) For each control period under § 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under § 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO<sub>x</sub> allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program

budget apportioned to electric generating units, the permitting authority will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (b)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(c) For each control period under § 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under § 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO<sub>x</sub> allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (c)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98

percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(d) For each control period under § 96.41, the permitting authority will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget units under § 96.4 in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

(1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO<sub>x</sub> allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget under § 96.40, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NO<sub>x</sub> allowances for no more than five consecutive control periods under § 96.41, starting with the control period during which the NO<sub>x</sub> Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NO<sub>x</sub> allowance allocation request must be submitted prior to May 1 of the first control period for which the NO<sub>x</sub> allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NO<sub>x</sub> Budget unit.

(3) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for units under § 96.4(a)(1) may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO<sub>x</sub> Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(4) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for units under § 96.4(a)(2) may request for a control

period NO<sub>x</sub> allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NO<sub>x</sub> Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(5) The permitting authority will review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.

(i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under § 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under § 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.

(ii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO<sub>x</sub> Budget unit.

(iii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has a smaller amount of NO<sub>x</sub> allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NO<sub>x</sub> allowances in the allocation set-aside to the NO<sub>x</sub> Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NO<sub>x</sub> allowances, the permitting authority will deny, and will not allocate any NO<sub>x</sub> allowances pursuant to, any NO<sub>x</sub> allowance allocation request under which NO<sub>x</sub> allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NO<sub>x</sub> allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NO<sub>x</sub> authorized account representative that submitted the request and the Administrator of the number of NO<sub>x</sub>

allowances (if any) allocated for the control period to the NO<sub>x</sub> Budget unit.

(e) For a NO<sub>x</sub> Budget unit that is allocated NO<sub>x</sub> allowances under paragraph (d) of this section for a control period, the Administrator will deduct NO<sub>x</sub> allowances under § 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero if the number calculated is less than zero:

NO<sub>x</sub> allowances deducted for actual utilization for units under § 96.4(a)(1) = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × 0.15 lb/mmBtu); and  
NO<sub>x</sub> allowances deducted for actual utilization for units under § 96.4(a)(2) = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × 0.17 lb/mmBtu)

Where:

"Unit's NO<sub>x</sub> allowances allocated for control period" is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under paragraph (d) of this section; and

"Unit's actual control period utilization" is the utilization (in mmBtu), as defined in § 96.2, of the unit during the control period.

(f) After making the deductions for compliance under § 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget units in the State using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate:

Unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = Total NO<sub>x</sub> allowances remaining in allocation set-aside × (Unit's NO<sub>x</sub> allowance allocation ÷ (State trading program budget excluding allocation set-aside))

Where:

"Total NO<sub>x</sub> allowances remaining in allocation set-aside" is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

"Unit's NO<sub>x</sub> allowance allocation" is the number of NO<sub>x</sub> allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

"State trading program budget excluding allocation set-aside" is the State trading program budget under § 96.40 for the control period to which the allocation set-aside applies multiplied by 95 percent if the

control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

#### Subpart F—NO<sub>x</sub> Allowance Tracking System

##### § 96.50 NO<sub>x</sub> Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with § 96.51(a), the Administrator will establish one compliance account for each NO<sub>x</sub> Budget unit and one overdraft account for each source with one or more NO<sub>x</sub> Budget units. Allocations of NO<sub>x</sub> allowances pursuant to subpart E of this part or § 96.88 and deductions or transfers of NO<sub>x</sub> allowances pursuant to § 96.31, § 96.54, § 96.56, subpart G of this part, or subpart I of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.

(b) *Nature and function of general accounts.* Consistent with § 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.

##### § 96.51 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under § 96.13, the Administrator will establish:

(1) A compliance account for each NO<sub>x</sub> Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO<sub>x</sub> Budget units.

(b) *General accounts.* (1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the 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 NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative;

(ii) At the option of the NO<sub>x</sub> authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NO<sub>x</sub> authorized account representative or

any alternate NO<sub>x</sub> 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 NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative: "I certify that I was selected as the NO<sub>x</sub> authorized account representative or the NO<sub>x</sub> 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<sub>x</sub> 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 NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> authorized account representative and the dates signed.

