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(e) The patented technology is not otherwise reasonably available, and there are no other reasonable alternatives for accomplishing compliance with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521); and
(f) The unavailability of a mandatory patent license may result in a substantial lessening of competition or a tendency to create a monopoly in any line of commerce in any section of the United States.  

§ 95.4 Limitations on mandatory licenses  
(a) If the Administrator, or the Administrator's designee, decides to apply to the Attorney General for a mandatory patent license in accordance with §95.3, the application shall include a proposed patent license with the following limitations:
(1) The scope and duration of the patent license shall be limited to that necessary to permit the proposed licensee to comply with the requirements the Act;
(2) The patent license shall be non-exclusive;
(3) The patent license shall be non-assignable, except with that part of the enterprise or goodwill that enjoys the license;
(4) The patent license shall be for use of the licensed technology in the United States only;
(5) The patent license shall extend only to those uses necessary to enable the licensee to comply with sections 111, 112 or 202 of the Act (42 U.S.C. 7411, 7412 or 7521);
(6) The patent license shall provide for termination, subject to adequate protections of the legitimate interests of the licensed party, when the circumstances that made the compulsory patent license necessary cease to exist and are unlikely to recur; and
(7) The patent license shall provide for adequate remuneration that takes into account the economic value of the license;
(b) The Administrator, or the Administrator's designee, may decide as appropriate to include additional conditions, terms or limitations on the scope of the patent license for which application is made to the Attorney General.
Subpart A—NOX 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 NOX 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 NOX 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 NOX authorized account representative for a NOX Budget source or a group of identified NOX Budget sources who is authorized to represent the owners and operators of such source or sources and of the NOX Budget units at such source or sources with regard to matters under the NOX Budget Trading Program.

Account number means the identification number given by the Administrator to each NOX 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.
§ 96.2 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 NOX allowances to be initially credited to a NOX 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.


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 NOX 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 NOX Budget unit under §96.4 on the date the unit commences commercial operation, the date the unit becomes a NOX 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 NOX 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 NOX Budget unit under §96.4 on the date of commencement of operation, the date the unit becomes a NOX 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 NOX Allowance Tracking System account, established by the Administrator for a NOX Budget unit under subpart F of this part, in which the NOX allowance allocations for the unit are initially recorded and in which are held NOX allowances available for use by the unit for a control period for the purpose of meeting the unit’s NOX Budget 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 NOX Budget source’s or a NOX Budget unit’s compliance or noncompliance with this part and that is signed by the NOX 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 NOX authorized account representative and as determined by the Administrator in accordance with subpart H of this part.


Excess emissions means any tonnage of nitrogen oxides emitted by a NOX Budget unit during a control period that exceeds the NOX 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 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 NOX 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 NOX 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 CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NOₓ 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 O₂) or the minimum carbon dioxide concentration (in percent CO₂), 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 NOₓ emissions limitation means, with regard to a NOₓ Budget opt-in source, the lowest NOₓ 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 derating limits.
emissions limitation for the control period immediately preceding such deadline.

**NOX authorized account representative** means, for a NOX Budget source or NOX Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOX Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NOX Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NOX allowances held in the general account.

**NOX Budget emissions limitation** means, for a NOX Budget unit, the tonnage equivalent of the NOX 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 NOX 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 NOX Budget Program, or for a change in regulatory status, for a NOX Budget opt-in source under §96.86 or §96.87.

**NOX Budget opt-in permit** means a NOX Budget permit covering a NOX Budget opt-in source.

**NOX Budget opt-in source** means a unit that has been elected to become a NOX Budget unit under the NOX Budget Trading Program and whose NOX Budget opt-in permit has been issued and is in effect under subpart I of this part.

**NOX 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 NOX Budget Trading Program requirements applicable to a NOX Budget source, to each NOX Budget unit at the NOX Budget source, and to the owners and operators and the NOX authorized account representative of the NOX Budget source and each NOX Budget unit.

**NOX Budget source** means a source that includes one or more NOX Budget units.

**NOX 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.

**NOX Budget unit** means a unit that is subject to the NOX 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 NOX Budget permit under §96.83(a).

**Operator** means any person who operates, controls, or supervises a NOX Budget unit, a NOX Budget source, or unit for which an application for a NOX Budget opt-in permit under §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 NOX Budget unit under the NOX Budget Trading Program through a final, effective NOX Budget opt-in permit under subpart I of this part.

**Overdraft account** means the NOX Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NOX Budget source where there are two or more NOX Budget units.

**Owner** means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NOX Budget unit or in a unit for which an application for a NOX Budget opt-in permit under §96.83 is submitted and not denied or withdrawn; or
2. Any holder of a leasehold interest in a NOX Budget unit or in a unit for which an application for a NOX Budget opt-in permit under §96.83 is submitted and not denied or withdrawn; or
3. Any purchaser of power from a NOX Budget unit or from a unit for which an application for a NOX Budget opt-in permit under §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 NOX Budget unit or the unit for which an application for a NOX 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 NOX allowances held in the general account and who is subject to the binding agreement for the NOX authorized account representative to represent that person’s ownership interest with respect to NOX 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 NOX 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 NOX allowances, the movement of NOX allowances by the Administrator from one NOX Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

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 NOX allowances, the unique identification number assigned to each NOX 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 NOX 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 NOX tons apportioned to all NOX Budget units in a given State, in accordance with the NOX 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 NOX Budget emissions limitation,
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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 NOX 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.
CO2—carbon dioxide.
NOx—nitrogen oxides.

