For the reasons set forth in the preamble, parts 51, 72, 75, and 96 of chapter 1 of title 40 of the Code of Federal Regulations are amended as follows:

PART 51--REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401, 7410, 7411, 7412, 7413, 7414, 7470-7479, 7501-7508, 7601, and 7602.

Subpart G--Control Strategy [AMENDED]

2. Subpart G is amended to add §§ 51.121 and 51.122 to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

(a)(1) The Administrator finds that the State implementation plan (SIP) for each jurisdiction listed in paragraph (c) of this section is substantially inadequate to comply with the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA), 42 U.S.C. 7410(a)(2)(D)(i)(I), because the SIP does not include adequate provisions to prohibit sources and other activities from emitting nitrogen oxides ("NOx") in amounts that will contribute significantly to nonattainment in one or more other States with respect to

the 1-hour ozone national ambient air quality standards (NAAQS). Each of the jurisdictions listed in paragraph (c) of this section must submit to EPA a SIP revision that cures the inadequacy.

(2) Under section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), the Administrator determines that each jurisdiction listed in paragraph (c) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I), 42 U.S.C. 7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting NOx in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the 8-hour ozone NAAQS.

(b)(1) For each jurisdiction listed in paragraph (c) of this section, the SIP revision required under paragraph (a) of this section will contain adequate provisions, for purposes of complying with section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I), only if the SIP revision:

(i) Contains control measures adequate to prohibit emissions of NOx that would otherwise be projected, in accordance with paragraph (g) of this section, to cause the jurisdiction's overall NOx emissions to be in excess of the budget for that jurisdiction described in paragraph (e) of

this section (except as provided in paragraph (b)(2) of this section),

(ii) Requires full implementation of all such control measures by no later than May 1, 2003, and

(iii) Meets the other requirements of this section.

The SIP revision's compliance with the requirement of paragraph (b)(1)(i) of this section shall be considered compliance with the jurisdiction's budget for purposes of this section.

(2) The requirements of paragraph (b)(1)(i) of this section shall be deemed satisfied, for the portion of the budget covered by an interstate trading program, if the SIP revision:

(i) Contains provisions for an interstate trading program that EPA determines will, in conjunction with interstate trading programs for one or more other jurisdictions, prohibit NOx emissions in excess of the sum of the portion of the budgets covered by the trading programs for those jurisdictions; and

(ii) Conforms to the following criteria:

(A) Emissions reductions used to demonstrate compliance with the revision must occur during the ozone season.

(B) Emissions reductions occurring prior to the year 2003 may be used by a source to demonstrate compliance with the SIP revision for the 2003 and 2004 ozone seasons,

provided the SIP's provisions regarding such use comply with the requirements of paragraph (e)(3) of this section.

(C) Emissions reduction credits or emissions allowances held by a source or other person following the 2003 ozone season or any ozone season thereafter that are not required to demonstrate compliance with the SIP for the relevant ozone season may be banked and used to demonstrate compliance with the SIP in a subsequent ozone season.

(D) Early reductions created according to the provisions in paragraph (b)(2)(ii)(B) of this section and used in the 2003 ozone season are not subject to the flow control provisions set forth in paragraph (b)(2)(ii)(E) of this section.

(E) Starting with the 2004 ozone season, the SIP shall include provisions to limit the use of banked emissions reduction credits or emissions allowances beyond a predetermined amount as calculated by one of the following approaches:

(*1*) Following the determination of compliance after each ozone season, if the total number of emissions reduction credits or banked allowances held by sources or other persons subject to the trading program exceeds 10 percent of the sum of the allowable ozone season NOx emissions for all sources subject to the trading program,

then all banked allowances used for compliance for the following ozone season shall be subject to the following:

(*i*) A ratio will be established according to the following formula: (0.10) x (the sum of the allowable ozone season NOx emissions for all sources subject to the trading program) ÷ (the total number of banked emissions reduction credits or emissions allowances held by all sources or other persons subject to the trading program).

(*ii*) The ratio, determined using the formula specified in paragraph (b)(2)(ii)(E)(*1*)(*i*) of this section, will be multiplied by the number of banked emissions reduction credits or emissions allowances held in each account at the time of compliance determination. The resulting product is the number of banked emissions reduction credits or emissions allowances in the account which can be used in the current year's ozone season at a rate of 1 credit or allowance for every 1 ton of emissions. The SIP shall specify that banked emissions reduction credits or emissions allowances in excess of the resulting product either may not be used for compliance, or may only be used for compliance at a rate no less than 2 credits or allowances for every 1 ton of emissions.

(*2*) At the time of compliance determination for each ozone season, if the total number of banked emissions

reduction credits or emissions allowances held by a source subject to the trading program exceeds 10 percent of the source's allowable ozone season NOx emissions, all banked emissions reduction credits or emissions allowances used for compliance in such ozone season by the source shall be subject to the following:

(*i*) The source may use an amount of banked emissions reduction credits or emissions allowances not greater than 10 percent of the source's allowable ozone season NOx emissions for compliance at a rate of 1 credit or allowance for every 1 ton of emissions.

(*ii*) The SIP shall specify that banked emissions reduction credits or emissions allowances in excess of 10 percent of the source's allowable ozone season NOx emissions may not be used for compliance, or may only be used for compliance at a rate no less than 2 credits or allowances for every 1 ton of emissions.

(c) The following jurisdictions (hereinafter referred to as "States") are subject to the requirements of this section: Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of

Columbia.

(d)(1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than [12 months from signature].

(2) The State makes an official submission of its SIP revision to EPA only when:

(i) The submission conforms to the requirements of appendix V to this part; and

(ii) The State delivers five copies of the plan to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1) The NOx budget for a State listed in paragraph (c) of this section is defined as the total amount of NOx emissions from all sources in that State, as indicated in paragraph (e)(2) of this section with respect to that State, which the State must demonstrate that it will not exceed in the 2007 ozone season pursuant to paragraph (g)(1) of this section.

(2) The State-by-State amounts of the NOx budget, expressed in tons, are as follows:

State	Budget
Alabama	158,677
Connecticut	40,573
Delaware	18,523

District of Columbia	6,792
Georgia	177,381
Illinois	210,210
Indiana	202,584
Kentucky	155,698
Maryland	71,388
Massachusetts	78,168
Michigan	212,199
Missouri	114,532
New Jersey	97,034
New York	179,769
North Carolina	151,847
Ohio	239,898
Pennsylvania	252,447
Rhode Island	8,313
South Carolina	109,425
Tennessee	182,476
Virginia	155,718
West Virginia	92,920
Wisconsin	106,540
Total	**3,023,113**

(3)(i) Notwithstanding the State's obligation to comply with the budgets set forth in paragraph (e)(2) of this section, a SIP revision may allow sources required by the revision to implement NOx emission control measures by May 1, 2003 to demonstrate compliance in the 2003 and 2004 ozone seasons using credit issued from the State's compliance supplement pool, as set forth in paragraph (e)(3)(iii) of this section.

(ii) A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2004

ozone season.

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	**Compliance Supplement Pool (Tons of NOx)**
Alabama	10,361
Connecticut	559
Delaware	417
District of Columbia	0
Georgia	10,919
Illinois	17,455
Indiana	19,738
Kentucky	13,018
Maryland	3,662
Massachusetts	285
Michigan	15,359
Missouri	10,469
New Jersey	1,722
New York	1,831
North Carolina	10,624
Ohio	22,947
Pennsylvania	13,716
Rhode Island	0
South Carolina	5,062
Tennessee	12,093
Virginia	6,108
West Virginia	16,937
Wisconsin	6,717
Total	**200,000**

(iv) The SIP revision may provide for the distribution

of the compliance supplement pool to sources that are required to implement control measures using one or both of the following two mechanisms:

(A) The State may issue some or all of the compliance supplement pool to sources that implement emissions reductions during the ozone season beyond all applicable requirements in years prior to the year 2003 according to the following provisions:

(*1*) The State shall complete the issuance process by no later than May 1, 2003.

(*2*) The emissions reduction may not be required by the State's SIP or be otherwise required by the CAA.

(*3*) The emissions reduction must be verified by the source as actually having occurred during an ozone season between September 30, 1999 and May 1, 2003.

(*4*) The emissions reduction must be quantified according to procedures set forth in the SIP revision and approved by EPA. Emissions reductions implemented by sources serving electric generators with a nameplate capacity greater than 25 MWe, or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr, must be quantified according to the requirements in paragraph (i)(4) of this section.

(*5*) If the SIP revision contains approved provisions for an emissions trading program, sources that receive credit according to the requirements of this paragraph may trade the credit to other sources or persons according to the provisions in the trading program.

(B) The State may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline according to the following provisions:

(*1*) The State shall initiate the issuance process by the later date of September 30, 2002 or after the State issues credit according to the procedures in paragraph (e)(3)(iv)(A) of this section.

(*2*) The State shall complete the issuance process by no later than May 1, 2003.

(*3*) The State shall issue credit to a source only if the source demonstrates the following:

(*i*) For a source used to generate electricity, compliance with the SIP revision’s applicable control measures by May 1, 2003, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to

comply with the SIP revision.

(*ii*) For a source not used to generate electricity, compliance with the SIP revision's applicable control measures by May 1, 2003, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in paragraph (e)(3)(iv)(B)(*3*)(*i*) of this section.

(*iii*) For a source subject to an approved SIP revision that allows for early reduction credits in accordance with paragraph (e)(3)(iv)(A) of this section, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a source subject to an approved emissions trading program, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(*4*) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a source under paragraph (e)(3)(iv)(B) of this section.

(4) If, no later than [insert date 60 days after

signature], any member of the public requests revisions to the source-specific data used to establish the State budgets set forth in paragraph (e)(2) of this section or the 2007 baseline sub-inventory information set forth in paragraph (g)(2)(ii) of this section, then EPA will act on that request no later than [insert date 120 days after signature] provided:

(A) The request is submitted in electronic format;

(B) Information is provided to corroborate and justify the need for the requested modification;

(C) The request includes the following data information regarding any electricity-generating source at issue:

(i) Federal Information Placement System (FIPS) State Code;

(ii) FIPS County Code;

(iii) Plant name;

(iv) Plant ID numbers (ORIS code preferred, State agency tracking number also or otherwise);

(v) Unit ID numbers (a unit is a boiler or other combustion device);

(vi) Unit type;

(vii) Primary fuel on a heat input basis;

(viii) Maximum rated heat input capacity of unit;

(ix) Nameplate capacity of the largest generator the unit serves;

(x) Ozone season heat inputs for the years 1995 and 1996;

(xi) 1996 (or most recent) average NOx rate for the ozone season;

(xii) Latitude and longitude coordinates;

(xiii) Stack parameter information ;

(xiv) Operating parameter information;

(xv) Identification of specific change to the inventory; and

(xvi) Reason for the change;

(D) The request includes the following data information regarding any non-electricity generating point source at issue:

(i) FIPS State Code;

(ii) FIPS County Code;

(iii) Plant name;

(iv) Facility primary standard industrial classification code (SIC);

(v) Plant ID numbers (NEDS, AIRS/AFS, and State agency tracking number also or otherwise);

(vi) Unit ID numbers (a unit is a boiler or other combustion device);

(vii) Primary source classification code (SCC);

(viii) Maximum rated heat input capacity of unit;

(ix) 1995 ozone season or typical ozone season daily

NOx emissions;

(x) 1995 existing NOx control efficiency;

(xi) Latitude and longitude coordinates;

(xii) Stack parameter information;

(xiii) Operating parameter information;

(xiv) Identification of specific change to the inventory; and

(xv) Reason for the change;

(E) The request includes the following data information regarding any stationary area source or nonroad mobile source at issue:

(i) FIPS State Code;

(ii) FIPS County Code;

(iii) Primary source classification code (SCC);

(iv) 1995 ozone season or typical ozone season daily NOx emissions;

(v) 1995 existing NOx control efficiency;

(vi) Identification of specific change to the inventory; and

(vii) Reason for the change;

(F) The request includes the following data information regarding any highway mobile source at issue:

(i) FIPS State Code;

(ii) FIPS County Code;

(iii) Primary source classification code (SCC) or

vehicle type;

(iv) 1995 ozone season or typical ozone season daily vehicle miles traveled (VMT);

(v) 1995 existing NOx control programs;

(vi) identification of specific change to the inventory; and

(vii) reason for the change.

(f) Each SIP revision must set forth control measures to meet the NOx budget in accordance with paragraph (b)(1)(i) of this section, which include the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2) Should a State elect to impose control measures on fossil fuel-fired NOx sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr as a means of meeting its NOx budget, then those measures must:

(i)(A) Impose a NOx mass emissions cap on each source;

(B) Impose a NOx emissions rate limit on each source

and assume maximum operating capacity for every such source for purposes of estimating mass NOx emissions; or

(C) Impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than options (2)(i)(A) or (2)(i)(B) of this section that the State will comply with its NOx budget in the 2007 ozone season; and

(ii) Impose enforceable mechanisms to assure that collectively all such sources, including new or modified units, will not exceed in the 2007 ozone season the total NOx emissions projected for such sources by the State pursuant to paragraph (g) of this section.

(3) For purposes of paragraph (f)(2) of this section, the term “fossil fuel-fired” means, with regard to a NOx source:

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

(ii) 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

NOx source shall be “fossil fuel-fired” as of the date, during such year, on which the NOx source begins combusting fossil fuel.

(g)(1) Each SIP revision must demonstrate that the control measures contained in it are adequate to provide for the timely compliance with the State’s NOx budget during the 2007 ozone season.

(2) The demonstration must include the following:

(i) Each revision must contain a detailed baseline inventory of NOx mass emissions from the following sources in the year 2007, absent the control measures specified in the SIP submission: electric generating units (EGU), non-electric generating units (non-EGU), area, nonroad and highway sources. The State must use the same baseline emissions inventory that EPA used in calculating the State’s NOx budget, as set forth for the State in paragraph (g)(2)(ii) of this section, except that EPA may direct the State to use different baseline inventory information if the State fails to certify that it has implemented all of the control measures assumed in developing the baseline inventory.