(vi) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

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

(ii) The NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> 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<sub>x</sub> allowances held in the general account in all matters pertaining to the NO<sub>x</sub> Budget Trading Program, notwithstanding any agreement between the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative by

the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for the persons having an ownership interest with respect to NO<sub>x</sub> allowances held in the general account. Each such submission shall include the following certification statement by the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.

(3)(i) An application for a general account may designate one and only one NO<sub>x</sub> authorized account representative and one and only one alternate NO<sub>x</sub> authorized account representative who may act on behalf of the NO<sub>x</sub> authorized account representative. The agreement by which the alternate NO<sub>x</sub> authorized account representative is selected shall include a procedure for authorizing the alternate NO<sub>x</sub> authorized account representative to act in lieu of the NO<sub>x</sub> authorized account representative.

(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NO<sub>x</sub> authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO<sub>x</sub> authorized account representative.

(4)(i) The NO<sub>x</sub> 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)(1) of this

section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO<sub>x</sub> 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 NO<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate NO<sub>x</sub> 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)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO<sub>x</sub> 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 NO<sub>x</sub> authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to NO<sub>x</sub> allowances 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 NO<sub>x</sub> authorized account representative and any alternate NO<sub>x</sub> 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.

(B) Within 30 days following any change in the persons having an ownership interest with respect to NO<sub>x</sub> allowances in the general account, including the addition of persons, the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> 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<sub>x</sub> allowances in the general account to include the change.

(5)(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1)

of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative or the finality of any decision or order by the Administrator under the NO<sub>x</sub> Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or any alternate NO<sub>x</sub> authorized account representative for a general account, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

**§ 96.52 NO<sub>x</sub> Allowance Tracking System responsibilities of NO<sub>x</sub> authorized account representative.**

(a) Following the establishment of a NO<sub>x</sub> 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 NO<sub>x</sub> allowances in the account, shall be made only by the NO<sub>x</sub> authorized account representative for the account.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each NO<sub>x</sub> authorized account representative.

**§ 96.53 Recordation of NO<sub>x</sub> allowance allocations.**

(a) The Administrator will record the NO<sub>x</sub> allowances for 2003 in the NO<sub>x</sub> Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NO<sub>x</sub> allowances allocated under § 96.88(a)(1) for each NO<sub>x</sub> Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NO<sub>x</sub> Budget unit's compliance account and the overdraft account pursuant to § 96.54, the Administrator will record

NO<sub>x</sub> allowances, as allocated to the unit under subpart E of this part or under § 96.88(a)(2), 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 will also record NO<sub>x</sub> allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) *Serial numbers for allocated NO<sub>x</sub> allowances.* When allocating NO<sub>x</sub> allowances to and recording them in an account, the Administrator will assign each NO<sub>x</sub> allowance a unique identification number that will include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

#### § 96.54 Compliance.

(a) *NO<sub>x</sub> allowance transfer deadline.* The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> Budget emissions limitation for a control period in a given year only if the NO<sub>x</sub> allowances:

- (1) Were allocated for a 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<sub>x</sub> allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under § 96.60 by the NO<sub>x</sub> allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 96.61, of NO<sub>x</sub> 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<sub>x</sub> allowance transfer deadline for a control period, the Administrator will deduct NO<sub>x</sub> allowances available under paragraph (a) of this section to cover the unit's NO<sub>x</sub> emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under § 96.42(e), for the control period:

- (i) From the compliance account; and
- (ii) Only if no more NO<sub>x</sub> allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO<sub>x</sub> Allowance Tracking System account number and end with the unit having the compliance account with the highest NO<sub>x</sub> 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 Administrator will deduct NO<sub>x</sub> allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO<sub>x</sub> allowances deducted for the control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NO<sub>x</sub> allowances required for deduction to account for actual utilization under § 96.42(e) for the control period; or

(ii) Until no more NO<sub>x</sub> allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO<sub>x</sub> allowances by serial number.* The NO<sub>x</sub> authorized account representative for each compliance account may identify by serial number the NO<sub>x</sub> allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) *First-in, first-out.* The Administrator will deduct NO<sub>x</sub> allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO<sub>x</sub> allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

- (i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under subpart E or I of this part;
- (ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;
- (iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and
- (iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under paragraph (b) of this

section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO<sub>x</sub> 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 will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:

(1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with subpart H of this part, 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 § 96.42(e) for the control period.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

#### § 96.55 Banking.

(a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO<sub>x</sub> allowance is deducted or transferred under § 96.31, § 96.54, § 96.56, subpart G of this part, or subpart I of this part.