§ 96.4 Applicability.

(a) The following units in a State shall be NOx Budget units, and any source that includes one or more such units shall be a NOX Budget source, subject to the requirements of this 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 NOX 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 NOX 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 NOX mass emissions by the unit’s maximum potential hourly NOX mass emissions.

(iii) Require that the unit’s potential NOX mass emissions shall be calculated as follows:

(A) Select the default NOX 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
§ 96.5 Retired unit exemption.

(a) This section applies to any NOX Budget unit, other than a NOX Budget opt-in source, that is permanently retired.

(b)(1) Any NOX Budget unit, other than a NOX Budget opt-in source, that is permanently retired shall be exempt from the NOX 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 NOX 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 NOX 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

only fuel oil) that has the highest default NOX 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 NOX emission rate under paragraph (b)(1)(ii)(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 NOX 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.
§ 96.6 Standard requirements.

(a) Permit Requirements. (1) The NOX authorized account representative of each NOX Budget source required to have a federally enforceable permit and each NOX Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete NOX 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 NOX Budget permit application.

(2) The owners and operators and, to the extent applicable, the NOX authorized account representative of a unit exempt under this section shall comply with the requirements of the NOX Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(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 NOX authorized account representative of the source submits a complete NOX 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 NOX authorized account representative of the source submits a complete NOX 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 NOX authorized account representative of a unit exempt under this section shall comply with the requirements of the NOX Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements
§ 96.6 Permit application and issue or deny a NOX Budget permit. 

(2) The owners and operators of each NOX Budget source required to have a federally enforceable permit and each NOX Budget unit required to have a federally enforceable permit at the source shall have a NOX Budget permit issued by the permitting authority and operate the unit in compliance with such NOX Budget permit.

(3) The owners and operators of a NOX Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOX Budget permit application, and to have a NOX Budget permit, under subpart C of this part for such NOX Budget source.

(b) Monitoring requirements. (1) The owners and operators and, to the extent applicable, the NOX authorized account representative of each NOX Budget source and each NOX Budget unit at the source shall comply with the monitoring requirements of 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 NOX Budget emissions limitation under paragraph (c) of this section.

(c) Nitrogen oxides requirements. (1) The owners and operators of each NOX Budget source and each NOX Budget unit at the source shall hold NOX allowances available for compliance deductions under §96.54, as of the NOX allowance transfer deadline, in the unit’s compliance account and the source’s overdraft account in an amount not less than the total NOX emissions for the control period from the unit, as determined in accordance with 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 NOX Budget emissions limitation shall constitute a separate violation of this part, the CAA, and applicable State law.

(3) A NOX 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) NOX allowances shall be held in, deducted from, or transferred among NOX Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.

(5) A NOX 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 NOX allowance was allocated.

(6) A NOX allowance allocated by the permitting authority or the Administrator under the NOX Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NOX Budget Trading Program. No provision of the NOX Budget Trading Program, the NOX Budget permit application, the NOX Budget permit, or an exemption under §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 NOX allowance allocated by the permitting authority or the Administrator under the NOX 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 NOX allowance to or from a NOX Budget unit’s compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOX Budget permit of the NOX Budget unit by operation of law without any further review.

(d) Excess emissions requirements. (1) The owners and operators of a NOX Budget unit that has excess emissions in any control period shall:

(i) Surrender the NOX 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 NOX Budget source and each NOX 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
§ 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

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§ 96.10 Authorization and responsibilities of the NOx authorized account representative.

(a) Except as provided under §96.11, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.

(b) The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under §96.13, the NOx 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 NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, notwithstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

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

(e)(1) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative: “I am authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx 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 NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.11 Alternate NOx authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
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§ 96.12 Changing the NO\textsubscript{X} authorized account representative and the alternate NO\textsubscript{X} authorized account representative; changes in the owners and operators.

(a) Changing the NO\textsubscript{X} authorized account representative. The NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} authorized account representative and the owners and operators of the NO\textsubscript{X} Budget source and the NO\textsubscript{X} Budget units at the source.

(b) Changing the alternate NO\textsubscript{X} authorized account representative. The alternate NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} authorized account representative and the owners and operators of the NO\textsubscript{X} Budget source and the NO\textsubscript{X} Budget units at the source.

(c) Changes in the owners and operators. (1) In the event a new owner or operator of a NO\textsubscript{X} Budget source or a NO\textsubscript{X} 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\textsubscript{X} authorized account representative and any alternate NO\textsubscript{X} 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\textsubscript{X} Budget source or a NO\textsubscript{X} Budget unit, including the addition of a new owner or operator, the NO\textsubscript{X} authorized account representative or alternate NO\textsubscript{X} 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\textsubscript{X} authorized account representative or an alternate NO\textsubscript{X} authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NO\textsubscript{X} Budget source and each NO\textsubscript{X} 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\textsubscript{X} authorized account representative and any alternate NO\textsubscript{X} authorized account representative.

(3) A list of the owners and operators of the NO\textsubscript{X} Budget source and of each NO\textsubscript{X} Budget unit at the source.