(ii) The base year 2007 NOx emissions sub-inventories for each State, expressed in tons per ozone season, are as follows:

State	EGU	Non-EGU	Area	Nonroad	Highway	Total
Alabama	76,900	49,781	25,225	16,594	50,111	218,610
Connecticut	5,600	5,273	4,588	9,584	18,762	43,807
Delaware	5,800	1,781	963	4,261	8,131	20,936
District of Columbia	0*	310	741	3,470	2,082	6,603
Georgia	86,500	33,939	11,902	21,588	86,611	240,540
Illinois	119,300	55,721	7,822	47,035	81,297	311,174
Indiana	136,800	71,270	25,544	22,445	60,694	316,753
Kentucky	107,800	18,956	38,773	19,627	45,841	230,997
Maryland	32,600	10,982	4,105	17,249	27,634	92,570
Massachusetts	16,500	9,943	10,090	18,911	24,371	79,815
Michigan	86,600	79,034	28,128	23,495	83,784	301,042
Missouri	82,100	13,433	6,603	17,723	55,230	175,089
New Jersey	18,400	22,228	11,098	21,163	34,106	106,995
New York	39,200	25,791	15,587	29,260	80,521	190,358
North Carolina	84,800	34,027	10,651	17,799	66,019	213,296
Ohio	163,100	53,241	19,425	37,781	99,079	372,626
Pennsylvania	123,100	73,748	17,103	25,554	92,280	331,785
Rhode Island	1,100	327	420	2,073	4,375	8,295
South Carolina	36,300	34,740	8,359	11,903	47,404	138,706
Tennessee	70,900	60,004	11,990	44,567	64,965	252,426
Virginia	40,900	39,765	18,622	21,551	70,212	191,050
West Virginia	115,500	40,192	4,790	10,220	20,185	190,887
Wisconsin	52,000	22,796	8,160	12,965	49,470	145,391
Total	**1,501,800**	**757,281**	**290,689**	**456,818**	**1,173,163**	**4,179,751**

*The base case for the District of Columbia is actually projected to be 30 tons per season. The base case values in this table are rounded to the nearest 100 tons.

(iii) Each revision must contain a summary of NOx mass emissions in 2007 projected to result from implementation of each of the control measures specified in the SIP submission and from all NOx sources together following implementation of all such control measures, compared to the baseline 2007 NOx emissions inventory for the State described in paragraph (g)(2)(i) of this section. The State must provide EPA with a summary of the computations, assumptions, and judgments

used to determine the degree of reduction in projected 2007 NOx emissions that will be achieved from the implementation of the new control measures compared to the baseline emissions inventory.

(iv) Each revision must identify the sources of the data used in the projection of emissions.

(h) Each revision must comply with § 51.116 of this part (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the NOx budget. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State:

(i) Information on the amount of NOx emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § 51.212 of this part (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control

measures, then the revision must comply with § 51.213 of this part (regarding transportation control measures);

(4) If the revision contains measures to control fossil fuel-fired NOx sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring provisions of part 75, subpart H.

(5) For purposes of paragraph (i)(4) of this section, the term “fossil fuel-fired” means, with regard to a NOx source:

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

(ii) 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 NOx source shall be “fossil fuel-fired” as of the date, during such year, on which the NOx source begins combusting

fossil fuel.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's NOx budget specified in paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

(4) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of § 51.121(j)(3) and (4) of this subpart may be delegated to the State under § 114 of the CAA.

(l)(1) A revision may assign legal authority to local agencies in accordance with § 51.232 of this part.

(2) Each revision must comply with § 51.240 of this part (regarding general plan requirements).

(m) Each revision must comply with § 51.280 of this part (regarding resources).

(n) For purposes of the SIP revisions required by this section, EPA may make a finding as applicable under § 179(a)(1)-(4) of the CAA, 42 U.S.C. 7509(a)(1)-(4), starting the sanctions process set forth in § 179(a) of the CAA. Any such finding will be deemed a finding under § 52.31(c) of this part and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31 of this part.

(o) Each revision must provide for State compliance with the reporting requirements set forth in § 51.122 of this part.

(p)(1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to 40 CFR part 96 (the model NOx budget trading program for SIPs), incorporates such part by reference into its regulations, or adopts regulations that differ

substantively from such part only as set forth in paragraph (p)(2) of this section, then that portion of the State's SIP revision is automatically approved as satisfying the same portion of the State's NOx emission reduction obligations as the State projects such regulations will satisfy, provided that:

(i) The State has the legal authority to take such action and to implement its responsibilities under such regulations, and

(ii) The SIP revision accurately reflects the NOx emissions reductions to be expected from the State's implementation of such regulations.

(2) If a State adopts an emissions trading program that differs substantively from 40 CFR part 96 in only the following respects, then such portion of the State's SIP revision is approved as set forth in paragraph (p)(1) of this section:

(i) The State may expand the applicability provisions of the trading program to include units (as defined in 40 CFR 96.2) that are smaller than the size criteria thresholds set forth in 40 CFR 96.4(a);

(ii) The State may decline to adopt the exemption provisions set forth in 40 CFR 96.4(b);

(iii) The State may decline to adopt the opt-in provisions set forth in subpart I of 40 CFR part 96;

(iv) The State may decline to adopt the allocation provisions set forth in subpart E of 40 CFR part 96 and may instead adopt any methodology for allocating NOx allowances to individual sources, provided that:

(A) The State’s methodology does not allow the State to allocate NOx allowances in excess of the total amount of NOx emissions which the State has assigned to its trading program; and

(B) The State’s methodology conforms with the timing requirements for submission of allocations to the Administrator set forth in 40 CFR 96.41; and

(v) The State may decline to adopt the early reduction credit provisions set forth in 40 CFR 96.55(c) and may instead adopt any methodology for issuing credit from the State’s compliance supplement pool that complies with paragraph (e)(3) of this section.

(3) If a State adopts an emissions trading program that differs substantively from 40 CFR part 96 other than as set forth in paragraph (p)(2) of this section, then such portion of the State’s SIP revision is not automatically approved as set forth in paragraph (p)(1) of this section but will be reviewed by the Administrator for approvability in accordance with the other provisions of this section.

* * * * *

§ 51.122 Emissions Reporting Requirements for SIP Revisions Relating to Budgets for NOx Emissions

(a) For its transport SIP revision under § 51.121 of this part, each State must submit to EPA NOx emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NOx emissions data to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Annual reporting. Each revision must provide for annual reporting of NOx emissions data as follows:

(i) The State must report to EPA emissions data from all NOx sources within the State for which the State specified control measures in its SIP submission under § 51.121(g) of this part. This would include all sources for which the State has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the State developed in accordance with § 51.121(g) of this part.

(ii) If sources report NOx emissions data to EPA annually pursuant to a trading program approved under § 51.121(p) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR part 75, then the State need not provide annual reporting to EPA for such

sources.

(2) Triennial reporting. Each plan must provide for triennial (i.e., every third year) reporting of NOx emissions data from all sources within the State.

(3) Year 2007 reporting. Each plan must provide for reporting of year 2007 NOx emissions data from all sources within the State.

(4) The data availability requirements in § 51.116 of this part must be followed for all data submitted to meet the requirements of paragraphs (b)(1),(2) and (3) of this section.

(c) The data reported in paragraph (b) of this section for stationary point sources must meet the following minimum criteria:

(1) For annual data reporting purposes the data must include the following minimum elements:

(i) Inventory year.

(ii) State Federal Information Placement System code.

(iii) County Federal Information Placement System code.

(iv) Federal ID code (plant).

(v) Federal ID code (point).

(vi) Federal ID code (process).

(vii) Federal ID code (stack).

(vii) Site name.

(viii) Physical address.

(ix) SCC.

(x) Pollutant code.

(xi) Ozone season emissions.

(xii) Area designation.

(2) In addition, the annual data must include the following minimum elements as applicable to the emissions estimation methodology.

(i) Fuel heat content (annual).

(ii) Fuel heat content (seasonal).

(iii) Source of fuel heat content data.

(iv) Activity throughput (annual).

(v) Activity throughput (seasonal).

(vi) Source of activity/throughput data.

(vii) Spring throughput (%).

(viii) Summer throughput (%).

(ix) Fall throughput (%).

(x) Work weekday emissions.

(xi) Emission factor.

(xii) Source of emission factor.

(xiii) Hour/day in operation.

(xiv) Operations Start time (hour).

(xv) Day/week in operation.

(xvi) Week/year in operation.

(3) The triennial and 2007 inventories must include the following data elements:

(i) The data required in paragraphs (c)(1) and (c)(2) of this section.

(ii) X coordinate (latitude).

(iii) Y coordinate (longitude).

(iv) Stack height.

(v) Stack diameter.

(vi) Exit gas temperature.

(vii) Exit gas velocity.

(viii) Exit gas flow rate.

(ix) SIC.

(x) Boiler/process throughput design capacity.

(xi) Maximum design rate.

(xii) Maximum capacity.

(xiii) Primary control efficiency.

(xiv) Secondary control efficiency.

(xv) Control device type.

(d) The data reported in paragraph (b) of this section for area sources must include the following minimum elements:

(1) For annual inventories it must include:

(i) Inventory year.

(ii) State FIPS code.

(iii) County FIPS code.

(iv) SCC.

(v) Emission factor.

(vi) Source of emission factor.

(vii) Activity/throughput level(annual).

(viii) Activity throughput level(seasonal).

(ix) Source of activity/throughput data.

(x) Spring throughput (%).

(xi) Summer throughput (%).

(xii) Fall throughput (%).

(xiii) Control efficiency (%).

(xiv) Pollutant code.

(xv) Ozone season emissions.

(xvi) Source of emissions data.

(xvii) Hour/day in operation.

(xviii) Day/week in operation.

(xix) Week/year in operations.

(2) The triennial and 2007 inventories must contain, at a minimum, all the data required in paragraph (d)(1) of this section.

(e) The data reported in paragraph (b) of this section for mobile sources must meet the following minimum criteria:

(1) For the annual, triennial, and 2007 inventory purposes, the following data must be reported:

(i) Inventory year.

(ii) State FIPS code.

(iii) County FIPS code.

(iv) SCC

(v) Emission factor.

(vi) Source of emission factor.

(vii) Activity (this must be reported for both highway and nonroad activity. Submit nonroad activity in the form of hours of activity at standard load (either full load or average load) for each engine type, application, and horsepower range. Submit highway activity in the form of vehicle miles traveled (VMT) by vehicle class on each roadway type. Report both highway and nonroad activity for a typical ozone season weekday day, if the State uses EPA's default weekday/weekend activity ratio. If the State uses a different weekday/weekend activity ratio, submit separate activity level information for weekday days and weekend days.)

(viii) Source of activity data.

(ix) Pollutant code.

(x) Summer work weekday emissions.

(xi) Ozone season emissions.

(xii) Source of emissions data.

(2) [Reserved.]

(f) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information for EPA to verify the calculated value of ozone season emissions.

(g) Reporting schedules.

(1) Annual reports are to begin with data for emissions occurring in the year 2003.

(2) Triennial reports are to begin with data for emissions occurring in the year 2002.

(3) Year 2007 data are to be submitted for emissions occurring in the year 2007.

(4) States must submit data for a required year no later than 12 months after the end of the calendar year for which the data are collected.

(h) Data Reporting Procedures. When submitting a formal NOx budget emissions report and associated data, States shall notify the appropriate EPA Regional Office.

(1) States are required to report emissions data in an electronic format to one of the locations listed in this paragraph (h). Several options are available for data reporting.

(2) An agency may choose to continue reporting to the EPA Aerometric Information Retrieval System (AIRS) system using the AIRS facility subsystem (AFS) format for point sources. (This option will continue for point sources for some period of time after AIRS is reengineered (before 2002), at which time this choice may be discontinued or modified.)

(3) An agency may convert its emissions data into the

Emission Inventory Improvement Program/Electronic Data Interchange (EIIP/EDI) format. This file can then be made available to any requestor, either using E-mail, floppy disk, or value added network (VAN), or can be placed on a file transfer protocol (FTP) site.

(4) An agency may submit its emissions data in a proprietary format based on the EIIP data model.

(5) For options (h)(3) and (4), the terms *submitting* and *reporting* data are defined as either providing the data in the EIIP/EDI format or the EIIP based data model proprietary format to EPA, Office of Air Quality Planning and Standards, Emission Factors and Inventory Group, directly or notifying this group that the data are available in the specified format and at a specific electronic location (e.g., FTP site).

(6) For annual reporting (not for triennial reports), a State may have sources submit the data directly to EPA to the extent the sources are subject to a trading program that qualifies for approval under paragraph (q) of § 51.121 of this part, and the State has agreed to accept data in this format. The EPA will make both the raw data submitted in this format and summary data available to any State that chooses this option.

(i) Definitions. As used in this section, the

following words and terms shall have the meanings set forth below:

(1) *Annual emissions*. Actual emissions for a plant, point, or process, either measured or calculated.

(2) *Ash content*. Inert residual portion of a fuel.

(3) *Area designation*. The designation of the area in which the reporting source is located with regard to the ozone NAAQS. This would include attainment or nonattainment designations. For nonattainment designations, the classification of the nonattainment area must be specified, i.e., transitional, marginal, moderate, serious, severe, or extreme.

(4) *Boiler design capacity*. A measure of the size of a boiler, based on the reported maximum continuous steam flow. Capacity is calculated in units of MMBtu/hr.

(5) *Control device type*. The name of the type of control device (e.g., wet scrubber, flaring, or process change).

(6) *Control efficiency*. The emissions reduction efficiency of a primary control device, which shows the amount of reductions of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(7) *Day/week in operations*. Days per week that the emitting process operates.

(8) *Emission factor*. Ratio relating emissions of a specific pollutant to an activity or material throughput level.

(9) *Exit gas flow rate*. Numeric value of stack gas flow rate.

(10) *Exit gas temperature*. Numeric value of an exit gas stream temperature.

(11) *Exit gas velocity*. Numeric value of an exit gas stream velocity.

(12) *Fall throughput (%)*. Portion of throughput for the 3 fall months (September, October, November). This represents the expression of annual activity information on the basis of four seasons, typically spring, summer, fall, and winter. It can be represented either as a percentage of the annual activity (e.g., production in summer is 40 percent of the year’s production), or in terms of the units of the activity (e.g., out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

(13) *Federal ID code (plant)*. Unique codes for a plant or facility, containing one or more pollutant-emitting sources.

(14) *Federal ID code (point)*. Unique codes for the point of generation of emissions, typically a physical piece of equipment.

(15) *Federal ID code (stack number)*. Unique codes for the point where emissions from one or more processes are released into the atmosphere.

(16) *Federal Information Placement System (FIPS)*. The system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(17) *Heat content*. The thermal heat energy content of a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

(18) *Hr/day in operations*. Hours per day that the emitting process operates.

(19) *Maximum design rate*. Maximum fuel use rate based on the equipment’s or process’ physical size or operational capabilities.

(20) *Maximum nameplate capacity*. A measure of the size of a generator which is put on the unit’s nameplate by the manufacturer. The data element is reported in megawatts (MW) or kilowatts (KW).

(21) *Mobile source*. A motor vehicle, nonroad engine or

nonroad vehicle, where:

"motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway;

"nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202 of the CAA;

"nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(22) *Ozone season*. The period May 1 through September 30 of a year.

(23) *Physical address*. Street address of facility.

(24) *Point source*. A non-mobile source which emits 100 tons of NOx or more per year unless the State designates as a point source a non-mobile source emitting at a specified level lower than 100 tons of NOx per year. A non-mobile source which emits less NOx per year than the point source threshold is an area source.

(25) *Pollutant code*. A unique code for each reported pollutant that has been assigned in the EIIP Data Model. Character names are used for criteria pollutants, while

Chemical Abstracts Service (CAS) numbers are used for all other pollutants. Some States may be using storage and retrieval of aerometric data (SAROAD) codes for pollutants, but these should be able to be mapped to the EIIP Data Model pollutant codes.