(2) The Administrator will designate, as a "banked" NO<sub>x</sub> allowance, any NO<sub>x</sub> 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 § 96.54.

(b) Each year starting in 2004, after the Administrator has completed the designation of banked NO<sub>x</sub> allowances under paragraph (a)(2) of this section and before May 1 of the year, the Administrator will determine the extent to which banked NO<sub>x</sub> allowances may be used for compliance in the control period for the current year, as follows:

(1) The Administrator will determine the total number of banked NO<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO<sub>x</sub> Budget units are located, any banked NO<sub>x</sub> allowance may be deducted for compliance in accordance with § 96.54.

(3) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NO<sub>x</sub> Budget units are located, any banked allowance

may be deducted for compliance in accordance with § 96.54, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO<sub>x</sub> Budget units are located and divided by the total number of banked NO<sub>x</sub> allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NO<sub>x</sub> allowances in each compliance account or overdraft account. The resulting product is the number of banked NO<sub>x</sub> allowances in the account that may be deducted for compliance in accordance with § 96.54. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with § 96.54, except that, if such NO<sub>x</sub> allowances are used to make a deduction, two such NO<sub>x</sub> allowances must be deducted for each deduction of one NO<sub>x</sub> allowance required under § 96.54.

(c) Any NO<sub>x</sub> Budget unit may reduce its NO<sub>x</sub> emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NO<sub>x</sub> allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NO<sub>x</sub> Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NO<sub>x</sub> emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) NO<sub>x</sub> emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.

(3) Each NO<sub>x</sub> Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NO<sub>x</sub> emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO<sub>x</sub> emission rate in the 2000 control period.

(4) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that meets the requirements of paragraphs

(c)(1) and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.

(i) In the early reduction credit request, the NO<sub>x</sub> authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO<sub>x</sub> emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NO<sub>x</sub> emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(5) The permitting authority will allocate NO<sub>x</sub> allowances, to NO<sub>x</sub> Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.

(ii) If the State's compliance supplement pool has an amount of NO<sub>x</sub> allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NO<sub>x</sub> Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).

(iii) If the State's compliance supplement pool has a smaller amount of NO<sub>x</sub> allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit covered by

such accepted requests according to the following formula:

$$\text{Unit's allocated early reduction credits} = \frac{[\text{Unit's adjusted early reduction credits}] / [\text{Total adjusted early reduction credits requested by all units}]}{\text{Available NO}_x \text{ allowances from the State's compliance supplement pool}}$$

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Available NO<sub>x</sub> allowances from the State's compliance supplement pool" is the number of NO<sub>x</sub> allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NO<sub>x</sub> allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.

(7) NO<sub>x</sub> allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under § 96.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the Administrator will deduct as retired any NO<sub>x</sub> allowance that is recorded under paragraph (c)(6) of this section and is not deducted for compliance in accordance with § 96.54 for the control period in 2003 or 2004.

(8) NO<sub>x</sub> allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

#### § 96.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO<sub>x</sub> Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO<sub>x</sub> authorized account representative for the account.

#### § 96.57 Closing of general accounts.

(a) The NO<sub>x</sub> 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 NO<sub>x</sub> Allowance Tracking System and by correctly submitting for recordation under § 96.60 an allowance

transfer of all NO<sub>x</sub> allowances in the account to one or more other NO<sub>x</sub> Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO<sub>x</sub> allowances, the Administrator may notify the NO<sub>x</sub> authorized account representative for the account that the account will be closed and deleted from the NO<sub>x</sub> Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NO<sub>x</sub> allowances into the account under § 96.60 or a statement submitted by the NO<sub>x</sub> authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

### Subpart G—NO<sub>x</sub> Allowance Transfers

#### § 96.60 Submission of NO<sub>x</sub> allowance transfers.

The NO<sub>x</sub> authorized account representatives seeking recordation of a NO<sub>x</sub> allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO<sub>x</sub> allowance transfer shall include the following elements in a format specified by the Administrator:

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each NO<sub>x</sub> allowance to be transferred; and
- (c) The printed name and signature of the NO<sub>x</sub> authorized account representative of the transferor account and the date signed.