(4) The following certification statement by the NO\textsubscript{X} authorized account representative and any alternate NO\textsubscript{X} authorized account representative: ‘‘I certify that I was selected as the NO\textsubscript{X} authorized account representative or
§ 96.14 Objections concerning the NOₓ 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 NOₓ authorized account representative shall affect any representation, action, inaction, or submission of the NOₓ authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NOₓ 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 NOₓ authorized account representative, including private legal disputes concerning the proceeds of NOₓ allowance transfers.

Subpart C—Permits

§ 96.20 General NOₓ Budget trading program permit requirements.

(a) For each NOₓ Budget source required to have a federally enforceable permit, such permit shall include a NOₓ Budget permit administered by the permitting authority.

(1) For NOₓ Budget sources required to have a title V operating permit, the NOₓ 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 NOₓ Budget sources required to have a non-title V permit, the NOₓ 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.
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(b) Each NOX Budget permit (including a draft or proposed NOX Budget permit, if applicable) shall contain all applicable NOX 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 NOX Budget permit applications.

(a) Duty to apply. The NOX authorized account representative of any NOX Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NOX Budget permit application under §96.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For NOX Budget sources required to have a title V operating permit:

(i) For any source, with one or more NOX Budget units under §96.4 that commence operation before January 1, 2000, the NOX authorized account representative shall submit a complete NOX Budget permit application under §96.22 covering such NOX 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 NOX Budget unit under §96.4 that commences operation on or after January 1, 2000, the NOX authorized account representative shall submit a complete NOX Budget permit application under §96.22 for the NOX Budget unit commences operation.

(c) Duty to reapply. (1) For a NOX Budget source required to have a title V operating permit, the NOX authorized account representative shall submit a complete NOX Budget permit application under §96.22 for the NOX Budget source covering the NOX Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing operating permit renewal.

(2) For a NOX Budget source required to have a non-title V permit, the NOX authorized account representative shall submit a complete NOX Budget permit application under §96.22 covering such NOX 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.

§ 96.22 Information requirements for NOX Budget permit applications.

A complete NOX Budget permit application shall include the following elements concerning the NOX Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NOX 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 NOX Budget unit at the NOX Budget source and
§ 96.23 NO\textsubscript{X} Budget permit contents.

(a) Each NO\textsubscript{X} Budget permit (including any draft or proposed NO\textsubscript{X} Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NO\textsubscript{X} Budget permit application under §96.22 as approved or adjusted by the permitting authority.

(b) Each NO\textsubscript{X} 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\textsubscript{X} allowance to or from the compliance accounts of the NO\textsubscript{X} Budget units covered by the permit or the overdraft account of the NO\textsubscript{X} Budget source covered by the permit.

§ 96.24 Effective date of initial NO\textsubscript{X} Budget permit.

The initial NO\textsubscript{X} Budget permit covering a NO\textsubscript{X} Budget unit for which a complete NO\textsubscript{X} Budget permit application is timely submitted under §96.23(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NO\textsubscript{X} Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NO\textsubscript{X} 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\textsubscript{X} Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

§ 96.25 NO\textsubscript{X} Budget permit revisions.

(a) For a NO\textsubscript{X} Budget source with a title V operating permit, except as provided in §96.23(b), the permitting authority will revise the NO\textsubscript{X} Budget permit, as necessary, in accordance with the permitting authority’s title V operating permits regulations addressing permit revisions.

(b) For a NO\textsubscript{X} Budget source with a non-title V permit, except as provided in §96.23(b), the permitting authority will revise the NO\textsubscript{X} 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\textsubscript{X} Budget units at a source are subject to the NO\textsubscript{X} Budget emissions limitation, the NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} Budget emissions limitation for the control period covered by the report:

(1) Identification of each NO\textsubscript{X} Budget unit;

(2) At the NO\textsubscript{X} authorized account representative’s option, the serial numbers of the NO\textsubscript{X} allowances that are to be deducted from each unit’s compliance account under §96.54 for the control period;

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(3) At the NO\textsubscript{X} authorized account representative’s option, for units sharing a common stack and having NO\textsubscript{X} 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\textsubscript{X} authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO\textsubscript{X} Budget units at the source in compliance with the NO\textsubscript{X} Budget Trading Program, whether each NO\textsubscript{X} 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\textsubscript{X} Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NO\textsubscript{X} 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\textsubscript{X} emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO\textsubscript{X} 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\textsubscript{X} Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NO\textsubscript{X} allowances from or transfer NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} emissions apportioned to the NO\textsubscript{X} 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\textsubscript{X} allowance allocations.

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO\textsubscript{X} allowance allocations, in accordance with §96.42, for the control periods in 2003, 2004, and 2005.
§ 96.42 NOX allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NOX allowance allocations for each NOX Budget unit under §96.4 will be:

(i) For a NOX allowance allocation under §96.4(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 NOX allowance allocation under §96.4(b), the unit’s heat input for the control period in the year that is four years before the year for which the NOX 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 NOX 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 NOX 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 NOX allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOX 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 NOX allowances to each NOX 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 NOX allowance as appropriate.

(2) If the initial total number of NOX allowances allocated to all NOX 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 NOX emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOX allowances allocated to all such NOX Budget units for the control period under paragraph (b)(1) of this section so that the total number of NOX allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOX 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 NOX emissions in the State trading program budget apportioned to electric generating units.