(26) *Process rate/throughput*. A measurable factor or parameter that is directly or indirectly related to the emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, the amount of a raw material processed, the amount of a product that is manufactured, the amount of a material that is handled or processed, population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

(27) *SCC*. Source category code. A process-level code that describes the equipment or operation emitting pollutants.

(28) *Secondary control efficiency (%)*. The emissions reductions efficiency of a secondary control device, which shows the amount of reductions of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a

percentage or in tenths.

(29) *SIC*. Standard Industrial Classification code. U.S. Department of Commerce's categorization of businesses by their products or services.

(30) *Site name*. The name of the facility.

(31) *Spring throughput (%)*. Portion of throughput or activity for the 3 spring months (March, April, May). See the definition of Fall Throughput.

(32) *Stack diameter*. Stack physical diameter.

(33) *Stack height*. Stack physical height above the surrounding terrain.

(34) *Start date (inventory year)*. The calendar year that the emissions estimates were calculated for and are applicable to.

(35) *Start time (hour)*. Start time (if available) that was applicable and used for calculations of emissions estimates.

(36) *Summer throughput (%)*. Portion of throughput or activity for the 3 summer months (June, July, August). See the definition of Fall Throughput.

(37) *Summer work weekday emissions*. Average day’s emissions for a typical day.

(38) *VMT by Roadway Class*. This is an expression of vehicle activity that is used with emission factors. The

emission factors are usually expressed in terms of grams per mile of travel. Since VMT does not directly correlate to emissions that occur while the vehicle is not moving, these non-moving emissions are incorporated into EPA's MOBILE model emission factors.

(39) *Week/year in operation*. Weeks per year that the emitting process operates.

(40) *Work Weekday*. Any day of the week except Saturday or Sunday.

(41) *X coordinate (latitude)*. East-west geographic coordinate of an object.

(42) *Y coordinate (longitude)*. North-south geographic coordinate of an object.

* * * * *

PART 72--PERMITS REGULATION

1. The authority for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, et seq.

2. Section 72.2 is amended by adding new definitions of "excepted monitoring system," "low mass emissions unit, "maximum potential hourly heat input", "maximum rated hourly heat input," and "ozone season" to read as follows:

§ 72.2 Definitions.

* * * * *

Excepted monitoring system means a monitoring system that

follows the procedures and requirements of § 75.19 of this chapter or of appendix D or E to part 75 for approved exceptions to the use of continuous emission monitoring systems.

* * * * *

Low mass emissions unit means an affected unit that is a gas-fired or oil-fired unit, burns only natural gas or fuel oil and qualifies under § 75.19 of this chapter.

* * * * *

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 flow rate and either the maximum carbon dioxide concentration (in percent CO2) or the minimum oxygen concentration (in percent O2).

* * * * *

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.

* * * * *

Ozone season means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

* * * * *

PART 75 -- CONTINUOUS EMISSION MONITORING

3. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651k.

4. Section 75.1 is amended by revising paragraph (a) to read as follows:

§ 75.1 Purpose and scope.

(a) Purpose. The purpose of this part is to establish requirements for the monitoring, recordkeeping, and reporting of sulfur dioxide (SO2), nitrogen oxides (NOx), and carbon dioxide (CO2) emissions, volumetric flow, and opacity data from affected units under the Acid Rain Program pursuant to sections 412 and 821 of the CAA, 42 U.S.C. 7401-7671q as amended by Public Law 101-549 (November 15, 1990). In addition, this part sets forth provisions for the monitoring, recordkeeping, and reporting of NOx mass emissions with which EPA, individual States, or groups of States may require sources to comply in order to demonstrate

compliance with a NOx mass emission reduction program, to the extent these provisions are adopted as requirements under such a program.

* * * * *

5. Section 75.2 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§75.2 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, the provisions of this part apply to each affected unit subject to Acid Rain emission limitations or reduction requirements for SO2 or NOx.

* * * * *

(c) The provisions of this part apply to sources subject to a State or federal NOx mass emission reduction program, to the extent these provisions are adopted as requirements under such a program.

6. Section 75.4 is amended by revising paragraph (a) introductory text to read as follows:

§ 75.4 Compliance dates.

(a) The provisions of this part apply to each existing Phase I and Phase II unit on February 10, 1993. For substitution or compensating units that are so designated under the Acid Rain permit which governs that unit and contains the approved substitution or reduced utilization

plan, pursuant to § 72.41 or § 72.43 of this chapter, the provisions of this part become applicable upon the issuance date of the Acid Rain permit. For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the provisions of this part become applicable upon the submission of an opt-in permit application in accordance with § 74.14 of this chapter. The provisions of this part for the monitoring, recording, and reporting of NOx mass emissions become applicable on the deadlines specified in the applicable State or federal NOx mass emission reduction program, to the extent these provisions are adopted as requirements under such a program. In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all monitoring systems required by this part for monitoring SO2, NOx, CO2, opacity, and volumetric flow are installed and that all certification tests are completed no later than the following dates (except as provided in paragraphs (d) through (h) of this section):

* * * * *

7. Section 75.6 is amended by adding paragraph (f) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(f) The following materials are available for purchase from the following address: American Petroleum Institute, Publications Department, 1220 L Street NW, Washington, DC 20005-4070

(1)American Petroleum Institute (API) Petroleum Measurement Standards, Chapter 3, Tank Gauging: Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, December 1994; Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, April 1992 (reaffirmed January 1997); Section 2, Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, September 1995; Section 3, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, June 1996; Section 4, Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, April 1995; and Section 5, Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, March 1997; for § 75.19.

(2) Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992), for §75.19.

* * * * *

8. Sections 75.11 is amended by adding paragraph (d)(3), to read as follows:

§ 75.11 Specific provisions for monitoring SO2 emissions (SO2 and flow monitors).

*****

(d)***

(3) By using the low mass emissions excepted methodology in § 75.19(c) for estimating hourly SO2 mass emissions if the affected unit qualifies as a low mass emissions unit under §§ 75.19(a) and (b).

*****

9. Section 75.12 is amended by revising the title, by redesignating paragraph (d) as paragraph (e), and by adding new paragraph (d) to read as follows:

§ 75.12 Specific provisions for monitoring NOx emission rate (NOx and diluent gas monitors).

* * * * *

(d) Low mass emissions units. Notwithstanding the requirements of §§ 75.12(a) and (c), the owner or operator of an affected unit that qualifies as a low mass emissions unit under §§ 75.19(a) and (b) shall comply with one of the following:

(1) Meet the general operating requirements in § 75.10 for a NOx continuous emission monitoring system;

(2) Meet the requirements specified in paragraph (d)(2) of this section for using the excepted monitoring procedures in appendix E to this part, if applicable; or

(3) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly NOx emission rate and hourly NOx mass emissions, if applicable under §§75.19(a) and (b).

* * * * *

10. Section 75.13 is amended by adding paragraph (d) to read as follows:

*****

(d) Determination of CO2 mass emissions from low mass emissions units. The owner or operator of a unit that qualifies as a low mass emissions unit under §§ 75.19(a) and (b) shall comply with one of the following:

(1) Meet the general operating requirements in § 75.10 for a CO2 continuous emission monitoring system and flow monitoring system;

(2) Meet the requirements specified in paragraph (b) or (c) of this section for use of the methods in appendix G or F to this part, respectively; or

(3) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly CO2 mass emissions, if applicable under §§75.19(a) and (b).

*****

11. Section 75.17 is amended by adding introductory text before paragraph (a) to read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, by-pass, and multiple stacks for NOx emission rate.

Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the owner or operator of an affected unit that is using the procedures in this part to meet the monitoring and reporting requirements of a State or federal NOx mass emission reduction program must also meet the provisions for monitoring NOx emission rate in §§ 75.71 and 75.72.

* * * * *

12. Section 75.19 is added to subpart B to read as follows:

§ 75.19 Optional SO2, NOx, and CO2 emissions calculation for low mass emissions units.

(a) Applicability.

(1) Consistent with the requirements of paragraphs (a)(2) and (b) of this section, the low mass emissions excepted methodology in paragraph (c) of this section may be used in lieu of continuous emission monitoring systems or, if applicable, in lieu of excepted methods under appendix D or E to this part, for the purpose of determining hourly

heat input and hourly NOx, SO2, and CO2 mass emissions from a low mass emissions unit.

(i) A low mass emissions unit is an affected unit that is gas-fired, or oil-fired unit, that burns only natural gas or fuel oil and for which:

(A) An initial demonstration is provided, in accordance with paragraph (a)(2) of this section, which shows that the unit emits no more than 25 tons of SO2 annually and no more than 50 tons of NOx annually; and

(B) An annual demonstration is provided thereafter, using one of the allowable methodologies in paragraph (c) of this section, showing that the low mass emission unit continues to emit no more than 25 tons of SO2 annually and no more than 50 tons of NOx annually.

(ii) Any qualifying unit must start using the low mass emissions excepted methodology in the first hour in which the unit operates in a calendar year. Notwithstanding, the earliest date for which a unit that meets the eligibility requirements of this section may begin to use this methodology is January 1, 2000.

(2) A unit may initially qualify as a low mass emissions unit only under the following circumstances:

(i) If the designated representative submits a certification application to use the low mass emissions excepted methodology and the Administrator certifies the use

of such methodology. The certification application must contain:

(A) Actual SO2 and NOx mass emissions data for each of the three calendar years prior to the calendar year in which the certification application is submitted demonstrating to the satisfaction of the Administrator that the unit emits less than 25 tons of SO2 and less than 50 tons of NOx annually; and

(B) Calculated SO2 and NOx mass emissions, for each of the three calendar years prior to the calendar year in which the certification application is submitted, demonstrating to the satisfaction of the Administrator that the unit emits less than 25 tons of SO2 and less than 50 tons of NOx annually. The calculated emissions for each year shall be determined using either the maximum rated heat input methodology described in paragraph (c)(3)(i) of this section or the long term fuel flow heat input methodology described in paragraph (c)(3)(ii) of this section, in conjunction with the appropriate SO2, NOx, and CO2 emission rate from paragraph (c)(1)(i) of this section for SO2, paragraph (c)(1)(ii) or (c)(1)(iv) of this section for NOx and paragraph (c)(1)(iii) of this section for CO2; or

(ii) When the three full years of actual, historical SO2 and NOx mass emissions data required under paragraph (a)(2)(i) of this section are not available, the designated

representative may submit an application to use the low mass emissions excepted methodology based upon a combination of historical SO2 and NOx mass emissions data and projected SO2 and NOx mass emissions, totaling three years. Historical data must be used for any years in which historical data exists and projected data should be used for any remaining future years needed to provide capacity factor data for three consecutive calender years. For example, if a unit commenced operation two years ago, the designated representative may submit actual, historical data for the previous two years and one year of projected emissions for the current calendar year or, for unit that commenced operation after January 1, 1997, the designated representative may submit three years of projected emissions, beginning with the current calendar year. Any actual or projected annual emissions must demonstrate to the satisfaction of the Administrator that the unit will emit less than 25 tons of SO2 and less than 50 tons of NOx annually. Projected emissions shall be calculated using either the default emission rates in tables 1a, 1b and 1c of paragraphs (c)(1)(i), (ii), and (iii) of this section, or for NOx emission rate a fuel-and-unit-specific NOx emission rate determined in accordance with the testing procedures in paragraph (c)(iv) of this section, in conjunction with projections of unit operating hours or fuel type and fuel

usage, according to one of the allowable calculation methodologies in paragraph (c) of this section.

(b) On-Going Qualification and Disqualification.

(1) Once a low mass emission unit has qualified for and has started using the low mass emissions excepted methodology, an annual demonstration is required, showing that the unit continues to emit less than 25 tons of SO2 annually and less than 50 tons of NOx annually. The calculation methodology used for the annual demonstration shall be the same methodology, from paragraph (c) of this section, by which the unit initially qualified to use the low mass emissions excepted methodology.

(2) If any low mass emission unit fails to provide the required annual demonstration under paragraph (b)(1) of this section, such that the calculated cumulative year-to-date emissions for the unit exceed 25 tons of SO2 or 50 tons of NOx in any calendar quarter of any calendar year, then;

(i) the low mass emission unit shall be disqualified from using the low mass emissions excepted methodology as of the end of the second calendar quarter following such quarter in which either the 25 ton limit for SO2 or the 50 ton limit for NOx was exceeded, and;

(ii) the owner or operator of the low mass emission unit shall have two calendar quarters from the end of the

quarter in which the unit exceeded the 25 ton limit for SO2 or the 50 ton limit for NOx to install, certify, and report SO2, NOx, and CO2 emissions from monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13.

(3) If a low mass emission unit that initially qualifies to use the low mass emissions excepted methodology under this section changes fuels, such that a fuel other than those allowed for use in the low mass emissions methodology (e.g. natural gas or fuel oil) is combusted in the unit, the unit shall be disqualified from using the low mass emissions excepted methodology as of the first hour that the new fuel is combusted in the unit. The owner or operator shall install, certify, and report SO2, NOx, and CO2 from monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13 prior to a change to such fuel. The owner or operator must notify the Administrator in the case where a unit switches fuels without previously having installed and certified a SO2, NOx and CO2 monitoring system meeting the requirements of §§ 75.11, 75.12, and 75.13.

(4) If a unit commencing operation after January 1, 1997 initially qualifies to use the low mass emissions excepted methodology under this section and the owner or operator wants to use a low mass emissions methodology for the unit, he or she must:

(i) Keep the records specified in paragraph (c)(2) of

this section, beginning with the date and hour of commencement of commercial operation, for a unit subject to an Acid Rain emission limitation, and beginning with the date and hour of the commencement of operation, for a unit subject to a NOx mass reduction program;

(ii) Use these records to determine the cumulative heat input and SO2, NOx, and CO2 mass emissions in order to continue to qualify as a low mass emission unit; and

(iii) Determine the cumulative SO2 and NOx mass emissions according to paragraph (c) of this section using the same procedures used after the certification deadline for the unit, for purposes of demonstrating eligibility to use the excepted methodology set forth in this section. For example, use the default emission rates in paragraphs (c)(1)(i) through (c)(1)(iii) of this section or use the fuel-and-unit-specific NOx emission rate determined according to paragraph (c)(1)(iv) of this section. The Administrator will not count SO2 mass emissions calculated for the period between commencement of commercial operation and the certification deadline for the unit under §75.4 against SO2 allowances to be held in the unit account.

(5) A low mass emission unit that has been disqualified from using the low mass emissions excepted methodology may subsequently qualify again to use the low mass emissions methodology under paragraph (a)(2) of this section, provided

that if such unit qualified under paragraph (a)(2)(ii) of this section, the unit may subsequently qualify again only if the unit meets the requirements of paragraph (a)(2)(i) of this section.

(c) Low mass emissions excepted methodology, calculations, and values.

(1) Determination of SO_2, NOx, and CO2 emission rates

(i) Use Table 1a to determine the appropriate SO2 emission rate for use in calculating hourly SO2 mass emissions under this section.