#### § 96.61 EPA recordation.

(a) Within 5 business days of receiving a NO<sub>x</sub> allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NO<sub>x</sub> allowance transfer by moving each NO<sub>x</sub> allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under § 96.60;
- (2) The transferor account includes each NO<sub>x</sub> allowance identified by serial number in the transfer; and
- (3) The transfer meets all other requirements of this part.

(b) A NO<sub>x</sub> allowance transfer that is submitted for recordation following the NO<sub>x</sub> allowance transfer deadline and that includes any NO<sub>x</sub> allowances allocated for a control period prior to or the same as the control period to which

the NO<sub>x</sub> allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO<sub>x</sub> allowance allocations in § 96.53(b).

(c) Where a NO<sub>x</sub> allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

#### § 96.62 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO<sub>x</sub> allowance transfer under § 96.61, the Administrator will notify each party to the transfer. Notice will be given to the NO<sub>x</sub> authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a NO<sub>x</sub> allowance transfer that fails to meet the requirements of § 96.61(a), the Administrator will notify the NO<sub>x</sub> authorized account representatives of both accounts subject to the transfer of:

- (1) A decision not to record the transfer, and
- (2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NO<sub>x</sub> allowance transfer for recordation following notification of non-recordation.

### Subpart H—Monitoring and Reporting

#### § 96.70 General requirements.

The owners and operators, and to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.2 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be replaced by the terms "NO<sub>x</sub> Budget unit," "NO<sub>x</sub> authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in § 96.2.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each NO<sub>x</sub> Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NO<sub>x</sub> Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:

- (1) Install all monitoring systems required under this subpart for

monitoring NO<sub>x</sub> mass. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input, and flow, in accordance with §§ 75.72 and 75.76.

(2) Install all monitoring systems for monitoring heat input, if required under § 96.76 for developing NO<sub>x</sub> allowance allocations.

(3) Successfully complete all certification tests required under § 96.71 and meet all other provisions of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.

(4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this section.

(b) *Compliance dates.* The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:

(1) NO<sub>x</sub> Budget units for which the owner or operator intends to apply for early reduction credits under § 96.55(d) must comply with the requirements of this subpart by May 1, 2000.

(2) Except for NO<sub>x</sub> Budget units under paragraph (b)(1) of this section, NO<sub>x</sub> Budget units under § 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2002.

(3) NO<sub>x</sub> Budget units under § 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under § 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) May 1, 2002; or

(ii) The earlier of:

(A) 180 days after the date on which the unit commences operation or, (B) For units under § 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(4) NO<sub>x</sub> Budget units under § 96.4 that commence operation on or after January 1, 2002 and that report on a control season basis under § 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) The earlier of:

(A) 180 days after the date on which the unit commences operation or,

(B) For units under § 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(ii) However, if the applicable deadline under paragraph (b)(4)(i) section does not occur during a control period, May 1; immediately following

the date determined in accordance with paragraph (b)(4)(i) of this section.

(5) For a NO<sub>x</sub> Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:

(i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(ii) However, if the unit reports on a control season basis under § 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (b)(5)(i) of this section.

(6) For a unit for which an application for a NO<sub>x</sub> Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.

(c) *Reporting data prior to initial certification.* (1) The owner or operator of a NO<sub>x</sub> Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.

(2) The owner or operator of a NO<sub>x</sub> Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NO<sub>x</sub> mass, heat input (if required for purposes of allocations) and any other values required to determine NO<sub>x</sub> Mass (e.g. NO<sub>x</sub> emission rate and heat input or NO<sub>x</sub> concentration and stack flow) using the provisions of § 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(d) *Prohibitions.* (1) No owner or operator of a NO<sub>x</sub> Budget unit or a non-NO<sub>x</sub> Budget unit monitored under § 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.75.

(2) No owner or operator of a NO<sub>x</sub> Budget unit or a non-NO<sub>x</sub> Budget unit monitored under § 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in § 75.74 of this chapter.

(3) No owner or operator of a NO<sub>x</sub> Budget unit or a non-NO<sub>x</sub> Budget unit monitored under § 75.72(b)(2)(ii) shall

disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in § 75.74 of this chapter.

(4) No owner or operator of a NO<sub>x</sub> Budget unit or a non-NO<sub>x</sub> Budget unit monitored under § 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption under § 96.5 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 96.71(b)(2).

