

Environmental Protection Agency

§ 97.42

§ 97.31 Administrator's action on compliance certifications.

(a) The Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NO_x allowances from or transfer NO_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_x Allowance Allocations

§ 97.40 Trading program budget.

In accordance with §§ 97.41 and 97.42, the Administrator will allocate to the NO_x Budget units under § 97.4(a) in a State, for each control period specified in § 97.41, a total number of NO_x allowances equal to the trading budget for the State, as set forth in appendix C of this part, less the sum of the NO_x emission limitations (in tons) for each unit exempt under § 97.4(b) that is not allocated any NO_x allowances under § 97.42 (b) or (c) for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under § 97.42(d)(5)(ii)(B) for the control period.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21646, Apr. 21, 2004]

§ 97.41 Timing requirements for NO_x allowance allocations.

(a) The NO_x allowance allocations, determined in accordance with §§ 97.42(a) through (c), for the control periods in 2004 through 2007 are set forth in appendices A and B of this part.

(b) By April 1, 2005, the Administrator will determine by order the NO_x allowance allocations, in accordance with §§ 97.42 (a) through (c), for the control periods in 2008 through 2012.

(c) By April 1, 2010, by April 1 of 2015, and thereafter by April 1 of the year that is 5 years after the last year for

which NO_x allowances allocations are determined, the Administrator will determine by order the NO_x allowance allocations, in accordance with §§ 97.42(a) through (c), for the control periods in the years that are 3, 4, 5, 6, and 7 years after the applicable deadline under this paragraph (c).

(d) By April 1, 2004 and April 1 of each year thereafter, the Administrator will determine by order the NO_x allowance allocations, in accordance with § 97.42(d), for the control period in the year of the applicable deadline under this paragraph (d).

(e) The Administrator will make available to the public each determination of NO_x allowance allocations under paragraph (b), (c), or (d) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.42. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.42.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

§ 97.42 NO_x allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under § 97.4(a) will be:

(i) For a NO_x allowance allocation under § 97.41(a):

(A) For a unit under § 97.4(a)(1), the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998; or

(B) For a unit under § 97.4(a)(2), the control period in 1995 or, if the Administrator determines that reasonably reliable data are available for control periods in 1996 through 1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998.

(ii) For a NO_x allowance allocation under § 97.41(b), the unit's average heat input for the control periods in 2002 through 2004.

(iii) For a NO_x allowance allocation under § 97.41(c), the unit's average heat input for the control period in the

§97.42

40 CFR Ch. I (7-1-10 Edition)

years that are 4, 5, 6, 7, and 8 years before the first year for which the allocation is being calculated.

(2) The unit's 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. Notwithstanding the first sentence of this paragraph (a)(2):

(i) For a NO_x allowance allocation under §97.41(a), such heat input will be determined using 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 control period.

(ii) For a NO_x allowance allocation under §97.41(b) or (c) for a unit exempt under §97.4(b), such heat input shall be treated as zero if the unit is exempt under §97.4(b) during the control period.

(b) For each group of control periods specified in §97.41(a) through (c), the Administrator will allocate to all NO_x Budget units in a given State under §97.4(a)(1) that commenced operation before May 1, 1997 for allocations under §97.41(a), May 1, 2003 for allocations under §97.41(b), and May 1 of the year 5 years before the first year for which the allocation under §97.41(c) is being calculated, a total number of NO_x allowances equal to 95 percent of the portion of the State's trading program budget under §97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO_x allowances to each NO_x Budget unit under §97.4(a)(1) for each control period in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under §97.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under §97.40 covering such units, the Administrator will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period

under paragraph (b)(1) of this section so that the total number of NO_x allowances allocated equals 95 percent of such portion of the State's trading program budget. This adjustment will be made by: multiplying each unit's allocation by 95 percent of such portion of the State's trading program budget; dividing by the total number of NO_x allowances allocated under paragraph (b)(1) of this section for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(c) For each group of control periods specified in §97.41(a) through (c), the Administrator will allocate to all NO_x Budget units in a given State under §97.4(a)(2) that commenced operation before May 1, 1997 for allocations under §97.41(a), May 1, 2003 for allocations under §97.41(b), and May 1 of the year 5 years before the first year for which the allocation under §97.41(c) is being calculated, a total number of NO_x allowances equal to 95 percent of the portion of the State's trading program budget under §97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO_x allowances to each NO_x Budget unit under §97.4(a)(2) for each control period in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under §97.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under §97.40 covering such units, the Administrator will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (a)(1) of this section so that the total number of NO_x allowances allocated equals 95 percent of the portion of the State's trading program budget under §97.40 covering such units. This adjustment will be made by: multiplying each unit's allocation by 95 percent of the portion of the

Environmental Protection Agency**§ 97.42**

State's trading program budget under § 97.40 covering such units; dividing by the total number of NO_x allowances allocated under paragraph (c)(1) of this section for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(d) For each control period specified in § 97.41(d), the Administrator will allocate NO_x allowances to NO_x Budget units in a given State under § 97.4(a) (except for units exempt under § 97.4(b)) that commence operation, or are projected to commence operation, on or after: May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)). The Administrator will make the allocations under this paragraph (d) in accordance with the following procedures:

(1) The Administrator will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO_x allowances equal to 5 percent of the tons of NO_x emission in the State's trading program budget under § 97.40, rounded to the nearest whole number of NO_x allowances as appropriate.