Table 1a: SO2 Emission Factors (lb/mmBtu) for Various Fuel Types

Fuel Type	SO2 Emission Factors
Pipeline Natural Gas	0.0006 lb/mmBtu
Other Natural Gas	0.06 lb/mmBtu
Residual Oil	2.1 lb/mmBtu
Diesel Fuel	0.5 lb/mmBtu

(ii) Use either the appropriate NOx emission factor from Table 1b, or a fuel-and-unit-specific NOx emission rate determined according to paragraph (c)(1)(iv) of this

section, to calculate hourly NOx mass emissions under this section.

Table 1b: NOx Emission Rates (lb/mmBtu) for Various Boiler/Fuel Types

Boiler Type	Fuel Type	NOx Emission Rate
Turbine	Gas	0.7
Turbine	Oil	1.2
Boiler	Gas	1.5
Boiler	Oil	2

(iii) Use Table 1c to determine the appropriate CO2 emission rate for use in calculating hourly CO2 mass emissions under this section.

Table 1c: CO2 Emission Factors (ton/mmBtu) for Gas and Oil

Fuel Type	CO2 Emission Factors
Natural Gas	0.059 ton/mmBtu
Oil	0.081 ton/mmBtu

(iv) In lieu of using the default NOx emission rate from Table 1b of paragraph (c)(1)(ii) of this section, the

owner or operator may, for each fuel combusted by a low mass emission unit, determine a fuel-and-unit-specific NOx emission rate for the purpose of calculating NOx mass emissions under this section. This option may be used by any unit which qualifies to use the low mass emission excepted methodology under paragraph (a) of this section, and also by groups of units which combust fuel from a common source of supply and which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section to determine heat input. If this option is chosen, the following procedures shall be used.

(A) Except as otherwise provided in paragraphs (c)(1)(iv)(F) and (G) of this paragraph, determine a fuel-and-unit-specific NOx emission rate by conducting a four load NOx emission rate test procedure as specified in section 2.1 of appendix E to this part, for each type of fuel combusted in the unit. For a group of units sharing a common fuel supply, the appendix E testing must be performed on each individual unit in the group, unless some or all of the units in the group belong to an identical group of units, as defined in paragraph (c)(1)(iv)(B) of this section, in which case, representative testing may be conducted on units in the identical group of units, as described in paragraph (c)(1)(iv)(B) of this section. For

the purposes of this section, make the following modifications to the appendix E test procedures:

(*1*) Do not measure the heat input as required under 2.1.3 of appendix E to this part.

(*2*) Do not plot the test results as specified under 2.1.6 of appendix E to this part.

(B) Representative appendix E testing may be done on low mass emission units in a group of identical units. All of the units in a group of identical units must combust the same fuel type but do not have to share a common fuel supply.

(*1*) To be considered identical, all low mass emission units must be of the same size (based on maximum rated hourly heat input), manufacturer and model, and must have the same history of modifications (e.g., have the same controls installed, the same types of burners and have undergone major overhauls at the same frequency (based on hours of operation)). Also, under similar operating conditions, the stack or turbine outlet temperature of each unit must be within $\pm$ 50 degrees Fahrenheit of the average stack or turbine outlet temperature for all of the units.

(*2*) If all of the low mass emission units in the group qualify as identical, then representative testing of the units in the group may be performed according to Table LM-1,

below:

Table LM-1: Identical Unit Testing Requirements

# of Identical Units in the Group	# of Appendix E Tests Required
2	1
3 to 6	2
7	3
> 7	n tests; wheren n = number of units divided by 3 and rounded to nearest integer.

(*3*) If there are only two low mass emission units in the group of identical units, the results of the representative testing under paragraph (c)(1)(iv)(B)(1) of this section may be used to establish the fuel-and-unit-specific NOx emission rate(s) for the units. However, if there are more than two low mass emission units in the

group, the testing must confirm that the units are identical by meeting the following criteria. The results of the representative testing may only be used to establish the fuel-and-unit-specific NOx emission rate(s) for such units if the following criteria are met:

(*i*) at each of the four load levels tested, the NOx emission rate for each tested low mass emission unit does not differ by more than ± 10% from the average of the NOx emission rates for all units tested, or;

(*ii*) if the average NOx emission rate of all low mass emission units tested at all four load levels is less than 0.20 lb/mmBtu, an alternative criteria of ± 0.020 lb/mmBtu may be use in lieu of the 10% criteria. Units must all be within + 0.020 lb/mmBtu of the average from the test to be considered identical units under this section.

(*4*) If the acceptance criteria in paragaph (c)(1)(iv)(B)(*3*) of this section are not met then the group of low mass emission units is not considered an identical group of units and individual appendix E testing of each unit is required.

(*5*) Fuel and unit specific NOx emission rates determined according to paragraphs (c)(iv)(F) and (c)(iv)(G) of this section may be used in lieu of appendix E testing for one or more low mass emission units in a group of

identical units.

(C) Based on the results of the appendix E testing, determine the fuel-and-unit-specific NOx emission rate as follows:

(*1*) For an individual low mass emission unit with no NOx emissions controls of any kind, the highest NOx emission rate obtained for a particular type of fuel in the appendix E test multiplied by 1.15 shall be the fuel-and-unit-specific NOx emission rate, for that type of fuel.

(*2*) For a group of low mass emission units sharing a common fuel supply with no NOx controls of any kind on any of the units, the highest NOx emission rate obtained for a particular type of fuel in all of the appendix E tests of all units in the group of units sharing a common fuel supply multiplied by 1.15 shall be the fuel-and-unit-specific NOx emission rate for each unit in the group, for that type of fuel.

(*3*) For a group of identical low mass emission units which perform representative testing according to paragraph (c)(1)(iv)(B) with no NOx controls of any kind on any of the units, the fuel-and-unit-specific NOx emission rate for all units, for a particular type of fuel, multiplied by 1.15 shall be the highest NOx emission rate from any unit tested in the group, for that type of fuel.

(*4*) For an individual low mass emission unit which has NOx emission controls of any kind, the fuel-and-unit-specific NOx emission rate for each type of fuel combusted in the unit shall be the higher of:

(*i*) The highest emission rate from the appendix E test for that type of fuel multiplied by 1.15; or

(*ii*) 0.15 lb/mmBtu

(*5*) For a group of low mass emission units sharing a common fuel supply, one or more of which has NOx controls of any kind, the fuel-and-unit-specific NOx emission rate for each unit in the group of units sharing a common fuel supply shall, for a particular type of fuel combusted by the group of units sharing a common fuel supply, shall be the higher of:

(*i*) The highest NOx emission rate from all appendix E tests of all low mass emission units in the group for that type of fuel multiplied by 1.15; or

(*ii*) 0.15 lb/mmBtu

(*6*) For a group of identical low mass emission units, which perform representative testing according to (c)(1)(iv)(B)and have identical NOx controls, the fuel-and-unit-specific NOx emission rate for each unit in the group of units, for a particular type of fuel, shall be the higher of:

(*i*) The highest NOx emission rate from all appendix E tests of all tested low mass emission units in the group of identical units for that type of fuel multiplied by 1.15; or

(*ii*) 0.15 lb/mmBtu

(D) For each low mass emission unit, each unit in a group of units sharing a common fuel supply, or identical units for which the provisions of paragraph (c)(1)(iv) of this section are used to account for NOx emission rate, the owner or operator shall determine a new fuel-and-unit-specific NOx emission rate every five years, unless changes in the fuel supply, physical changes to the unit, changes in the manner of unit operation, or changes to the emission controls occur which may cause a significant increase in the unit’s actual NOx emission rate. If such changes occur, the fuel-and-unit-specific NOx emission rate(s) shall be re-determined according to paragraph (c)(1)(iv) of this section. If a low mass emission unit belongs to a group of identical units and it is required to retest to determine a new fuel-and-unit-specific NOx emission rate because of changes in the fuel supply, physical changes to the unit, changes in the manner of unit operation or changes to the emission controls occur which may cause a significant increase in the unit’s actual NOx emission rate, any other unit in that group of identical units is not required to re-

determine the fuel-and-unit-specific NOx emission rate unless such unit also undergoes changes in the fuel supply, physical changes to the unit, changes in the manner of unit operation or changes to the emission controls occur which may cause a significant increase in the unit’s actual NOx emission rates.

(E) Each low mass emission unit, each low mass emission unit in a group of units combusting a common fuel, or each low mass emission unit in a group of identical units for which a fuel-and-unit-specific NOx emission rate(s) are determined shall meet the quality assurance and quality control provisions of paragraph (e) of this section.

(F) Low mass emission units may use the results of appendix E testing, if such test results are available from a test conducted no more than five years prior to the time of initial certification, to determine the appropriate fuel- and unit-specific NOx emission rate(s). However, fuel-and-unit-specific NOx emission rates from historical testing may not be used longer than five years after the appendix E testing was conducted.

(G) Low mass emission units for which at least 3 years of NOx emission rate continuous emissions monitoring system data and corresponding fuel usage data are available may determine fuel-and-unit-specific NOx emission rates from the actual data using the following procedure. Separate the

actual NOx emission rate data into groups, according to the type of fuel combusted. Discard data from periods when multiple fuels were combusted. Each fuel-specific data set must contain at least 168 hours of data and must represent all normal operating ranges of the unit when combusting the fuel. Sort the data in each fuel-specific data set in ascending order according to NOx emission rate. Determine the 95th percentile NOx emission rate for each data set as defined in § 72.2 of this chapter. Use the 95th percentile value for each data set as the fuel-and-unit-specific NOx emission rate, except that for a unit with NOx emission controls of any kind, if the 95th percentile value is less than 0.15 lb/mmBtu, a value of 0.15 lb/mmBtu shall be used as the fuel-and-unit-specific NOx emission rate.

(H) For low mass emission units with NOx emission controls, the owner or operator shall, during every hour of unit operation during the test period, monitor and record parameters, as required under paragraph (e)(5) of this section, which indicate that the NOx emission controls are operating properly. After the test period, these same parameters shall be monitored and recorded and kept for all operating hours in order to determine whether the NOx controls are operating properly and to allow the determination of the correct NOx emission rate as required under paragraph (c)(1)(iv) of this section.

(*1*) For low mass emission units with steam or water injection, the steam-to-fuel or water-to-fuel ratio used during the testing must be documented. The water-to-fuel or steam-to-fuel ratio must be maintained during unit operations for a unit to use the fuel and unit specific NOx emission rate determined during the test. Owners or operators must include in the monitoring plan the acceptable range of the water-to-fuel or steam-to-fuel ratio, which will be used to indicate hourly, proper operation of the NOx controls for each unit. The water-to-fuel or steam-to-fuel ratio shall be monitored and recorded during each hour of unit operation. If the water-to-fuel or steam-to-fuel ratio is not within the acceptable range in a given hour the fuel and unit specific NOx emission rate may not be used for that hour.

(*2*)For low mass emission units with other types of NOx controls, appropriate parameters and the acceptable range of the parameters which indicate hourly proper operation of the NOx controls must be specified in the monitoring plan. These parameters shall be monitored during each subsequent operating hour. If any of these parameters are not within the acceptable range in a given operating hour, the fuel and unit specific NOx emission rates may not be used in that hour.

(2) Records of Operating Time, Fuel Usage, Unit Output and NOx Emission Control Operating Status

The owner or operator shall keep the following records on-site, for three years, in a form suitable for inspection:

(i) For each low mass emission unit, the owner or operator shall keep hourly records which indicate whether or not the unit operated during each clock hour of each calendar year. The owner or operator may report partial operating hours or may assume that for each hour the unit operated the operating time is a whole hour. Units using partial operating hours and the maximum rated hourly heat input to calculate heat input for each hour must report partial operating hours.

(ii) For each low mass emissions unit, the owner or operator shall keep hourly records indicating the type(s) of fuel(s) combusted in the unit during each hour of unit operation.

(iii) For each low mass emission unit using the long term fuel flow methodology under paragraph (c)(3)(ii) of this section to determine hourly heat input, the owner or operator shall keep hourly records of unit output (in megawatts or thousands of pounds of steam), for the purpose of apportioning heat input to the individual unit operating hours.

(iv) For each low mass emission unit with NOx emission

controls of any kind, the owner or operator shall keep hourly records of the hourly value of the parameter(s) specified in (c)(1)(iv)(H) of this section used to indicate proper operation of the unit's NOx controls.

(3) Heat Input

Hourly, quarterly and annual heat input for a low mass emission unit shall be determined using either the maximum rated hourly heat input method under paragraph (c)(3)(i) of this section or the long term fuel flow method under paragraph (c)(3)(ii) of this section.

(i) Maximum Rated Hourly Heat Input Method.

(A) For the purposes of the mass emission calculation methodology of paragraph (c)(3) of this section, the hourly heat input (mmBtu) to a low mass emission unit shall be deemed to equal the maximum rated hourly heat input, as defined in § 72.2 of this chapter, multiplied by the operating time of the unit for each hour. The owner or operator may choose to record and report partial operating hours or may assume that a unit operated for a whole hour for each hour the unit operated. However, the owner or operator of a unit may petition the Administrator under § 75.66 for a lower value for maximum rated hourly heat input than that defined in § 72.2 of this chapter. The Administrator may approve such lower value if the owner or operator demonstrates that either the maximum hourly heat

input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and such a lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(B) The quarterly heat input, HI_{qtr}, in mmBtu, shall be determined using Equation LM-1 :

$$HI_{qtr} = T_{qtr} \times HI_{hr}$$

(Eq. LM-1)

where:

T_{qtr} = Actual number of operating hours in the quarter **(**hr**)**.

HI_{hr} = Hourly heat input under paragraph (c)(3)(i)(A) of this section **(**mmBtu**)**.

(C) The year-to-date cumulative heat input (mmBtu) shall be the sum of the quarterly heat input values for all of the calendar quarters in the year to date.

(ii) Long Term Fuel Flow Heat Input Method. The owner or operator may, for the purpose of demonstrating that a low mass emission unit or group of low mass emission units

sharing a common fuel supply meets the requirements of this section, use records of long-term fuel flow, to calculate hourly heat input to a low mass emission unit.

(A) This option may be used for a group of low mass emission units only if:

(*1*) The low mass emission units combust fuel from a common source of supply; and

(*2*) Records are kept of the total amount of fuel combusted by the group of low mass emission units and the hourly output (in megawatts or pounds of steam) from each unit in the group; and

(*3*) All of the units in the group are low mass emission units.

(B) For each fuel used during the quarter, the volume in standard cubic feet (for gas) or gallons (for oil) may be determined using any of the following methods;

(*1*) Fuel billing records (for low mass emission units, or groups of low mass emission units, which purchase fuel from non-affiliated sources),

(*2*) American Petroleum Institute (API) standard, American Petroleum Institute (API) Petroleum Measurement Standards, Chapter 3, Tank Gauging: Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, December 1994; Section 1B, Standard Practice for

Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, April 1992 (reaffirmed January 1997); Section 2, Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, September 1995; Section 3, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, June 1996; Section 4, Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, April 1995; and Section 5, Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, March 1997; Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992) (incorporated by reference under § 75.6); or;

(*3*) A fuel flow meter certified and maintained according to appendix D to this part.