#### § 96.71 Initial certification and recertification procedures

(a) The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.17 of this chapter, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the Administrator under § 96.75(a) to determine if the approval applies under the NO<sub>x</sub> Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in § 75.72 of this chapter, or for any NO<sub>x</sub> concentration CEMS used under the provisions of § 75.71(a)(2) of this chapter, the owner or operator shall

meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in § 75.72 of this chapter, or that uses a NO<sub>x</sub> concentration CEMS under § 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in § 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to § 75.20 is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system according to § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or

operator shall recertify the continuous emissions monitoring system according to § 75.20(b) of this chapter. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

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

(i) *Notification of certification.* The NO<sub>x</sub> authorized account representative shall submit to the permitting authority, the appropriate EPA Regional Office and the permitting authority a written notice of the dates of certification in accordance with § 96.73.

(ii) *Certification application.* The NO<sub>x</sub> authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.

(iii) Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, the provisional certification date for a monitor shall be determined using the procedures set forth in § 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NO<sub>x</sub> Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

(iv) *Certification application formal approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of part 75 of this chapter and is included in the certification

application will be deemed certified for use under the NO<sub>x</sub> Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.72(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph

(b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under § 75.20(a)(5)(i) of this chapter:

(1) For units using or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under § 75.19 of this chapter, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit.

(2) For units intending to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;

(B) The NO<sub>x</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section; and

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(c) *Initial certification and recertification procedures for low mass emission units using the excepted methodologies under § 75.19 of this chapter.* The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under § 75.19 of this chapter shall meet the applicable general operating requirements of § 75.10 of this chapter, the applicable requirements of § 75.19 of this chapter, and the applicable certification requirements of § 96.71 of this chapter, except that the excepted methodology shall be deemed provisionally certified for use under the NO<sub>x</sub> Budget Trading Program, as of the following dates:

(1) For units that are reporting on an annual basis under § 96.74(d);

(i) For a unit that commences operation before its compliance deadline under § 96.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under § 75.19 of this

chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commences operation after its compliance deadline under § 96.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under § 75.19 of this chapter until the completion of the period for permitting authority review, or

(2) For units that are reporting on a control period basis under § 96.74(b)(3)(ii) of this part:

(i) For a unit that commenced operation before its compliance deadline under § 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under § 75.19 of this chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commenced operation before its compliance deadline under § 96.71(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under § 75.19 of this chapter until the completion of the period for the permitting authority review; or

(iii) For a unit that commences operation after its compliance deadline under § 96.71(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.

(iv) For a unit that has not operated after its compliance deadline under § 96.71(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under § 75.19 of this chapter until the completion of the period for the permitting authority's review.

(d) *Certification/recertification procedures for alternative monitoring systems.* The NO<sub>x</sub> authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall apply for certification to the permitting authority prior to use of the system under the NO<sub>x</sub> Trading Program. The NO<sub>x</sub> authorized account

representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and § 75.20(f) of this chapter.

#### § 96.72 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in § 96.71 for each disapproved system.

#### § 96.73 Notifications.

The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

**§ 96.74 Recordkeeping and reporting.**

(a) *General provisions.* (1) The NO<sub>x</sub> authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of § 96.10(e).

(2) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and which includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, the submission must also be signed by the designated representative or the alternative designated representative.

(b) *Monitoring plans.* (1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.

(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.

(c) *Certification applications.* The NO<sub>x</sub> authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.71 including the information required under subpart H of part 75 of this chapter.

(d) *Quarterly reports.* The NO<sub>x</sub> authorized account representative shall submit quarterly reports, as follows:

(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO<sub>x</sub> budget unit chooses to meet the annual reporting requirements of this subpart H, the NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For units that elect to comply with the early reduction credit provisions under § 96.55 of this part, the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(ii) For units commencing operation prior to May 1, 2002 that are not

required to certify monitors by May 1, 2000 under § 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

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

(2) If a NO<sub>x</sub> budget unit is not subject to an Acid Rain emission limitation, then the NO<sub>x</sub> authorized account representative shall either:

(i) Meet all of the requirements of part 75 related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in paragraph (d)(1) of this section; or

(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under § 75.74(d)(3) through September 30 of each year in accordance with the provisions of § 75.74(b) of this chapter. The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(A) For units that elect to comply with the early reduction credit provisions under § 96.55, the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(B) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under § 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or

(C) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation.