(c) For each control period under §96.41, the permitting authority will allocate to all NOX 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 NOX allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOX
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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\textsubscript{X} allowances to each NO\textsubscript{X} Budget unit under §96.4(a)(2) in an amount equaling 0.17 lb/mm\textsuperscript{Btu} multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO\textsubscript{X} allowance as appropriate.

(2) If the initial total number of NO\textsubscript{X} allowances allocated to all NO\textsubscript{X} 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\textsubscript{X} emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NO\textsubscript{X} allowances allocated to all such NO\textsubscript{X} Budget units for the control period under paragraph (c)(1) of this section so that the total number of NO\textsubscript{X} allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO\textsubscript{X} 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\textsubscript{X} emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NO\textsubscript{X} allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NO\textsubscript{X} allowance as appropriate.

(d) For each control period under §96.41, the permitting authority will allocate NO\textsubscript{X} allowances to NO\textsubscript{X} 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\textsubscript{X} allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NO\textsubscript{X} emissions in the State trading program budget under §96.40, rounded to the nearest whole NO\textsubscript{X} allowance as appropriate.

(2) The NO\textsubscript{X} authorized account representative of a NO\textsubscript{X} 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\textsubscript{X} allowances for no more than five consecutive control periods under §96.41, starting with the control period during which the NO\textsubscript{X} 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\textsubscript{X} allowance allocation request must be submitted prior to May 1 of the first control period for which the NO\textsubscript{X} allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NO\textsubscript{X} Budget unit.

(3) In a NO\textsubscript{X} allowance allocation request under paragraph (d)(2) of this section, the NO\textsubscript{X} authorized account representative for units under §96.4(a)(1) may request for a control period NO\textsubscript{X} allowances in an amount that does not exceed 0.15 lb/mm\textsuperscript{Btu} multiplied by the NO\textsubscript{X} Budget unit’s maximum design heat input (in mm\textsuperscript{Btu/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\textsubscript{X} allowance allocation request under paragraph (d)(2) of this section, the NO\textsubscript{X} authorized account representative for units under §96.4(a)(2) may request for a control period NO\textsubscript{X} allowances in an amount that does not exceed 0.17 lb/mm\textsuperscript{Btu} multiplied by the NO\textsubscript{X} Budget unit’s maximum design heat input (in mm\textsuperscript{Btu/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\textsubscript{X} allowances pursuant to, each NO\textsubscript{X} allowance allocation request under paragraph (d)(2) of
(d)(5)(i) of this section) to the NO

authority will deny, and will not allocate

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 con-
trol period and the number of allow-
ances requested have a smaller

amount of the NO

mitting authority will allocate the

amount of NO

allowances remaining in alloca-

tion set-aside to the NO

Budget unit.

(i) Upon receipt of the NO

allowance allocation request, the permitting au-

thority 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.

(ii) If the allocation set-aside for the control period for which NO

allowances are requested has an amount of NO

allowances not less than the number requested (as adjusted under para-

graph (d)(5)(i) of this section), the per-

mitting authority will allocate the amount of the NO

allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO

Budget unit.

(iii) If the allocation set-aside for the control period for which NO

allowances are requested has a smaller amount of NO

allowances than the number requested (as adjusted under para-

graph (d)(5)(i) of this section), the per-

mitting authority will deny in part the request and allocate only the re-

maining number of NO

allowances in the allocation set-aside to the NO

Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all

NO

allowances, the permitting au-

thority will deny, and will not allocate any NO

allowances pursuant to, any

NO

allowance allocation request under which NO

allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NO

allowance allocation request, the per-

mitting authority will take appro-

priate action under paragraph (d)(5) of

this section and notify the NO

authorized account representative that sub-

mitted the request and the Admin-

istrator of the number of NO

allowances (if any) allocated for the control period to the NO

Budget unit.

(e) For a NO

Budget unit that is allo-

cated NO

allowances under para-

graph (d) of this section for a control period, the Administrator will deduct

NO

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 num-

ber of NO

allowances to be deducted to account for the unit’s actual utiliza-

tion using the following formulas and rounding to the nearest whole NO

allowance as appropriate, provided that the number of NO

allowances to be de-

ducted shall be zero if the number cal-

culated is less than zero:

\[
\text{NO} \text{X} \text{ allowances deducted for actual utilization for units under } \S 96.4(a)(1) = (\text{Unit’s } \text{NO} \text{X} \text{ allowances allocated for control period}) - (\text{Unit’s actual control period utilization} \times 0.15 \text{ lb/mmBtu}); \text{ and}
\]

\[
\text{NO} \text{X} \text{ allowances deducted for actual utilization for units under } \S 96.4(a)(2) = (\text{Unit’s } \text{NO} \text{X} \text{ allowances allocated for control period}) - (\text{Unit’s actual control period utilization} \times 0.17 \text{ lb/mmBtu})
\]

Where:

“Unit’s NO

allowances allocated for control period” is the number of NO

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

allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NO

allowances to the NO

Budget units in the State using the following formula and rounding to the nearest whole NO

allowance as appropriate:

\[
\text{Unit’s share of NO} \text{X} \text{ allowances remaining in allocation set-aside} = \frac{\text{Total NO} \text{X} \text{ allowances remaining in allocation set-aside} \times (\text{Unit’s NO} \text{X} \text{ allowance allocation set-aside})}{\text{State trading program budget excluding allocation set-aside}}
\]

Where:
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“Total NOx allowances remaining in allocation set-aside” is the total number of NOx allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies:

“Unit’s NOx allowance allocation” is the number of NOx 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 NOx allowance as appropriate.