(C) For each fuel combusted during a quarter, the gross calorific value of the fuel shall be determined by either:

(*1*) Using the applicable procedures for gas and oil analysis in sections 2.2 and 2.3 of appendix D to this part. If this option is chosen the highest gross calorific value recorded during the previous calendar year shall be used; or

(*2*) Using the appropriate default gross calorific value listed in Table 1d.

Table 1d: Default Gross Calorific Values (GCVs) for Various Fuels

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

(D) For each type of fuel oil combusted during the quarter, the specific gravity of the oil shall be determined either by:

(*1*) Using the procedures in section 2.2.6 of appendix D to this part. If this option is chosen, use the highest specific gravity value recorded during the previous calendar year shall be used; or

(*2*) Using the appropriate default specific gravity value in Table 1e.

Table 1e: Default Specific Gravity Values for Fuel Oil

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

(E) The quarterly heat input from each type of fuel combusted during the quarter by a low mass emission unit or group of low mass emission units sharing a common fuel supply shall be determined using Equation LM-2 for oil and LM-3 for natural gas.

$$HI_{fuel-qtr} = M_{qtr} \frac{GCV_{\max}}{10^6}$$

Eq LM-2 (for fuel oil or diesel fuel)

where:

$HI_{fuel-qtr}$ = Quarterly total heat input from oil (mmBtu).

M_{qtr} = Mass of oil consumed during the entire quarter, determined as the product of the volume of oil under paragraph (c)(3)(ii)(B) of this section and the specific gravity under paragraph (c)(3)(ii)(D) of this section (lb)

GCV_{max} = Gross calorific value of oil, as determined under paragraph (c)(3)(ii)(C) of this section (Btu/lb)

10^6 = Conversion of Btu to mmBtu.

$$HI_{fuel-qtr} = Q_g \frac{GCV_{\max}}{10^6}$$

Eq LM-3 (for natural gas)

where:

$HI_{fuel-qtr}$ = Quarterly heat input from natural gas (mmBtu).

Q_g = Value of natural gas combusted during the quarter, as determined under paragraph (c)(3)(ii)(B) of this section standard cubic feet (scf).

GCV_g = Gross calorific value of the natural gas combusted during the quarter, as determined under paragraph (c)(3)(ii)(C) of this section (Btu/scf)

10^6 = Conversion of Btu to mmBtu.

(F) The quarterly heat input (mmBtu) for all fuels for the quarter, $HI_{qtr-total,}$ shall be the sum of the $HI_{fuel-qtr}$ values determined using Equations LM-2 and LM-3.

$$HI_{qtr-total} = \sum_{all-fuels} HI_{fuel-qtr}$$

(Eq. LM-4)

(G) The year-to-date cumulative heat input (mmBtu) for all fuels shall be the sum of all quarterly total heat input ($HI_{qtr-total}$) values for all calendar quarters in the year to date.

(H) For each low mass emission unit, each low mass emission unit of an identical group of units, or each low mass emission unit in a group of units sharing a common fuel supply, the owner or operator shall determine the quarterly unit output in megawatts or pounds of steam. The quarterly unit output shall be the sum of the hourly unit output values recorded under paragraph (c)(2) of this section and shall be determined using Equations LM-5 or LM-6.

$$MW_{qtr} = \sum_{all-hours} MW$$

Eq LM-5 (for MW output)

$$ST_{qtr} = \sum_{all-hours} ST$$

Eq LM-6 (for steam output)

where:

MW_{qtr} = the power produced during all hours of operation during the quarter by the unit (MW)

$ST_{fuel\text{-}qtr}$ = the total quarterly steam output produced during all hours of operation during the quarter by the unit (klb)

MW = the power produced during each hour in which the unit operated during the quarter (MW).

ST = the steam output produced during each hour in which the unit operated during the quarter (klb)

(I) For a low mass emission unit that is not included in a group of low mass emission units sharing a common fuel supply, apportion the total heat input for the quarter, $HI_{qtr\text{-}total}$ to each hour of unit operation using either Equation LM- 7 or LM-8:

$$HI_{hr} = HI_{qtr-total} \frac{MW_{hr}}{MW_{qtr}}$$

(Eq LM-7 for MW output)

$$HI_{hr} = HI_{qtr-total} \frac{ST_{hr}}{ST_{qtr}}$$

(Eq LM-8 for steam output)

where:

HI_{hr} = hourly heat input to the unit (mmBtu)

MW_{hr} = hourly output from the unit (MW)

ST_{hr} = hourly steam output from the unit (klb)

(J) For each low mass emission unit that is included in a group of units sharing a common fuel supply, apportion the total heat input for the quarter, $HI_{qtr\text{-}total}$ to each hour of operation using either Equation LM-7a or LM-8a:

$$HI_{hr} = HI_{qtr-total} \frac{MW_{hr}}{\sum_{all-units} MW_{qtr}}$$

(Eq LM-7a for MW output)

(Eq LM-8a for steam output)

where:

HI_{hr} = hourly heat input to the individual unit (mmBtu)

MW_{hr} = hourly output from the individual unit (MW)

ST_{hr} = hourly steam output from the individual unit (klb)

$\sum_{all-units} MW_{qtr}$ = Sum of the quarterly outputs (from Eq.LM-5) for all units in the group (MW)

$\sum_{all-units} ST_{qtr}$ = Sum of the quarterly steam outputs (from Eq. LM-6) for all units in the group (klb)

(4) Calculation of SO2, NOx and CO2 mass emissions The owner or operator shall, for the purpose of demonstrating that a low mass emission unit meets the requirements of this section, calculate SO2, NOx and CO2 mass emissions in accordance with the following.

(i) SO2 Mass Emissions.

(A) The hourly SO2 mass emissions (lbs) for a low mass emission unit shall be determined using Equation LM-9 and the appropriate fuel-based SO2 emission factor from Table 1a of paragraph (c)(1)(i) of this section for the fuels combusted in that hour. If more than one fuel is combusted in the hour, use the highest emission factor for all of the fuels combusted in the hour. If records are missing as to which fuel was combusted in the hour, use the highest emission factor for all of the fuels capable of being combusted in the unit.

$$W_{SO2} = EF_{SO2} \times HI_{hr}$$

(Eq. LM-9)

where:

W_{SO2} = Hourly SO2 mass emissions (lbs).

EF_{SO2} = SO2 emission factor from Table 1a of paragraph (c)(1)(i) of this section (lb/mmBtu).

HI_{hr} = Either the maximum rated hourly heat input under paragraph (c)(3)(i)(A) of this section or the hourly heat input under paragraph (c)(3)(ii) of this section (mmBtu).

(B) The quarterly SO2 mass emissions (tons) for the low mass emission unit shall be the sum of all the hourly SO2 mass emissions in the quarter, as determined under paragraph (c)(4)(i)(A) of this section, divided by 2000 lb/ton.

(C) The year-to-date cumulative SO2 mass emissions (tons) for the low mass emission unit shall be the sum of the quarterly SO2 mass emissions, as determined under paragraph (c)(4)(i)(B) of this section, for all of the calendar quarters in the year to date.

(ii) NOx Mass Emissions.

(A) The hourly NOx mass emissions for the low mass emission unit (lbs) shall be determined using Equation LM-10. If more than one fuel is combusted in the hour, use the

highest emission rate for all of the fuels combusted in the hour. If records are missing as to which fuel was combusted in the hour, use the highest emission factor for all of the fuels capable of being combusted in the unit. For low mass emission units with NOx emission controls of any kind and for which a fuel-and-unit-specific NOx emission rate is determined under paragraph (c)(1)(iv) of this section, for any hour in which the parameters under paragraph (c)(1)(iv)(A) of this section do not show that the NOx emission controls are operating properly, use the NOx emission rate from Table 1b of paragraph (c)(1)(ii) of this section for the fuel combusted during the hour with the highest NOx emission rate.

$$W_{NOx} = EF_{NOx} \times HI_{hr}$$

(Eq. LM-10)

where:

WNOx = Hourly NOx mass emissions (lbs).

EFNOx = Either the NOx emission factor from Table 1b of paragraph (c)(1)(ii) of this section of this section or the fuel-and-unit-specific NOx emission rate determined under paragraph (c)(1)(iv) of this section (lb/mmBtu).

HI_{hr} = Either the maximum rated hourly heat input

from paragraph (c)(3)(i)(A) of this section or the hourly heat input as determined under paragraph(c)(3)(ii) of this section (mmBtu).

(B) The quarterly NOx mass emissions (tons) for the low mass emission unit shall be the sum of all of the hourly NOx mass emissions in the quarter, as determined under paragraph (c)(4)(ii)(A) of this section, divided by 2000 lb/ton.

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

(iii) CO_2 Mass Emissions.

(A) The hourly CO2 mass emissions (tons) for the affected low mass emission unit shall be determined using Equation LM-11 and the appropriate fuel-based CO2 emission factor from Table 1c of paragraph (c)(1)(iii) of this section for the fuel being combusted in that hour. If more than one fuel is combusted in the hour, use the highest emission factor for all of the fuels combusted in the hour. If records are missing as to which fuel was combusted in the hour, use the highest emission factor for all of the fuels capable of being combusted in the unit.

$$W_{CO2} = EF_{CO2} \times HI_{hr}$$

(Eq. LM-11)

where:

W_{CO2} = Hourly CO2 mass emissions (tons).

EF_{CO2} = Fuel-based CO2 emission factor from Table 1c of paragraph (c)(1)(iii) of this section (ton/mmBtu).

HI_{hr} = Either the maximum rated hourly heat input from paragraph (c)(3)(i)(A) of this section or the hourly heat input as determined under paragraph (c)(3)(ii) of this section (mmBtu)

(B) The quarterly CO2 mass emissions (tons)for the low mass emission unit shall be the sum of all of the hourly CO2 mass emissions in the quarter, as determined under paragraph (c)(4)(iii)(A)of this section.

(C) The year-to-date cumulative CO2 mass emissions (tons) for the low mass emission unit shall be the sum of all of the quarterly CO2 mass emissions, as determined under paragraph (c)(4)(iii)(B) of this section, for all of the calendar quarters in the year to date.

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

(e) The quality control and quality assurance

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

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

(2) For low mass emission units or groups of units which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section and which use American Petroleum Institute (API) standard, American Petroleum Institute (API) Petroleum Measurement Standards, Chapter 3, Tank Gauging: Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, December 1994; Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank

Gauging, April 1992 (reaffirmed January 1997); Section 2, Standard Practice for Gauging Petroleum and Petroleum Products in Tank Cars, September 1995; Section 3, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, June 1996; Section 4, Standard Practice for Level Measurement of Liquid Hydrocarbons on Marine Vessels by Automatic Tank Gauging, April 1995; and Section 5, Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Vessels by Automatic Tank Gauging, March 1997, Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992) (incorporated by reference under § 75.6), to determine fuel usage, the owner or operator shall keep, at the facility, a copy of the standard used and shall keep records, for three years, of all measurements obtained for each quarter using the methodology.

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

(4) For each low mass emission unit for which fuel-and-

unit-specific NOx emission rates are determined in accordance with paragraph (c)(1)(iv) of this section, the owner or operator shall keep, at the facility, records which document the results of all NOx emission rate tests conducted according to appendix E to this part. If CEMS data are used to determine the fuel-and-unit-specific NOx emission rates under paragraph (c)(1)(iv)(G) of this section, the owner or operator shall keep, at the facility, records of the CEMS data and the data analysis performed to determine a fuel-and-unit-specific NOx emission rate. The appendix E test records and historical CEMS data records shall be kept until the fuel and unit specific NOx emission rates are re-determined.

(5) For each low mass emission unit for which fuel-and-unit-specific NOx emission rates are determined in accordance with paragraph (c)(1)(iv) of this section and which have NOx emission controls of any kind, the owner or operator shall develop and keep on-site a quality assurance plan which explains the procedures used to document proper operation of the NOx emission controls. The plan shall include the parameters monitored (e.g., water-to-fuel ratio) and the acceptable ranges for each parameter used to determine proper operation of the unit’s NOx controls.

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

* * * * *

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

(1) Monitoring plan. The designated representative shall submit a monitoring plan in accordance with §§ 75.53 and 75.62.

The designated representative for an owner or operator who wishes to use fuel- and unit-specific NOx emission rate testing for units with NOx controls under §75.19 (c)(1)(iv) must submit in the monitoring plan the parameters monitored which will be used to determine operation of the NOx emission controls. For units using water or steam injection to control NOx, the water-to-fuel or steam-to-fuel range of values must be documented.

(2) Certification application. [reserved]

(3) Approval of certification applications. The

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

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

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

(4) Disapproval of certification applications. If the Administrator determines that the certification application does not demonstrate that the unit meets the requirements of §§ 75.19(a) and (b), the Administrator shall issue a written

notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and the data recorded under the excepted methodology shall not be considered valid. The owner or operator shall follow the procedures for loss of certification:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in §§ 75.21(e) (introductory paragraph) and 75.21(e)(1): the maximum potential concentration of SO2, as defined in section 2.1.1.1 of appendix A to this part to report SO2 concentration; the maximum potential NOx emission rate, as defined in § 72.2 of this chapter to report NOx emission rate; the maximum potential flow rate, as defined in section 2.1 of appendix A to this part to report volumetric flow; or the maximum CO2 concentration used to determine the maximum potential concentration of SO2 in section 2.1.1.1 of appendix A to this part to report CO2 concentration data. For a unit subject to a State or federal NOx mass reduction program where the owner or operator intends to monitor NOx mass emissions with a NOx pollutant concentration monitor and a flow monitoring system, substitute for NOx

concentration using the maximum potential concentration of NOx, as defined in section 2.1.2.1 of appendix A to this part, and substitute for volumetric flow using the maximum potential flow rate, as defined in section 2.1 of appendix A to this part. The owner or operator shall substitute these values until such time, date, and hour as a continuous emission monitoring system or excepted monitoring system, where applicable, is installed and provisionally certified;

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

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

* * * * *

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

§ 75.24 Out-of-control periods.

* * * * *

(d) When the bias test indicates that an SO2 monitor, a

volumetric flow monitor, a NOx continuous emission monitoring system or a NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71(a)(2), is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test, or calculate and use the bias adjustment factor as specified in section 2.3.3 of appendix B to this part and in accordance with § 75.7.

* * * * *

Subpart H -- NOx Mass Emissions Provisions [Added]

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

§ 75.70 NOx mass emissions provisions.

(a) Applicability. The owner or operator of a unit shall comply with the requirements of this subpart to the extent that compliance is required by an applicable State or federal NOx mass emission reduction program that incorporates by reference, or otherwise adopts the provisions of, this subpart.