Data shall be reported from the date and hour corresponding to when the unit commenced operation; or

(D) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(E) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(3) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and § 75.64 of this chapter.

(i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NO<sub>x</sub> Budget unit (or group of units using a common stack) as well as information required in subpart G of part 75 of this chapter.

(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NO<sub>x</sub> Budget unit (or group of units using a common stack).

(4) *Compliance certification.* The NO<sub>x</sub> authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly

and fully monitored. The certification shall state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(ii) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO<sub>x</sub> emissions; and

(iii) For a unit that is reporting on a control period basis under § 96.74(d) the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

#### § 96.75 Petitions.

(a) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.72 of this chapter, the petition is governed by paragraph (b) of this section.

(b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the

common stack provisions of § 75.72 of this chapter or a NO<sub>x</sub> concentration CEMS used under 75.71(a)(2) of this chapter.

(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.

#### § 96.76 Additional requirements to provide heat input data for allocations purposes.

(a) The owner or operator of a unit that elects to monitor and report NO<sub>x</sub> Mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source located in a state developing source allocations based upon heat input.

(b) The owner or operator of a unit that monitor and report NO<sub>x</sub> Mass emissions using a NO<sub>x</sub> concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source that is applying for early reduction credits under § 96.55.

#### Subpart I—Individual Unit Opt-ins

##### § 96.80 Applicability.

A unit that is in the State, is not a NO<sub>x</sub> Budget unit under § 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NO<sub>x</sub> Budget opt-in source. A unit that is a NO<sub>x</sub> Budget unit, is covered by a retired unit exemption under § 96.5 that is in effect, or is not operating is not eligible to become a NO<sub>x</sub> Budget opt-in source.

##### § 96.81 General.

Except otherwise as provided in this part, a NO<sub>x</sub> Budget opt-in source shall be treated as a NO<sub>x</sub> Budget unit for purposes of applying subparts A through H of this part.

##### § 96.82 NO<sub>x</sub> authorized account representative.

A unit for which an application for a NO<sub>x</sub> Budget opt-in permit is submitted and not denied or withdrawn, or a NO<sub>x</sub> Budget opt-in source, located at the same source as one or more NO<sub>x</sub> Budget units, shall have the same NO<sub>x</sub> authorized account representative as such NO<sub>x</sub> Budget units.

##### § 96.83 Applying for NO<sub>x</sub> Budget opt-in permit.

(a) *Applying for initial NO<sub>x</sub> Budget opt-in permit.* In order to apply for an

initial NO<sub>x</sub> Budget opt-in permit, the NO<sub>x</sub> authorized account representative of a unit qualified under § 96.80 may submit to the permitting authority at any time, except as provided under § 96.86(g):

(1) A complete NO<sub>x</sub> Budget permit application under § 96.22;

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under § 96.13, if no NO<sub>x</sub> authorized account representative has been previously designated for the unit.

(b) *Duty to reapply.* The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget opt-in source shall submit a complete NO<sub>x</sub> Budget permit application under § 96.22 to renew the NO<sub>x</sub> Budget opt-in permit in accordance with § 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

##### § 96.84 Opt-in process.

The permitting authority will issue or deny a NO<sub>x</sub> Budget opt-in permit for a unit for which an initial application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 is submitted, in accordance with § 96.20 and the following:

(a) *Interim review of monitoring plan.* The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO<sub>x</sub> Budget opt-in permit under § 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO<sub>x</sub> emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NO<sub>x</sub> emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO<sub>x</sub> Budget unit" prior to issuance of a NO<sub>x</sub> Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO<sub>x</sub> emissions rate shall be calculated as the unit's total NO<sub>x</sub> emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NO<sub>x</sub> Budget opt-in permit on the NO<sub>x</sub> authorized account representative of the unit.

(e) *Confirmation of intention to opt-in.* Within 20 days after the issuance of the draft NO<sub>x</sub> Budget opt-in permit, the NO<sub>x</sub> authorized account representative of the unit must submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO<sub>x</sub> Budget opt-in permit under § 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NO<sub>x</sub> Budget opt-in permit application.