Subpart F—NOx Allowance Tracking System

§96.50 NOx 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 NOx Budget unit and one overdraft account for each source with one or more NOx Budget units. Allocations of NOx allowances pursuant to subpart E of this part or §96.88 and deductions or transfers of NOx 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 NOx 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 NOx 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 NOx authorized account representative and any alternate NOx authorized account representative;

(ii) At the option of the NOx authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NOx authorized account representative or any alternate NOx authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(iv) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: ‘‘I certify that I was selected as the NOx authorized account representative or the NOx alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.’’

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

(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 NOX authorized account representative and any alternate NOX authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOX allowances held in the general account in all matters pertaining to the NOX Budget Trading Program, not withstanding any agreement between the NOX authorized account representative or any alternate NOX authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOX authorized account representative or any alternate NOX authorized account representative by the Administrator or a court regarding the general account.
   (iii) Each submission concerning the general account shall be submitted, signed, and certified by the NOX authorized account representative or any alternate NOX authorized account representative for the persons having an ownership interest with respect to NOX allowances held in the general account. Each such submission shall include the following certification statement by the NOX authorized account representative or any alternate NOX authorized account representative any: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOX allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”
   (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 NOX authorized account representative and one and only one alternate NOX authorized account representative who may act on behalf of the NOX authorized account representative. The agreement by which the alternate NOX authorized account representative is selected shall include a procedure for authorizing the alternate NOX authorized account representative to act in lieu of the NOX authorized account representative.
   (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 NOX authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOX authorized account representative.
   (iii) The NOX authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOX authorized account representative shall be deemed to be a representation, action, inaction, or submission by the new NOX authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
(ii) The alternate NOX authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOX authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOX authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

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

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

(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 NOX authorized account representative or any alternate NOX authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOX authorized account representative or any alternate NOX authorized account representative or the finality of any decision or order by the Administrator under the NOX Budget Trading Program.

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

(c) Account identification. The Administrator will assign a unique identifying number to each NOX authorized account representative.

§ 96.52 NOX Allowance Tracking System responsibilities of NOX authorized account representative.

(a) Following the establishment of a NOX Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NOX allowances in the account, shall be made only by the NOX authorized account representative for the account.

(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NOX authorized account representative.

§ 96.53 Recordation of NOX allowance allocations.

(a) The Administrator will record the NOX allowances for 2003 in the NOX Budget units' compliance accounts and the allocation set-asides, as allocated
§ 96.54 Compliance.

(a) NO\textsubscript{X} allowance transfer deadline. The NO\textsubscript{X} allowances are available to be deducted for compliance with a unit’s NO\textsubscript{X} Budget emissions limitation for a control period in a given year only if the NO\textsubscript{X} 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 by the NO\textsubscript{X} allowance transfer deadline for a control period, the Administrator will deduct NO\textsubscript{X} allowances available under paragraph (a) of this section to cover the unit’s NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} Allowance Tracking System account number and end with the unit having the compliance account with the highest NO\textsubscript{X} Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NO\textsubscript{X} 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\textsubscript{X} allowances deducted for the control period equals the number of tons of NO\textsubscript{X} 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\textsubscript{X} allowances required for deduction to account for actual utilization under §96.42(e) for the control period; or

(ii) Until no more NO\textsubscript{X} allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) Identification of NO\textsubscript{X} allowances by serial number. The NO\textsubscript{X} authorized account representative for each compliance account may identify by serial number the NO\textsubscript{X} 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.
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§ 96.55 Banking.

(a) NOX allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

§ 96.55 Banking.

(2) First-in, first-out. The Administrator will deduct NOX allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOX allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NOX allowances that were allocated for the control period to the unit under subpart E or I of this part;

(ii) Those NOX 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 NOX allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and

(iv) Those NOX allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to 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 NOX allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit’s excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NOX allowances, the Administrator will deduct the required number of NOX allowances, regardless of the control period for which they were allocated, whenever NOX 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 NOX Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the 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 NOX 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 NOX authorized account representative of the units may identify the percentage of NOX allowances to be deducted from each such unit’s compliance account to cover the unit’s share of NOX emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with §96.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NOX allowances for each such unit until the number of NOX allowances deducted equals the unit’s identified percentage (under paragraph (e)(1) of this section) of the number of tons of NOX 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.
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(1) Any NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} allowance, any NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO\textsubscript{X} 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\textsubscript{X} Budget units are located, any banked NO\textsubscript{X} allowance may be deducted for compliance in accordance with §96.54.

(3) If the total number of banked NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} Budget units are located and divided by the total number of banked NO\textsubscript{X} 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\textsubscript{X} allowances in each compliance account or overdraft account. The resulting product is the number of banked NO\textsubscript{X} allowances in the account that may be deducted for compliance in accordance with §96.54. Any banked NO\textsubscript{X} allowances in excess of the resulting product may be deducted for compliance in accordance with §96.54, except that, if such NO\textsubscript{X} allowances are used to make a deduction, two such NO\textsubscript{X} allowances must be deducted for each deduction of one NO\textsubscript{X} allowance required under §96.54.