(1) For purposes of this subpart, the term “affected unit” shall mean any unit that is subject to a State or federal NOx mass emission reduction program requiring compliance with this subpart, the term “nonaffected unit” shall mean any unit that is not subject to such a program, the term “permitting authority” shall mean the permitting authority under an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart, and the term “designated representative” shall mean the responsible party under the applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

(2) In addition, the provisions of subparts A, C, D, E, F, and G and appendices A through G applicable to NOx concentration, flow rate, NOx emission rate and heat input, as set forth and referenced in this subpart, shall apply to the owner or operator of a unit required to meet the requirements of this subpart by a State or federal NOx mass emission reduction program. When applying these requirements, the term “affected unit” shall mean any unit that is subject to a State or federal NOx mass emission reduction program requiring compliance with this subpart, the term “permitting authority” shall mean the permitting authority under an applicable State or federal NOx mass emission reduction program that adopts the requirements of

this subpart, and the term “designated representative” shall mean the responsible party under the applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart. The requirements of this part for SO2, CO2 and opacity monitoring, recordkeeping and reporting do not apply to units that are subject to a State or federal NOx mass emission reduction program only and are not affected units with an Acid Rain emission limitation.

(b) Compliance dates. The owner or operator of an affected unit shall meet the compliance deadlines established by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

(c) Prohibitions.

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

(2) No owner or operator of an affected unit or a non-affected unit under § 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged emissions of NOx to the atmosphere without accounting for all such

emissions in accordance with the applicable provisions of this part, except as provided in §75.74.

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

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

(i) During the period that the unit is covered by a retired unit exemption that is in effect under the State or federal NOx mass emission reduction program that adopts the requirements of this subpart;

(ii) The owner or operator is monitoring NOx mass emissions from the affected unit with another certified monitoring system approved, in accordance with the

provisions of paragraph (d) of this section; or

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

(d) Initial certification and recertification procedures.

(1) The owner or operator of an affected unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of this part, except that the owner or operator shall meet any additional requirements set forth in an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

(2) The owner or operator of an affected unit that is not subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures established by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart. The owner or operator of an affected unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures established by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart for any additional NOx-diluent CEMS, flow monitors, diluent monitors or NOx concentration monitoring

system required under the NOx mass emissions provisions of §75.71 or the common stack provisions in § 75.72.

(e) Quality assurance and quality control requirements. For units that use continuous emission monitoring systems to account for NOx mass emissions, the owner or operator shall meet the quality assurance and quality control requirements in § 75.21 that apply to NOx-diluent continuous emission monitoring systems, flow monitoring systems, NOx concentration monitoring systems, and diluent monitors under §75.71. A NOx concentration monitoring system for determining NOx mass emissions in accordance with § 75.71 shall meet the same certification testing requirements, quality assurance requirements, and bias test requirements as are specified in this part for an SO2 pollutant concentration monitor. Units using excepted methods under § 75.19 shall meet the applicable quality assurance requirements of that section, and units using excepted monitoring methods under appendix D and E to this part shall meet the applicable quality assurance requirements of those appendices.

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

follows:

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

(i) A valid quality assured hour of NOx emission rate data (in lb/mmBtu) has not been measured and recorded for a unit by a certified NOx-diluent continuous emission monitoring system or by an approved monitoring system under subpart E of this part;

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

(iii) A valid quality assured hour of heat input data (in mmBtu) has not been measured and recorded for a unit from a certified flow monitor and a certified diluent (CO2 or O2) monitor or by an approved alternative monitoring system under subpart E of this part or by an accepted monitoring system under appendix D to this part, where heat input is required either for calculating NOx mass or allocating allowances under the applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart; or

(iv) A valid, quality-assured hour of NOx concentration

data (in ppm) has not been measured and recorded by a certified NOx concentration monitoring system, or by an approved alternative monitoring method under subpart E of this part, where the owner or operator chooses to use a NOx concentration monitoring system with a volumetric flow monitor, and without a diluent monitor, to calculate NOx mass emissions. The initial missing data procedures for determining monitor data availability and the standard missing data procedures for a NOx concentration monitoring system shall be the same as the procedures specified for a NOx-diluent continuous emission monitoring system under §§ 75.31, 75.32 and 75.33, except that the phrase “NOx concentration monitoring system" shall be substituted for the phrase “NOx continuous emission monitoring system“, the phrase “NOx concentration” shall be substituted for “NOx emission rate”; and the phrase “maximum potential NOx concentration, as defined in section 2.1.2.1 of appendix A of this part” shall be substituted for the phrase “maximum potential NOx emission rate, as defined in § 72.2 of this chapter”.

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

combusts fuel and:

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

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

(iii) A valid, quality-assured hour of NOx emission rate data has not been obtained according to the procedures and specifications of appendix E to this part.

(g) Reporting data prior to initial certification.

If the owner or operator of an affected unit has not successfully completed all certification tests required by the State or federal NOx mass emission reduction program that adopts the requirements of this subpart by the applicable date required by that program, he or she shall determine, record and report hourly data prior to initial certification using one of the following procedures, consistent with the monitoring equipment to be certified:

(1) For units that the owner or operator intends to monitor for NOx mass emissions using NOx emission rate and heat input, the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit, as defined

in §72.2 of this chapter.

(2) For units that the owner or operator intends to monitor for NOx mass emissions using a NOx concentration monitoring system and a flow monitoring system, the maximum potential concentration of NOx and the maximum potential flow rate of the unit under section 2.1 of Appendix A of this part;

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

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

(5) Any unit using the procedures in paragraph (g)(2) of this section that is required to report heat input for purposes of allocating allowances shall also report the maximum potential hourly heat input of the unit, as defined in §72.2 of this chapter.

(h) Petitions.

(1) The designated representative of an affected unit that is subject to an Acid Rain emissions limitation may submit a petition to the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NOx mass emission reduction program that adopts

the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart and with such State or federal NOx mass emission reduction program only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (h)(1) of this section, petitions requesting an alternative to a requirement concerning any additional CEMS required solely to meet the common stack provisions of § 75.72 shall be submitted to the permitting authority and the Administrator and shall be governed by paragraph (h)(3)(ii) of this section. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

(3)(i) The designated representative of an affected unit that is not subject to an Acid Rain emissions limitation may submit a petition to the permitting authority and the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

(ii) Use of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that it is approved by the Administrator and by the permitting authority if required by an applicable State or federal NOx mass emission reduction program that adopts the requirements of this subpart.

§ 75.71 Specific provisions for monitoring NOx and heat input for the purpose of calculating NOx mass emissions.

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

(1) Meet the general operating requirements in § 75.10 for a NOx-diluent continuous emission monitoring system (consisting of a NOx pollutant concentration monitor, an O2- or CO2-diluent gas monitor, and a data acquisition and handling system) to measure NOx emission rate and for a flow monitoring system and an O2- or CO2-diluent gas monitor to measure heat input, except as provided in accordance with subpart E of this part; or

(2) Meet the general operating requirements in § 75.10 for a NOx concentration monitoring system (consisting of a NOx pollutant concentration monitor and a data acquisition and handling system) to measure NOx concentration and for a flow monitoring system. In addition, if heat input is required to be reported under the applicable State or

federal NOx mass emission reduction program that adopts the requirements of this subpart, the owner or operator also must meet the general operating requirements for a flow monitoring system and an O2- or CO2-diluent gas monitor to measure heat input, or, if applicable, use the procedures in appendix D to this part. These requirements must be met, except as provided in accordance with subpart E of this part.

(b) Moisture correction. If a correction for the stack gas moisture content is needed to properly calculate the NOx emission rate in lb/mmBtu (i.e., if the NOx pollutant concentration monitor measures on a different moisture basis from the diluent monitor) or NOx mass emissions in tons (i.e., if the NOx concentration monitoring system or diluent monitor measures on a different moisture basis from the flow rate monitor), the owner or operator of an affected unit shall account for the moisture content of the flue gas on a continuous basis in accordance with § 75.11(b) except that the term “SO2" shall be replaced by the term “NOx”.

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

chapter, shall either:

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

(2) Meet the general operating requirements in § 75.10 for a NOx-diluent continuous emission monitoring system, except as provided in accordance with subpart E of this part, and use the procedures specified in appendix D to this part for determining hourly heat input. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NOx mass reporting provisions of this subpart, except as provided in §75.72(a); or

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

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

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

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

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

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

(2) Use the low mass emissions excepted methodology in § 75.19(c) for estimating hourly emission rate, hourly heat

input, and hourly NOx mass emissions.

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

§ 75.72 Determination of NOx mass emissions.

Except as provided in paragraphs (e) and (f) of this section, the owner or operator of an affected unit shall calculate hourly NOx mass emissions (in lbs) by multiplying the hourly NOx emission rate (in lbs/mmBtu) by the hourly heat input (in mmBtu/hr) and the hourly operating time (in hr). The owner or operator shall also calculate quarterly and cumulative year-to-date NOx mass emissions and cumulative NOx mass emissions for the ozone season (in tons) by summing the hourly NOx mass emissions according to the procedures in section 8 of appendix F to this part.

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

(1) Record the combined NOx mass emissions for the units exhausting to the common stack, install, certify, operate, and maintain a NOx-diluent continuous emissions

monitoring system in the common stack, and either:

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

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

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

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

(2) Install, certify, operate, and maintain a NOx-diluent continuous emissions monitoring system in the duct to the common stack from each unit and either:

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

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

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

(B) Install, certify, operate, and maintain a flow

monitoring system in the duct to the common stack for each remaining unit.

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

(1) Install, certify, operate, and maintain a NOx-diluent continuous emission monitoring system in the duct to the common stack from each affected unit; and

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

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

(A) Use the procedures in appendix D to determine heat input for that unit; however, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NOx mass reporting provisions of this subpart; and

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

(2) Install, certify, operate, and maintain a NOx-diluent continuous emission monitoring system in the common

stack; and

(i) Designate the nonaffected units as affected units in accordance with the applicable State or federal NOx mass emissions reduction program and meet the requirements of paragraph (a)(1) of this section; or

(ii) Install, certify, operate, and maintain a flow monitoring system in the common stack and a NOx-diluent continuous emission monitoring system in the duct to the common stack from each nonaffected unit. The designated representative shall submit a petition to the permitting authority and the Administrator to allow a method of calculating and reporting the NOx mass emissions from the affected units as the difference between NOx mass emissions measured in the common stack and NOx mass emissions measured in the ducts of the nonaffected units, not to be reported as an hourly value less than zero. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the NOx mass emissions from the affected units are not underestimated. In addition, the owner or operator shall also either:

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

(B) For any nonaffected unit exhausting to the common

stack and otherwise eligible to use the procedures in appendix D to this part, determine heat input using the procedures in appendix D for that unit. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NOx mass reporting provisions of this subpart. For any remaining nonaffected unit that exhausts to the common stack, install, certify, operate, and maintain a flow monitoring system in the duct to the common stack; or

(iii) Install a flow monitoring system in the common stack and record the combined emissions from all units as the combined NOx mass emissions for the affected units for recordkeeping and compliance purposes; or

(iv) Submit a petition to the permitting authority and the Administrator to allow use of a method for apportioning NOx mass emissions measured in the common stack to each of the units using the common stack and for reporting the NOx mass emissions. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the NOx mass emissions from the affected units are not underestimated.

(c) Unit with bypass stack. Whenever any portion of the flue gases from an affected unit can be routed to avoid the

installed NOx-diluent continuous emissions monitoring system or NOx concentration monitoring system, the owner and operator shall either:

(1) Install, certify, operate, and maintain a NOx-diluent continuous emissions monitoring system and a flow monitoring system on the bypass flue, duct, or stack gas stream and calculate NOx mass emissions for the unit as the sum of the emissions recorded by all required monitoring systems; or

(2) Monitor NOx mass emissions on the bypass flue, duct, or stack gas stream using the reference methods in § 75.22(b) for NOx concentration, flow, and diluent, or NOx concentration and flow, and calculate NOx mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems.

(d) Unit with multiple stacks. Notwithstanding § 75.17(c), when the flue gases from a affected unit discharge to the atmosphere through more than one stack, or when the flue gases from a unit subject to a NOx mass emission reduction program utilize two or more ducts feeding into two or more stacks (which may include flue gases from other affected or nonaffected unit(s)), or when the flue gases

from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain a NOx-diluent continuous emission monitoring system and a flow monitoring system in each duct feeding into the stack or stacks and determine NOx mass emissions from each affected unit using the stack or stacks as the sum of the NOx mass emissions recorded for each duct; or

(2) Install, certify, operate, and maintain a NOx-diluent continuous emissions monitoring system and a flow monitoring system in each stack, and determine NOx mass emissions from the affected unit using the sum of the NOx mass emissions recorded for each stack, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable requirements of paragraphs (a) and (b) of this section to determine and record NOx mass emissions from the units using that stack; or

(3) If the unit is eligible to use the procedures in appendix D to this part, install, certify, operate, and maintain a NOx-diluent continuous emissions monitoring system in one of the ducts feeding into the stack or stacks and use the procedures in appendix D to this part to

determine heat input for the unit, provided that:

(i) There are no add-on NOx controls at the unit;

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

(iii) The owner or operator of the unit demonstrates to the satisfaction of the permitting authority and the Administrator that the NOx emission rate in the monitored duct or stack is representative of the NOx emission rate in each duct or stack.

(e) Units using a NOx concentration monitoring system and a flow monitoring system to determine NOx mass. The owner or operator may use a NOx concentration monitoring system and a flow monitoring system to determine NOx mass emissions in paragraphs (a) through (d) above (in place of a NOx-diluent continuous emission monitoring system and a flow monitoring system). When using this approach, calculate NOx mass according to sections 8.2 and 8.3 in appendix F of this part. In addition, if an applicable State or federal NOx mass reduction program requires determination of a unit's heat input, the owner or operator must either:

(1) Install, certify, operate, and maintain a CO2 or O2 diluent monitor in the same location as each flow monitoring system. In addition, the owner or operator must provide heat input values for each unit utilizing a common stack by either:

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

(ii) Measure heat input from each affected unit, using a flow monitor and a CO2 or O2 diluent monitor in the duct from each affected unit; or,

(2) For units that are eligible to use appendix D to this part, use the procedures in appendix D to this part to determine heat input for the unit. However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of appendix D of this part are not applicable to any unit that is using the provisions of this subpart to monitor, record, and report NOx mass emissions under a State or federal NOx mass emission reduction program and that shares a common pipe or a common stack with a nonaffected unit.

(f) Units using the low mass emitter excepted methodology under §75.19 For units that are using the low mass emitter excepted methodology under §75.19, calculate ozone season NOx mass emissions by summing all of the hourly NOx mass emissions in the ozone season, as determined under paragraph §75.19(c)(4)(ii)(A) of this section, divided by 2000 lb/ton.

(g) Procedures for apportioning heat input to the unit level If the owner or operator of a unit using the common

stack monitoring provisions in paragraphs (a) or (b) of thi section does not monitor and record heat input at the unit level and the owner or operator is required to do so under an applicable State or federal NOx mass emission reduction program, the owner or operator should apportion heat input from the common stack to each unit according to §75.16(e)(5)

§ 75.73 Recordkeeping and Reporting.[Reserved]

§ 75.74 Annual and ozone season monitoring and reporting requirements.