(f) *Issuance of draft NO<sub>x</sub> Budget opt-in permit.* If the NO<sub>x</sub> authorized account representative confirms the intention to opt-in the unit under paragraph (e) of this section, the permitting authority will issue the draft NO<sub>x</sub> Budget opt-in permit in accordance with § 96.20.

(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NO<sub>x</sub> Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO<sub>x</sub> Budget opt-in source under § 96.80, the permitting authority will issue a draft denial of a NO<sub>x</sub> Budget opt-in permit for the unit in accordance with § 96.20.

(h) *Withdrawal of application for NO<sub>x</sub> Budget opt-in permit.* A NO<sub>x</sub> authorized account representative of a unit may withdraw its application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 at any time prior to the issuance of the final NO<sub>x</sub> Budget opt-in permit. Once the application for a NO<sub>x</sub> Budget opt-in permit is withdrawn, a NO<sub>x</sub> authorized account representative wanting to reapply must submit a new application for a NO<sub>x</sub> Budget permit under § 96.83.

(i) *Effective date.* The effective date of the initial NO<sub>x</sub> Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO<sub>x</sub> Budget opt-in permit by the permitting authority. The unit shall be a NO<sub>x</sub> Budget opt-in source and a NO<sub>x</sub> Budget unit as of the effective date of the initial NO<sub>x</sub> Budget opt-in permit.

#### **§ 96.85 NO<sub>x</sub> Budget opt-in permit contents.**

(a) Each NO<sub>x</sub> Budget opt-in permit (including any draft or proposed NO<sub>x</sub> Budget opt-in permit, if applicable) will contain all elements required for a complete NO<sub>x</sub> Budget opt-in permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO<sub>x</sub> Budget opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NO<sub>x</sub> allowances to or from the compliance accounts of each NO<sub>x</sub> Budget opt-in source covered by the NO<sub>x</sub> Budget opt-in permit or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located.

#### **§ 96.86 Withdrawal from NO<sub>x</sub> Budget Trading Program.**

(a) *Requesting withdrawal.* To withdraw from the NO<sub>x</sub> Budget Trading Program, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NO<sub>x</sub> Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NO<sub>x</sub> Budget Trading Program and the NO<sub>x</sub> Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal is to be effective, the NO<sub>x</sub> authorized account representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with § 96.30.

(2) If the NO<sub>x</sub> Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NO<sub>x</sub> Budget opt-in source's compliance account, or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located, the full amount required under § 96.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NO<sub>x</sub> Budget opt-in source's compliance

account, or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to that source under § 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NO<sub>x</sub> Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO<sub>x</sub> Budget opt-in source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> Budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

(c) A NO<sub>x</sub> Budget opt-in source that withdraws from the NO<sub>x</sub> Budget Trading Program shall comply with all requirements under the NO<sub>x</sub> Budget Trading Program concerning all years for which such NO<sub>x</sub> Budget opt-in source was a NO<sub>x</sub> Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NO<sub>x</sub> allowances required), the permitting authority will issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> Budget opt-in source of the acceptance of the withdrawal of the NO<sub>x</sub> Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> Budget opt-in source that the NO<sub>x</sub> Budget opt-in source's request to withdraw is denied. If the NO<sub>x</sub> Budget opt-in source's request to withdraw is denied, the NO<sub>x</sub> Budget opt-in source shall remain subject to the requirements for a NO<sub>x</sub> Budget opt-in source.

(e) *Permit amendment.* After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO<sub>x</sub> Budget permit covering the NO<sub>x</sub> Budget opt-in source to terminate the NO<sub>x</sub> Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NO<sub>x</sub> Budget opt-in source shall continue to be a NO<sub>x</sub> Budget opt-in source until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the NO<sub>x</sub> Budget opt-in source's request to withdraw, the NO<sub>x</sub> authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) *Ability to return to the NO<sub>x</sub> Budget Trading Program.* Once a NO<sub>x</sub> Budget opt-in source withdraws from the NO<sub>x</sub> Budget Trading Program and its NO<sub>x</sub> Budget opt-in permit is terminated under this section, the NO<sub>x</sub> authority account representative may not submit another application for a NO<sub>x</sub> Budget opt-in permit under § 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NO<sub>x</sub> Budget opt-in permit became effective.