(c) Any NO\textsubscript{X} Budget unit may reduce its NO\textsubscript{X} 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\textsubscript{X} allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NO\textsubscript{X} Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NO\textsubscript{X} emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 90 percent of the unit’s NO\textsubscript{X} emission rate in the 2000 control period.
(4) The NO\textsubscript{X} authorized account representative of a NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} 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/mm\textit{Btu} and the unit’s NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} allowances, to NO\textsubscript{X} 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 requirements of paragraphs (c)(2) and (4) of this section.

(ii) If the State’s compliance supplement pool has a smaller amount of NO\textsubscript{X} allowances than the number of early reduction credits for all units for 2001 and 2002 as adjusted under paragraph (c)(5)(i) of this section, the permitting authority will allocate NO\textsubscript{X} allowances to each NO\textsubscript{X} Budget unit covered by such accepted requests according to the following formula:

\[
\text{Unit’s allocated early reduction credits} = \left(\frac{\text{Unit’s adjusted early reduction credits}}{\text{Total adjusted early reduction credits requested by all units}}\right) \times \text{Available NO\textsubscript{X} allowances from the State’s compliance supplement pool}
\]

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\textsubscript{X} allowances from the State’s compliance supplement pool” is the number of NO\textsubscript{X} 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\textsubscript{X} 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)(3) through (5) of this section.

(7) NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004.
§ 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 NOX Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NOX authorized account representative for the account.

§ 96.57 Closing of general accounts.

(a) The NOX authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NOX Allowance Tracking System and by correctly submitting for recordation under §96.60 an allowance transfer of all NOX allowances in the account to one or more other NOX 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 NOX allowances, the Administrator may notify the NOX authorized account representative for the account that the account will be closed and deleted from the NOX 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 NOX allowances into the account under §96.60 or a statement submitted by the NOX authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G—NOX Allowance Transfers

§ 96.60 Submission of NOX allowance transfers.

The NOX authorized account representatives seeking recordation of a NOX allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOX 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 NOX allowance to be transferred; and

(c) The printed name and signature of the NOX authorized account representative of the transferor account and the date signed.

§ 96.61 EPA recordation.

(a) Within 5 business days of receiving a NOX allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NOX allowance transfer by moving each NOX 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 NOX allowance identified by serial number in the transfer; and

3. The transfer meets all other requirements of this part.

(b) A NOX allowance transfer that is submitted for recordation following the NOX allowance transfer deadline and that includes any NOX allowances allocated for a control period prior to or the same as the control period to which the NOX allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NOX allowance allocations in §96.53(b).

(c) Where a NOX 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 NOX allowance transfer under §96.61, the Administrator will notify each party to the transfer. Notice will be given to the NOX authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a NOX allowance transfer that fails to meet the requirements of §96.61(a), the Administrator will notify the NOX authorized account representatives of
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§ 96.70 General requirements.

The owners and operators, and to the extent applicable, the \( \text{NO}_x \) authorized account representative of a \( \text{NO}_x \) 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 “\( \text{NO}_x \) Budget unit,” “\( \text{NO}_x \) 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 \( \text{NO}_x \) Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a \( \text{NO}_x \) 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 \( \text{NO}_x \) mass. This includes all systems required to monitor \( \text{NO}_x \) emission rate, \( \text{NO}_x \) 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 \( \text{NO}_x \) 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) \( \text{NO}_x \) 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, 2002.

(2) Except for \( \text{NO}_x \) Budget units under paragraph (b)(1) of this section, \( \text{NO}_x \) 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) \( \text{NO}_x \) 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) \( \text{NO}_x \) 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 \( \text{NO}_x \) 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;
§ 96.71 Initial certification and recertification procedures

(a) The owner or operator of a NOx 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 NOx 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 NOx authorized account representative shall resubmit
the petition to the Administrator under §96.75(a) to determine if the approval applies under the NOx Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in §75.72 of this chapter, or for any NOx 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 NOx 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 76 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NOx 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 NOx 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 NOx 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 NOx 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 NOx 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 NOx 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\textsubscript{X} 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 and is included in the certification application, 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 provisionally certified 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\textsubscript{X} 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\textsubscript{X} emission rate and the maximum potential hourly heat input of the unit.
(2) For units intending to monitor for NO\textsubscript{x} mass emissions using a NO\textsubscript{x} pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO\textsubscript{x} 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\textsubscript{x} 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\textsubscript{x} Budget Trading Program. The NO\textsubscript{x} 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

(i) For a unit that commenced operation after its compliance deadline under §96.71(b), where the certification application is submitted after 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 commenced operation after its compliance deadline under §96.71(b), where the unit commenced 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\textsubscript{x} 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\textsubscript{x} Trading Program. The NO\textsubscript{x} authorized account representative shall
§ 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 NOX authorized account representative for a NOX 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 NOX 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 NOX authorized account representative for a NOX 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 NOX 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 NOx 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 NOx budget unit chooses to meet the annual reporting requirements of this subpart H, the NOx 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 reported from the earlier of the date and hour corresponding to when the unit commenced operation; 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 NOx budget unit is not subject to an Acid Rain emission limitation, then the NOx authorized account representative shall:

(i) Meet all of the requirements of part 75 related to monitoring and reporting NOx 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 NOx 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
§ 96.75 Petitions.