(2) The NO_x authorized account representative of a NO_x Budget unit specified in this paragraph (d) may submit to the Administrator a request, in a format specified by the Administrator, to be allocated NO_x allowances for the control period. The NO_x allowance allocation request must be received by the Administrator on or after the date on which the State permitting authority issues a permit to construct the unit and by January 1 before the control period for which NO_x allowances are requested.

(3) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for a NO_x Budget unit under § 97.4(a)(1) may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

(i) 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in

the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(4) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for a NO_x Budget unit under § 97.4(a)(2) may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

(i) 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(5) The Administrator will review each NO_x allowance allocation request submitted in accordance with paragraph (d)(2) of this section and will allocate NO_x allowances pursuant to such request as follows:

(i) Upon receipt of the NO_x allowance allocation request, the Administrator will make any necessary adjustments

§97.42

40 CFR Ch. I (7-1-10 Edition)

to the request to ensure that the requirements of paragraphs (d) introductory text, (d)(2), (d)(3), and (d)(4) are met.

(ii) The Administrator will determine the following amounts:

(A) The sum of the NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) in all NO_x allowance allocation requests under paragraph (d)(2) of this section for the control period; and

(B) For units exempt under §97.4(b) in the State that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for control periods under §97.41(a)); May 1, 2003, (for control periods under §97.41(b)); and May 1 of the year 5 years before beginning of the group of 5 years that includes the control period (for control periods under §97.41(c)), the sum of the NO_x emission limitations (in tons of NO_x) on which each unit's exemption under §97.4(b) is based.

(iii) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is not less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate the amount of the NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO_x Budget unit for which the allocation request was submitted.

(iv) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate, to the NO_x Budget unit for which the allocation request was submitted, the amount of NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) multiplied by the number of NO_x allowances in the allocation set-aside for the control period less the amount determined under paragraph (d)(5)(ii)(B) of this section, divided by the amount determined under paragraph (d)(5)(ii)(A) of this section, and rounded to the nearest whole number of NO_x allowances as appropriate.

(e)(1) For a NO_x Budget unit that is allocated NO_x allowances under para-

graph (d) of this section for a control period, the Administrator will deduct NO_x allowances under §97.54(b), (e), or (f) to account for the actual heat input of the unit during the control period. The Administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of NO_x allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual heat input for a unit under §97.4(a)(1)
= Unit's NO_x allowances allocated for control period - (Unit's actual control period heat input × the lesser of 0.15 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton); and NO_x allowances deducted for actual heat input for a unit under §97.4(a)(2) = Unit's NO_x allowances allocated for control period - (Unit's actual control period heat input × the lesser of 0.17 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton)

Where:

"Unit's NO_x allowances allocated for control period" is the number of NO_x allowances allocated to the unit for the control period under paragraph (d) of this section; and

"Unit's actual control period heat input" is the heat input (in mmBtu) of the unit during the control period.

(2) The Administrator will transfer any NO_x allowances deducted under paragraph (e)(1) of this section to the allocation set-aside for the control period for which they were allocated.

(f) After making the deductions for compliance under §97.54(b), (e), or (f) for a control period, the Administrator will determine whether any NO_x allowances remain in the allocation set-aside for the control period. The Administrator will allocate any such NO_x allowances to the NO_x Budget units in the State using the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = Total

Environmental Protection Agency**§ 97.43**

NO_x allowances remaining in allocation set-aside × (Unit's NO_x allowance allocation + State's trading program budget excluding allocation set-aside)

Where:

"Total NO_x allowances remaining in allocation set-aside" is the total number of NO_x allowances remaining in the allocation set-aside for the control period;

"Unit's NO_x allowance allocation" is the number of NO_x 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's trading program budget excluding allocation set-aside" is the State's trading program budget under §97.40 for the control period to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO_x allowances as appropriate.

(g) If the Administrator determines that NO_x allowances were allocated under paragraph (b), (c), or (d) of this section for a control period and the recipient of the allocation is not actually a NO_x Budget unit under §97.4(a), the Administrator will notify the NO_x authorized account representative and then will act in accordance with the following procedures:

(1)(i) The Administrator will not record such NO_x allowances for the control period in an account under §97.53;

(ii) If the Administrator already recorded such NO_x allowances for the control period in an account under §97.53 and if the Administrator makes such determination before making all deductions pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) for the control period, then the Administrator will deduct from the account NO_x allowances equal in number to and allocated for the same or a prior control period as the NO_x allowances allocated to such recipient for the control period. The NO_x authorized account representative shall ensure that the account contains the NO_x allowances necessary for completion of such deduction. If account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in the account; or

(iii) If the Administrator already recorded such NO_x allowances for the control period in an account under §97.53 and if the Administrator makes such determination after making all deductions pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) for the control period, then the Administrator will apply paragraph (g)(1)(ii) of this section to any subsequent control period for which NO_x allowances were allocated to such recipient.

(2) The Administrator will transfer the NO_x allowances that are not recorded, or that are deducted, pursuant to paragraph (g)(1) of this section to an allocation set-aside for the State in which such source is located.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

§ 97.43 Compliance Supplement Pool.

(a) For any NO_x Budget unit that reduces its NO_x emission rate in the 2001 through 2003 control period, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with paragraph (a)(4) of this section shall monitor and report NO_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 percent monitor data availability shall not be less than 90 percent during the 2000 control period, and the unit must be in full compliance with any applicable State or Federal NO_x emission control requirements during 2000 through 2002.

(2) NO_x emission rate and heat input under paragraphs (a)(3) and (4) of this section shall be determined in accordance with subpart H of this part.

(3) Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits under paragraph (a)(4) of this section shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80