#### § 96.87 Change in regulatory status.

(a) *Notification.* When a NO<sub>x</sub> Budget opt-in source becomes a NO<sub>x</sub> Budget unit under § 96.4, the NO<sub>x</sub> authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NO<sub>x</sub> Budget opt-in source's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's action.* (1)(i) When the NO<sub>x</sub> Budget opt-in source becomes a NO<sub>x</sub> Budget unit under § 96.4, the permitting authority will revise the NO<sub>x</sub> Budget opt-in source's NO<sub>x</sub> Budget opt-in permit to meet the requirements of a NO<sub>x</sub> Budget permit under § 96.23 as of an effective date that is the date on which such NO<sub>x</sub> Budget opt-in source becomes a NO<sub>x</sub> Budget unit under § 96.4.

(ii)(A) The Administrator will deduct from the compliance account for the NO<sub>x</sub> Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO<sub>x</sub> Budget source where the unit is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as:

(1) Any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> Budget unit (as a NO<sub>x</sub> Budget opt-in source) under § 96.88 for any control period after the last control period during which the unit's NO<sub>x</sub> Budget opt-in permit was effective; and

(2) If the effective date of the NO<sub>x</sub> Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> Budget unit (as a NO<sub>x</sub> Budget opt-in source) under § 96.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section,

divided by the total number of days in the control period.

(B) The NO<sub>x</sub> authorized account representative shall ensure that the compliance account of the NO<sub>x</sub> Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO<sub>x</sub> Budget source where the unit is located, includes the NO<sub>x</sub> allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(iii)(A) For every control period during which the NO<sub>x</sub> Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NO<sub>x</sub> Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NO<sub>x</sub> allowance allocations under § 96.42, as a unit that commenced operation on the effective date of the NO<sub>x</sub> Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NO<sub>x</sub> allowances under § 96.42.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NO<sub>x</sub> Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NO<sub>x</sub> allowances will be allocated to the NO<sub>x</sub> Budget unit under paragraph (b)(1)(i) of this section under § 96.42 for the control period: the number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub> Budget unit under § 96.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(2)(i) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget opt-in source does not renew its NO<sub>x</sub> Budget opt-in permit under § 96.83(b), the Administrator will deduct from the NO<sub>x</sub> Budget opt-in unit's compliance account, or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> Budget opt-in source under § 96.88 for any control period after the last control period for which the NO<sub>x</sub> Budget opt-in permit is effective. The NO<sub>x</sub> authorized account representative shall ensure that the NO<sub>x</sub> Budget opt-in

source's compliance account or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located includes the NO<sub>x</sub> allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NO<sub>x</sub> Budget opt-in source's compliance account. If any NO<sub>x</sub> allowances remain in the compliance account after completion of such deduction and any deduction under § 96.54, the Administrator will close the NO<sub>x</sub> Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO<sub>x</sub> Budget opt-in source. The NO<sub>x</sub> authorized account representative for the NO<sub>x</sub> Budget opt-in source shall become the NO<sub>x</sub> authorized account representative for the general account.

#### § 96.88 NO<sub>x</sub> allowance allocations to opt-in units.

(a) *NO<sub>x</sub> allowance allocation.* (1) By December 31 immediately before the first control period for which the NO<sub>x</sub> Budget opt-in permit is effective, the permitting authority will allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.

(2) By no later than December 31, after the first control period for which the NO<sub>x</sub> Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.

(b) For each control period for which the NO<sub>x</sub> Budget opt-in source has an approved NO<sub>x</sub> Budget opt-in permit, the NO<sub>x</sub> Budget opt-in source will be allocated NO<sub>x</sub> allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations will be the lesser of:

(i) The NO<sub>x</sub> Budget opt-in source's baseline heat input determined pursuant to § 96.84(c); or

(ii) The NO<sub>x</sub> Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NO<sub>x</sub> allocations are being calculated.

(2) The permitting authority will allocate NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:

(i) The NO<sub>x</sub> Budget opt-in source's baseline NO<sub>x</sub> emissions rate (in lb/mmBtu) determined pursuant to § 96.84(c); or

(ii) The most stringent State or Federal NO<sub>x</sub> emissions limitation applicable to the NO<sub>x</sub> Budget opt-in source during the control period.

**Subpart J—Mobile and Area Sources  
[Reserved]**

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