(a) Annual monitoring requirement.

(1) The owner or operator of an affected unit subject both to an Acid Rain emission limitation and to a State or federal NOx mass reduction program that adopts the provisions of this part must meet the requirements of this part during the entire calendar year.

(2) The owner or operator of an affected unit subject to a State or federal NOx mass reduction program that adopts the provisions of this part and that requires monitoring and reporting of hourly emissions on an annual basis must meet the requirements of this part during the entire calendar year.

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

paragraph (a) may either:

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

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

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

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

(2) The owner or operator is required to operate and maintain continuous emission monitoring systems and perform quality assurance and quality control procedures under §75.21 and appendix B of this part each year from the time the continuous emission monitoring system is initially certified or is recertified under paragraph (c)(1) of this

section through September 30. Records related to the quality assurance/quality control program must be kept in a form suitable for inspection on a year-round basis.;

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

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

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

(ii) The owner or operator of a diesel-fired unit that

performs sampling upon delivery from the delivery vehicle must ensure that all shipments received during the calendar year are sampled.

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

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

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

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

(6) The owner or operator shall use quality-assured data, in accordance with paragraph (c)(2) or (c)(3) of this section, in the substitute data procedures under subpart D of part 75 and section 2.4 of appendix D of part 75 of this chapter.

(i) The lookback periods (e.g., 2160 quality-assured

monitor operating hours for a NOx-diluent continuous emission monitoring system, a NOx concentration monitoring system, or a flow monitoring system) used to calculate missing data must include only data from periods when the monitors were quality assured under paragraph (c)(2) or (c)(3) of this section.

(ii) If the NOx emission rate or NOx concentration of the unit was consistently lower in the previous ozone season because the unit combusted a fuel that produces less NOx than the fuel currently being combusted or because the unit's add-on emission controls are not operating properly, then the owner or operator shall not use the missing data procedures of §§ 75.31 through 75.33. Instead, the owner or operator shall substitute the maximum potential NOx emission rate, as defined in §72.2 of this chapter, from a NOx-diluent continuous emission monitoring system, or the maximum potential concentration of NOx, as defined in section 2.1.2.1 of appendix A to this part, from a NOx concentration monitoring system. The owner or operator shall substitute these maximum potential values for each hour of missing NOx data, from completion of recertification testing until the earliest of:

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

(B) For a unit that changed fuels, the first hour when the unit combusts a fuel that produces the same or less NOx than the fuel combusted in the previous ozone season, or

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

(8) The owner or operator of a unit with NOx add-on emission controls or a unit capable of combusting more than one fuel shall keep records during ozone season in a form suitable for inspection to demonstrate that the typical NOx emission rate or NOx concentration during the prior ozone season(s) included in the missing data lookback period is representative of the ozone season in which missing data are substituted and that use of the missing data procedures will not systematically underestimate NOx mass emissions. These records shall include:

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

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

(9) The designated representative shall certify with each quarterly report that NOx emission rate values or NOx

concentration values substituted for missing data under subpart D of this part are calculated using only values from an ozone season, that substitute values measured during the prior ozone season(s) included in the missing data lookback period are representative of the ozone season in which missing data are substituted, and that NOx emissions are not systematically underestimated.

(10) Units may qualify to use the low mass emission excepted monitoring methodology in § 75.19 on an ozone season basis. In order to be allowed to use this methodology, a unit may not emit more than 25 tons of NOx per ozone season. The owner or operator of the unit shall meet the requirements of § 75.19, with the following exceptions:

(i) The phrase “50 tons of NOx annually” shall be replaced by the phrase “25 tons of NOx during the ozone season.”

(ii) If any low mass emission unit fails to provide a demonstration that its ozone season NOx mass emissions are less than 25 tons, than the unit is disqualified from using the methodology. The owner or operator must install and certify the any equipment needed to ensure that the unit is monitoring using an acceptable methodology by May 1 of the following year.

(11) Units may qualify to use the optional NOx mass

emissions estimation protocol for gas-fired peaking units and oil-fired peaking units in appendix E to this part on an ozone season basis. In order to be allowed to use this methodology, the unit must meet the definition of peaking unit in § 72.2 of this part, except that the word “calender year” shall be replaced by the word “ozone season” and the word annual in the definition of the term “capacity factor” in § 72.2 of this part, shall be replaced by the word “ozone season”.

§ 75.75 Additional ozone season calculation procedures for special circumstances.

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

(b) The owner or operator of a unit that is required to determine ozone season NOx emission rate (in lbs/mmBtu) shall do so by dividing ozone season NOx mass emissions(in lbs) determined in accordance with this subpart, by heat input determined in accordance with paragraph (a) of this section.

APPENDIX A TO PART 75 -- SPECIFICATIONS AND TEST PROCEDURES

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

3. PERFORMANCE SPECIFICATIONS

*****

3.3.2 RELATIVE ACCURACY FOR NOx DILUENT CONTINUOUS EMISSION MONITORING SYSTEMS

*****

3.3.6 [Reserved]

3.3.7 RELATIVE ACCURACY FOR NOx CONCENTRATION MONITORING SYSTEMS

The following requirement applies only to NOx concentration monitoring systems (i.e., NOx pollutant concentration monitors) that are used to determine NOx mass emissions, where the owner or operator elects to monitor and report NOx mass emissions using a NOx concentration monitoring system and a flow monitoring system.

The relative accuracy for NOx concentration monitoring systems shall not exceed 10.0 percent.

*****

3.4.1 SO2 POLLUTANT CONCENTRATION MONITORS, NOx CONCENTRATION MONITORING SYSTEMS AND NOx-DILUENT CONTINUOUS EMISSION MONITORING SYSTEMS

SO2 pollutant concentration monitors and NOx emission rate continuous emissions monitoring systems shall not be biased low as determined by the test procedure in section 7.6 of this appendix. NOx concentration monitoring systems used to determine NOx mass emissions, as defined in §75.71, shall not be biased low as determined by the test procedure in section 7.6 of this appendix. The bias specification applies to all SO2 pollutant concentration monitors, including those measuring an average SO2 concentration of 250.0 ppm or less, and to all NOx-diluent continuous emission monitoring systems, including those measuring an average NOx emission rate of 0.20 lb/mmBtu or less.

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

* * * * *

6.5 Perform relative accuracy test audits for each CO2 and SO2 pollutant concentration monitor; each NOx concentration monitoring system used to determine NOx mass emissions; each

O2 monitor used to calculate heat input or CO2 concentration; each SO2-diluent continuous emission monitoring system (lb/mmBtu) used by units with a qualifying Phase I technology for the period during which the units are required to monitor SO2 emission removal efficiency, from January 1, 1997 through December 31, 1999; each flow monitor; and each NOx-diluent continuous emission monitoring system. Perform relative accuracy test audits for each NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71(a)(2), using the same general procedures as for CO2 and SO2 pollutant concentration monitors; however, use the reference methods for NOx concentration listed in section 6.5.10 of this appendix. * * *

* * * * *

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

* * * * *

7.6 Bias Test and Adjustment Factor

Test the relative accuracy test audit data sets for bias for SO2 pollutant concentration monitors; flow

monitors; NOx concentration monitoring systems used to determine NOx mass emissions, as defined in §75.71(a)(2); and NOx-diluent continuous emission monitoring systems using the procedures outlined below.

* * * * *

7.6.5 Bias Adjustment

* * * In addition, use the adjusted NOx concentration and flow rate values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the NOx concentration and the flow rate when used to calculate NOx mass emissions, as specified in subpart H of this part. Do not use an adjusted NOx concentration value to calculate NOx emission rate using Equations F-5 or F-6 of Appendix F of this part. When monitoring NOx emission rate and heat input, use the adjusted NOx emission rate and flow rate values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the NOx emission rate and the heat input.

* * * * *

APPENDIX C TO PART 75-MISSING DATA ESTIMATION PROCEDURES [Amended]

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

* * * * *

2.1 Applicability

This procedure is applicable for data from all affected units for use in accordance with the provisions of this part to provide substitute data for volumetric flow rate (scfh), NOx emission rate (in lb/mmBtu), and NOx concentration data (in ppm) from NOx concentration monitoring systems used to determine NOx mass emissions.

2.2 Procedure

2.2.1 * * *

2.2.2 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the

NOx continuous emission monitoring system (or a NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71, for each hour of unit operation record a number, 1 through 10 (or 1 through 20 for flow at common stacks), that identifies the operating load range corresponding to the integrated hourly gross load of the unit(s) recorded for each unit operating hour.

2.2.3 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NOx continuous emission monitoring system (or a NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71 and continuing thereafter, the data acquisition and handling system must be capable of calculating and recording the following information for each unit operating hour of missing flow or NOx data within each identified load range during the shorter of: (1) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (2) all previous quality assured monitor operating hours.

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

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

scfh.

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

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

2.2.3.5 Average of the hourly NOx emission rate, in lb/mmBtu, reported by a NOx continuous emission monitoring system.

2.2.3.6 The 90th percentile value of hourly NOx emission rates, in lb/mmBtu.

2.2.3.7 The 95th percentile value of hourly NOx emission rates, in lb/mmBtu.

2.2.3.8 The maximum value of hourly NOx emission rates, in lb/mmBtu.

2.2.3.9 Average of the hourly NOx pollutant concentration, in ppm, reported by a NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71.

2.2.3.10 The 90th percentile value of hourly NOx pollutant

concentration, in ppm.

2.2.3.11 The 95th percentile value of hourly NOx pollutant concentration, in ppm..

2.2.3.12 The maximum value of hourly NOx pollutant concentration, in ppm.

2.2.4 * * *

2.2.5 When a bias adjustment is necessary for the flow monitor or the NOx continuous emission monitoring system (or the NOx concentration monitoring system used to determine NOx mass emissions, as defined in §75.71), apply the adjustment factor to all monitor or continuous emission monitoring system data values placed in the load ranges.

2.2.6 Use the calculated monitor or monitoring system data averages, maximum values, and percentile values to substitute for missing flow rate and NOx emission rate data (and where applicable, NOx concentration data) according to the procedures in subpart D of this part.

* * * * *

APPENDIX D TO PART 75 -- OPTIONAL SO2 EMISSIONS DATA PROTOCOL FOR GAS-FIRED AND OIL-FIRED UNITS

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

*****

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (i.e., a pipe carrying fuel for multiple units). However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of this appendix are not applicable to any unit that is using the provisions of subpart H of this part to monitor, record, and report NOx mass emissions under a State or federal NOx mass emission reduction program, except as provided in § 75.72(a) for units with a NOx CEMS installed in a common stack or except as provided for units monitored with an excepted monitoring system under appendix E to this part. For all other units, if the fuel flowmeter is installed in a common pipe header, do one of the following:

*****

APPENDIX F TO PART 75 -- CONVERSION PROCEDURES

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

8. Procedures for NOx Mass Emissions

The owner or operator of a unit that is required to monitor, record, and report NOx mass emissions under a State or federal NOx mass emission reduction program must use the procedures in section 8.1 to account for hourly NOx mass emissions, and the procedures in section 8.2 to account for quarterly, seasonal, and annual NOx mass emissions to the extent that the provisions of subpart H of this part are adopted as requirements under such a program.

8.1 Use the following procedures to calculate hourly NOx mass emissions in lbs for the hour using hourly NOx emission rate and heat input.

8.1.1 If both NOx emission rate and heat input are monitored at the same unit or stack level (e.g, the NOx emission rate value and heat input value both represent all of the units exhausting to the common stack), use the following equation:

$$M_{(NOx)_h} = E_{(NOx)_h} HI_h t_h$$

(Eq. F-24)

where:

$M_{(NOx)h}$ = NOx mass emissions in lbs for the hour.

$E_{(NOx)h}$ = Hourly average NOx emission rate for hour h, lb/mmBtu, from section 3 of this appendix, from method 19 of appendix A to part 60 of this chapter, or from section 3.3 of appendix E to this part. (Include bias-adjusted NOx emission rate values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

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

t_h = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). If the combined NOx emission rate and heat input are monitored for all of the units in a common stack, the monitoring location operating time is equal to the total time when any of those units was exhausting through the common stack.

8.1.2 If NOx emission rate is measured at a common stack and heat input is measured at the unit level, sum the hourly

heat inputs at the unit level according to the following formula:

$$HI_{CS} = \frac{\sum_{u=1}^{p} HI_u \ t_u}{t_{CS}}$$

(Eq. F-25)

where:

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

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

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

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

Use the hourly heat input rate at the common stack level and the hourly average NOx emission rate at the common stack level and the procedures in section 8.1.1 of this appendix to determine the hourly NOx mass emissions at the common

stack.

8.1.3 If a unit has multiple ducts and NOx emission rate is only measured at one duct, use the NOx emission rate measured at the duct, the heat input measured for the unit, and the procedures in section 8.1.1 of this appendix to determine NOx mass emissions.

8.1.4 If a unit has multiple ducts and NOx emission rate is measured in each duct, heat input shall also be measured in each duct and the procedures in section 8.1.1 of this appendix shall be used to determine NOx mass emissions.

8.2 If a unit calculates NOx mass emissions using a NOx concentration monitoring system and a flow monitoring system, calculate hourly NOx mass rate during unit (or stack) operation, in lb/hr, using Equation F-1 or F-2 in this appendix (as applicable to the moisture basis of the monitors). When using Equation F-1 or F-2, replace “SO2" with “NOx” and replace the value of K with 1.194×10^{-7} (lb NOx /scf)/ppm. (Include bias-adjusted flow rate or NOx concentration values, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary.)

8.3 If a unit calculates NOx mass emissions using a NOx concentration monitoring system and a flow monitoring system, calculate NOx mass emissions for the hour (lb) by multiplying the hourly NOx mass emission rate during unit

operation (lb/hr) by the unit operating time during the hour, as follows:

$$M_{(NO_x)_h} = E_h \; t_h$$

(Eq. F-26)

Where:

$M_{(NOx)h}$ = NOx mass emissions in lbs for the hour.

E_h = Hourly NOx mass emission rate during unit (or stack) operation, lb/hr, from section 8.2 of this appendix.

t_h = Monitoring location operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). If the NOx mass emission rate is monitored for all of the units in a common stack, the monitoring location operating time is equal to the total time when any of those units was exhausting through the common stack.

8.4 Use the following procedures to calculate quarterly, cumulative ozone season, and cumulative yearly NOx mass emissions, in tons:

$$M_{(NO_x)_{time\ period}} = \frac{\sum_{h=1}^{p} M_{(NO_x)_h}}{2000}$$

(Eq. F-27)

where:

$M_{(NOx)time\ period}$ = NOx mass emissions in tons for the given time period (quarter, cumulative ozone season, cumulative year-to-date).

$M_{(NOx)h}$ = NOx mass emissions in lbs for the hour.

p = The number of hours in the given time period (quarter, cumulative ozone season, cumulative year-to-date).