(a) The NO\textsubscript{x} authorized account representative of a NO\textsubscript{x} 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\textsubscript{x} authorized account representative of a NO\textsubscript{x} 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\textsubscript{x} authorized account representative of a NO\textsubscript{x} 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\textsubscript{x} 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
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§ 96.84 Opt-in process.

The permitting authority will issue or deny a NOx Budget opt-in permit for a unit for which an initial application for a NOx 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 NOx 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 NOx 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 NOx emissions

Subpart I—Individual Unit Opt-ins

§ 96.80 Applicability.

A unit that is in the State, is not a NOx Budget unit under §96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NOx Budget opt-in source. A unit that is a NOx 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 NOx Budget opt-in source.

§ 96.81 General.

Except otherwise as provided in this part, a NOx Budget opt-in source shall be treated as a NOx Budget unit for purposes of applying subparts A through H of this part.

§ 96.82 NOx authorized account representative.

A unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, or a NOx Budget opt-in source, located at the same source as one or more NOx Budget units, shall have the same NOx authorized account representative as such NOx Budget units.

§ 96.83 Applying for NOx Budget opt-in permit.

(a) Applying for initial NOx Budget opt-in permit. In order to apply for an initial NOx Budget opt-in permit, the NOx 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 NOx 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 NOx authorized account representative has been previously designated for the unit.

(b) Duty to reapply. The NOx authorized account representative of a NOx Budget opt-in source shall submit a complete NOx Budget permit application under §96.22 to renew the NOx 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 NOx Budget opt-in permit for a unit for which an initial application for a NOx 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 NOx 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 NOx 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 NOx emissions

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 NOx Mass emissions using a NOx 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 NOx Mass emissions using a NOx 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.
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\textsubscript{X} Budget unit’’ prior to issuance of a NO\textsubscript{X} 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\textsubscript{X} emissions rate shall be calculated as the unit’s total NO\textsubscript{X} 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\textsubscript{X} emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NO\textsubscript{X} Budget opt-in permit on the NO\textsubscript{X} authorized account representative of the unit.

(e) Confirmation of intention to opt-in. Each NO\textsubscript{X} Budget opt-in permit, the NO\textsubscript{X} 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\textsubscript{X} Budget opt-in permit. The permit application will cost the failure to make a timely submission as a withdrawal of the NO\textsubscript{X} Budget opt-in permit application.

(f) Issuance of draft NO\textsubscript{X} Budget opt-in permit. If the NO\textsubscript{X} 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\textsubscript{X} 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\textsubscript{X} Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO\textsubscript{X} Budget opt-in source under §96.60, the permitting authority will issue a draft denial of a NO\textsubscript{X} Budget opt-in permit for the unit in accordance with §96.20.

(h) Withdrawal of application for NO\textsubscript{X} Budget opt-in permit. A NO\textsubscript{X} authorized account representative of a unit may withdraw its application for a NO\textsubscript{X} Budget opt-in permit under §96.83 at any time prior to the issuance of the final NO\textsubscript{X} Budget opt-in permit. Once the application for a NO\textsubscript{X} Budget opt-in permit is withdrawn, a NO\textsubscript{X} authorized account representative wanting to reapply must submit a new application for a NO\textsubscript{X} Budget permit under §96.83.

(i) Effective date. The effective date of the initial NO\textsubscript{X} Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO\textsubscript{X} Budget opt-in permit by the permitting authority. The unit shall be a NO\textsubscript{X} Budget opt-in source and a NO\textsubscript{X} Budget unit as of the effective date of the initial NO\textsubscript{X} Budget opt-in permit.

§96.85 NO\textsubscript{X} Budget opt-in permit contents.

(a) Each NO\textsubscript{X} Budget opt-in permit (including any draft or proposed NO\textsubscript{X} Budget opt-in permit, if applicable) will contain all elements required for a complete NO\textsubscript{X} Budget opt-in permit application under §96.22 as approved or adjusted by the permitting authority.

(b) Each NO\textsubscript{X} 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\textsubscript{X} allowances to or from the compliance accounts of each NO\textsubscript{X} Budget opt-in source covered by the NO\textsubscript{X} Budget opt-in permit or the overdraft account of the NO\textsubscript{X} Budget source where the NO\textsubscript{X} Budget opt-in source is located.

§96.86 Withdrawal from NO\textsubscript{X} Budget Trading Program.

(a) Requesting withdrawal. To withdraw from the NO\textsubscript{X} Budget Trading Program, the NO\textsubscript{X} authorized account representative of a NO\textsubscript{X} 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 before the effective date.
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(b) Conditions for withdrawal. Before a NOx Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NOx Budget Trading Program and the NOx 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 NOx 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 NOx 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 NOx Budget opt-in source’s compliance account, or the overdraft account of the NOx Budget source where the NOx 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 NOx Budget opt-in source’s compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx 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 NOx 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 NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

(c) A NOx Budget opt-in source that withdraws from the NOx Budget Trading Program shall comply with all requirements under the NOx Budget Trading Program concerning all years for which such NOx Budget opt-in source was a NOx 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 NOx allowances required), the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source of the acceptance of the withdrawal of the NOx 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 NOx authorized account representative of the NOx Budget opt-in source that the NOx Budget opt-in source’s request to withdraw is denied. If the NOx Budget opt-in source’s request to withdraw is denied, the NOx Budget opt-in source shall remain subject to the requirements for a NOx 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 NOx Budget permit covering the NOx Budget opt-in source to terminate the NOx Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NOx Budget opt-in source shall continue to be a NOx 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 NOx Budget opt-in source’s request to withdraw, the NOx 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 NOx Budget Trading Program. Once a NOx Budget opt-in source withdraws from the NOx Budget Trading Program and its NOx Budget opt-in permit is terminated under this section, the NOx authority account representative may not submit...
§ 96.87 Change in regulatory status.

(a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under §96.4, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx 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 NOx Budget opt-in source becomes a NOx Budget unit under §96.4, the permitting authority will revise the NOx Budget opt-in source’s NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under §96.23 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under §96.4.

(1)(ii) The Administrator will deduct from the compliance account for the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, NOx allowances equal in number to and allocated for the same or a prior control period as:

(1) Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under §96.88 for any control period after the last control period during which the unit’s NOx Budget opt-in permit was effective; and

(2) If the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx 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 NOx authorized account representative shall ensure that the compliance account of the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, includes the NOx 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 NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(B)(ii)(A) For every control period during which the NOx Budget permit revision under paragraph (b)(1)(i) of this section is effective, the NOx Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NOx allowance allocations under §96.42, as a unit that commenced operation on the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NOx allowances under §96.42.

(B)(ii)(B) Notwithstanding paragraph (b)(1)(ii)(A) of this section, if the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1)(i) of this section under §96.42 for the control period: the number of NOx allowances otherwise allocated to the NOx 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.

(B)(ii)(C) When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under §96.83(b), the Administrator will deduct from the NOx Budget opt-in source’s compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt-in source under §96.88 for any control period after the last control period for which the NOx
Budget opt-in permit is effective. The NO\textsubscript{X} authorized account representative shall ensure that the NO\textsubscript{X} Budget opt-in source’s compliance account or the overdraft account of the NO\textsubscript{X} Budget source where the NO\textsubscript{X} Budget opt-in source is located includes the NO\textsubscript{X} allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO\textsubscript{X} allowances, the Administrator will deduct the required number of NO\textsubscript{X} allowances, regardless of the control period for which they were allocated, whenever NO\textsubscript{X} 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\textsubscript{X} Budget opt-in source’s compliance account. If any NO\textsubscript{X} allowances remain in the compliance account after completion of such deduction and any deduction under §96.54, the Administrator will close the NO\textsubscript{X} Budget opt-in source’s compliance account. If any NO\textsubscript{X} allowances remain in the compliance account after completion of such deduction and any deduction under §96.54, the Administrator will transfer any remaining allowances to a new general account for the owners and operators of the NO\textsubscript{X} Budget opt-in source. The NO\textsubscript{X} authorized account representative for the NO\textsubscript{X} Budget opt-in source shall become the NO\textsubscript{X} authorized account representative for the general account.

§96.88 NO\textsubscript{X} allowance allocations to opt-in units.

(a) NO\textsubscript{X} allowance allocation. (1) By December 31 immediately before the first control period for which the NO\textsubscript{X} Budget opt-in permit is effective, the permitting authority will allocate NO\textsubscript{X} allowances to the NO\textsubscript{X} 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\textsubscript{X} Budget opt-in permit is effective, and December 31 of each year thereafter, the permitting authority will allocate NO\textsubscript{X} allowances to the NO\textsubscript{X} 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\textsubscript{X} Budget opt-in source has an approved NO\textsubscript{X} Budget opt-in permit, the NO\textsubscript{X} Budget opt-in source will be allocated NO\textsubscript{X} allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO\textsubscript{X} allowance allocations will be the lesser of:

(i) The NO\textsubscript{X} Budget opt-in source’s baseline heat input determined pursuant to §96.84(c); or

(ii) The NO\textsubscript{X} 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\textsubscript{X} allocations are being calculated.

(2) The permitting authority will allocate NO\textsubscript{X} allowances to the NO\textsubscript{X} 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\textsubscript{X} Budget opt-in source’s baseline NO\textsubscript{X} emissions rate (in lb/mmBtu) determined pursuant to §96.84(c); or

(ii) The most stringent State or Federal NO\textsubscript{X} emissions limitation applicable to the NO\textsubscript{X} Budget opt-in source during the control period.

Subpart J—Mobile and Area Sources [Reserved]

PART 97—FEDERAL NO\textsubscript{X} BUDGET TRADING PROGRAM

Subpart A—NO\textsubscript{X} Budget Trading Program

General Provisions

Sec. 97.1 Purpose.
97.2 Definitions.
97.3 Measurements, abbreviations, and acronyms.
97.4 Applicability.
97.5 Retired unit exemption.
97.6 Standard requirements.
97.7 Computation of time.

Subpart B—NO\textsubscript{X} Authorized Account Representative for NO\textsubscript{X} Budget Sources

97.10 Authorization and responsibilities of NO\textsubscript{X} authorized account representative.
97.11 Alternate NO\textsubscript{X} authorized account representative.
97.12 Changing NO\textsubscript{X} authorized account representative and alternate NO\textsubscript{X} authorized