8.5 Specific provisions for monitoring NOx mass emissions from common stacks. The owner or operator of a unit utilizing a common stack may account for NOx mass emissions using either of the following methodologies, if the provisions of subpart H are adopted as requirements of a State or federal NOx mass reduction program:

8.5.1 The owner or operator may determine both NOx emission rate and heat input at the common stack and use the procedures in section 8.1.1 of this appendix to determine hourly NOx mass emissions at the common stack.

8.5.2 The owner or operator may determine the NOx emission rate at the common stack and the heat input at each of the units and use the procedures in section 8.1.2 of this

appendix to determine the hourly NOx mass emissions at each unit.

PART 96 -- NOx Budget Trading Program for State Implementation Plans

5. The authority citation for part 96 reads as follows:

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

6. Part 96 is added to read as follows:

Subpart A - NOx Budget Trading Program General Provisions

§ 96.1 Purpose.

§ 96.2 Definitions.

§ 96.3 Measurements, abbreviations, and acronyms.

§ 96.4 Applicability.

§ 96.5 Retired unit exemption.

§ 96.6 Standard requirements.

§ 96.7 Computation of time.

Subpart B - Authorized Account Representative for NOx Budget Sources

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

§ 96.11 Alternate NOx authorized account representative.

§ 96.12 Changing the NOx authorized account representative, alternate NOx authorized account representative; changes in the owners and operators.

§ 96.13 Account certificate of representation.

Subpart J - Mobile and Area Sources [Reserved]

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 (1) 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, (2) the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and (3) 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.

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.

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

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-

fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.5, for a unit that is a 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 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.

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.

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.

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

Excess emissions means any tonnage of nitrogen oxides emitted by a 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 actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

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

General account means a 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 CO_2) or the minimum oxygen concentration (in percent O_2).

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 CO_2), 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 deratings as measured in accordance with the United States Department of Energy standards.

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

NOx allowance means an authorization by the permitting authority or the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the

control period of the specified year or of any year thereafter.

NOx allowance deduction or deduct NOx allowances means the permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

NOx allowances held or hold NOx allowances means the NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NOx Allowance Tracking System account.

NOx Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

NOx Allowance Tracking System account means an account in the NOx Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NOx allowances.

NOx allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which

NOx allowances may be submitted for recordation in a NOx Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NOx Budget 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, 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

CO_2-carbon dioxide.

NOx-nitrogen oxides.

O_2-oxygen.

§ 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 1b of §75.19(c)(1)(ii) of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default 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)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under §96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

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

(v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by

November 1 of each year for which the unit is subject to the federally enforceable permit.

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

(3) If, for any control period under paragraph (b) of this section, the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section is removed from the unit’s federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1)(i) of this section or the

operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section, the unit shall be a 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.

§ 96.5 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 permanently retired and will comply with the requirements of paragraph (c) of this section.

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

(c) Special provisions.

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

(2)(i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the 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 arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NOx Budget opt-in source under subpart I of this part.

(5) For a period of 5 years from the date the records

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

(6) Loss of exemption.

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

(A) The date on which the NOx authorized account representative submits a NOx Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NOx authorized account representative is required under paragraph (c)(2) of this section to submit a NOx Budget permit application.

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

§ 96.6 Standard requirements.

(a) Permit Requirements.

(1) The 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 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 date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation for the NOx authorized account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 96.13;

provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative.

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

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.

(iv) Copies of all documents used to complete a NOx Budget permit application and any other submission under the NOx Budget Trading Program or to demonstrate compliance with the requirements of the NOx Budget Trading Program.

(2) The NOx authorized account representative of a NOx Budget source and each NOx Budget unit at the source shall submit the reports and compliance certifications required under the NOx Budget Trading Program, including those under subparts D, H, or I of this part.

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx

Budget permit, or an exemption under § 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NOx Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NOx Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NOx Budget source and each NOx Budget unit shall meet the requirements of the NOx Budget Trading Program.

(5) Any provision of the NOx Budget Trading Program that applies to a NOx Budget source (including a provision applicable to the NOx authorized account representative of a NOx Budget source) shall also apply to the owners and operators of such source and of the NOx Budget units at the source.

(6) Any provision of the NOx Budget Trading Program that applies to a NOx Budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under

subpart H of this part, the owners and operators and the NOx authorized account representative of one NOx Budget unit shall not be liable for any violation by any other NOx Budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.

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

§ 96.7 Computation of time.

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

(b) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the

period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NOx Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B - NOx Authorized Account Representative for NOx Budget Sources

§ 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, not withstanding 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.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, any

representation, action, inaction, or submission by the alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

(c) Except in this section and §§ 96.10(a), 96.12, 96.13, and 96.51, whenever the term “NOx authorized account representative” is used in this part, the term shall be construed to include the alternate NOx authorized account representative.

§ 96.12 Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.

(a) Changing the NOx authorized account representative. The NOx 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 NOx 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 NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(b) Changing the alternate NOx authorized account representative. The alternate NOx 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 NOx 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 NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(c) Changes in the owners and operators.

(1) In the event a new owner or operator of a NOx Budget source or a NOx 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 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 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 NOx Budget source or a NOx Budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx 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 NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NOx Budget source and each NOx 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 NOx authorized account representative and any alternate NOx authorized account representative.

(3) A list of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source.

(4) 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 alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. 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 the owners and operators of the NOx Budget source and of each NOx Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit.”

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

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

§ 96.14 Objections concerning the 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.

(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 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 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

(2) For NOx Budget sources required to have a non-title V 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 non-title V 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 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority’s non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the 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 title V operating 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 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 permit renewal.

§ 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 whether it is a NOx Budget unit under § 96.4 or under subpart I of this part;

(c) The standard requirements under § 96.6; and

(d) For each NOx Budget opt-in unit at the NOx Budget source, the following certification statements by the NOx authorized account representative:

(1) “I certify that each unit for which this permit application is submitted under subpart I of this part is not a NOx Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect.”

(2) If the application is for an initial NOx Budget

opt-in permit, “I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2.”

§ 96.23 NOx Budget permit contents.

(a) Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx 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 NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.

§ 96.24 Effective date of initial NOx Budget permit.

The initial NOx Budget permit covering a NOx Budget unit for which a complete NOx Budget permit application is timely submitted under § 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NOx Budget unit

commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NOx 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 NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

§ 96.25 NOx Budget permit revisions.

(a) For a NOx Budget source with a title V operating permit, except as provided in § 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NOx Budget source with a non-title V permit, except as provided in § 96.23(b), the permitting authority will revise the NOx 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 NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx

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 NOx 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 NOx Budget emissions limitation for the control period covered by the report:

(1) Identification of each NOx Budget unit;

(2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit’s compliance account under § 96.54 for the control period;

(3) At the NOx authorized account representative’s option, for units sharing a common stack and having NOx 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 NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx 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 NOx Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NOx 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 NOx emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NOx 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 NOx Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NOx allowances from or

transfer NOx 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 - NOx 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 NOx emissions apportioned to the NOx 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 NOx allowance allocations.

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with § 96.42, for the control periods in 2003, 2004, and 2005.

(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with § 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the NOx

allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with §96.42, for any NOx allowances remaining in the allocation set-aside for the prior control period.

§ 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:

(A) For a NOx allowance allocation under § 96.41(a), the average of the two highest amounts of the unit’s heat input for the control periods in 1995, 1996, and 1997 if the unit is under §96.4(a)(1) or the control period in 1995 if the unit is under §96.4(a)(2); and

(B) For a NOx allowance allocation under § 96.41(b), the unit’s heat input for the control period in the year that is four years before the year for which the 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 divided by the total number of NOx allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.

(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 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 NOx allowances to each NOx Budget unit under §96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.

(2) If the initial total number of NOx allowances allocated to all NOx 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 NOx emissions in the State trading program budget apportioned to non-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 (c)(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 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 NOx emissions in the State trading program

budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.

(d) For each control period under § 96.41, the permitting authority will allocate NOx allowances to NOx 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 NOx allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NOx emissions in the State trading program budget under § 96.40, rounded to the nearest whole NOx allowance as appropriate.

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

(3) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under §96.4(a)(1) may request for a control period NOx allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NOx Budget unit’s maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(4) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under §96.4(a)(2) may request for a control period NOx allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NOx Budget unit’s maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit

operated or is projected to operate.

(5) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.

(i) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under §96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under §96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs(d)(2) and (4) of this section.

(ii) If the allocation set-aside for the control period for which NOx allowances are requested has an amount of NOx allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NOx Budget unit.

(iii) If the allocation set-aside for the control period for which NOx allowances are requested has a smaller amount of NOx allowances than the number requested (as

adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx Budget unit.

(e) For a NOx Budget unit that is allocated NOx allowances under paragraph (d) of this section for a control period, the Administrator will deduct NOx allowances under § 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit’s actual utilization using the following formulas and rounding to the nearest whole NOx

allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:

NOx allowances deducted for actual utilization for units under §96.4(a)(1) = (Unit’s NOx allowances allocated for control period) - (Unit’s actual control period utilization x 0.15 lb/mmBtu); and

NOx allowances deducted for actual utilization for units under §96.4(a)(2) = (Unit’s NOx allowances allocated for control period) - (Unit’s actual control period utilization x 0.17 lb/mmBtu)

where:

“Unit’s NOx allowances allocated for control period” is the number of NOx 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 NOx allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NOx allowances to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx

allowance as appropriate:

Unit’s share of NOx allowances remaining in allocation set-aside = Total NOx allowances remaining in allocation set-aside x (Unit’s NOx allowance allocation ÷ (State trading program budget excluding allocation set-aside)

where:

“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.

(4)(i) The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(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 account

established under paragraph (a) or (b) of this section.

§ 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 under subpart E of this part. The Administrator will also record the NOx allowances allocated under § 96.88(a)(1) for each NOx Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to § 96.54, the Administrator will record NOx allowances, as allocated to the unit under subpart E of this part or under § 96.88(a)(2), in the

compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) Serial numbers for allocated NOx allowances. When allocating NOx allowances to and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.

§ 96.54 Compliance.

(a) NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit’s NOx Budget emissions limitation for a control period in a given year only if the NOx allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the unit’s compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or

overdraft account by a NOx allowance transfer correctly submitted for recordation under § 96.60 by the NOx allowance transfer deadline for that control period.

(b) Deductions for compliance.

(1) Following the recordation, in accordance with § 96.61, of NOx allowance transfers submitted for recordation in the unit’s compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this section to cover the unit’s NOx 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 NOx 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 NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx 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 NOx 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 NOx allowances deducted for the control period equals the number of tons of NOx 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 NOx allowances required for deduction to account for actual utilization under § 96.42(e) for the control period; or

(ii) Until no more NOx allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) First-in, first-out. The Administrator will deduct 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.

§ 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:

(1) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx 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” NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to §96.54.

(b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this section and before May 1of the year, the Administrator will determine the extent to which banked NOx 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 NOx allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NOx 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 NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with §96.54.

(3) If the total number of banked NOx 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 NOx 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 NOx Budget units are located and divided by the total number of banked NOx 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 NOx allowances in each compliance account or

overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with §96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with §96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under §96.54.

(c) Any NOx Budget unit may reduce its NOx 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 NOx allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NOx 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) NOx 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 NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NOx emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit’s NOx emission rate in the 2000 control period.

(4) The NOx authorized account representative of a NOx 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 NOx emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (3) of this section.

(i) In the early reduction credit request, the NOx authorized account may request early reduction credits for such control period in an amount equal to the unit’s heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit’s NOx 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 NOx 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 NOx allowances, to NOx 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), (3), and (4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.

(ii) If the State’s compliance supplement pool has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit

requested (as adjusted under paragraph (c)(5)(i) of this section).

(iii) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NOx allowances to each NOx Budget unit covered by such accepted requests according to the following formula: Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NOx 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 NOx allowances from the State's compliance supplement pool" is the number of NOx 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 NOx allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.

(7) NOx 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 NOx 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) NOx allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

§ 96.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any 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 transferror 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 transferror 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 transferror account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.60;

(2) The transferror 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 transferror 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 both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NOx allowance transfer for recordation following notification of non-recordation.

Subpart H - Monitoring and Reporting

§ 96.70 General Requirements.

The owners and operators, and to the extent applicable, the NOx authorized account representative of a NOx 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 “NOx Budget unit,” “NOx 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 NOx Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx

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 NOx mass. This includes all systems required to monitor NOx emission rate, NOx 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 NOx 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) NOx Budget units for which the owner or operator intends to apply for early reduction credits under § 96.55(d) must comply with the requirements of this subpart by May 1, 2000.

(2) Except for NOx Budget units under paragraph (b) (1)

of this section, NOx 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) NOx 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) NOx 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 NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:

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

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

(6) For a unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.

(c) Reporting data prior to initial certification.

(1) The owner or operator of a NOx Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.

(2) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NOx mass, heat input (if required for purposes of allocations) and any other values required to determine NOx Mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of § 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(d) Prohibitions.

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

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

(3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under § 75.72(b)(2)(ii) shall

disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in §75.74 of this chapter.

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

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

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

(iii) The NOx authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 96.71(b)(2).

§ 96.71 Initial certification and recertification procedures

(a) The owner or operator of a 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 75 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 NOx Budget Trading Program.

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

(B) Incomplete application notice. A certification

application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification application. If the NOx authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.

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

with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

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

(v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

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

(1) For units using or intending to monitor for NOx emission rate and heat input or for units using the low mass emission excepted methodology under § 75.19 of this chapter, the maximum potential NOx emission rate and the maximum

potential hourly heat input of the unit.

(2) For units intending to monitor for NOx mass emissions using a NOx pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOx and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;

(B) The NOx 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 NOx Budget Trading Program, as of the following dates:

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

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

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

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

(A) For a unit that commenced operation before its compliance deadline under § 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification

application for approval to use the low mass emissions excepted methodology under § 75.19 of this chapter until the completion of the period for the permitting authority review; or

(B) 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

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

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

§ 96.72 Out of control periods.

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

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification

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

§ 96.73 Notifications.

The 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 calender 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 calender 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 calender quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

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

(2) If a NOx budget unit is not subject to an Acid Rain emission limitation, then the NOx authorized account representative shall either:

(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 calender 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 calender 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 calender 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 calender 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 calender 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 calender quarter that includes the date of initial provisional certification under § 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the

date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(3) The NOx authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and § 75.64 of this chapter.

(i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack) as well as information required in subpart G of part 75 of this chapter..

(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack).

(4) Compliance certification. The NOx authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit’s emissions

are correctly and fully monitored. The certification shall state that:

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

(ii) For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and

(iii) For a unit that is reporting on a control period basis under § 96.74(d) the NOx emission rate and NOx concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NOx emissions.

§ 96.75 Petitions

(a) The NOx authorized account representative of a NOx 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 NOx authorized account representative of a NOx 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 NOx authorized account representative of a NOx 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 NOx concentration CEMS used under 75.71(a)(2) of this chapter.

(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the

extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.

§ 96.76 Additional Requirements to Provide Heat Input Data

(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.

Subpart I - Individual 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 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 “NOx Budget unit” prior to issuance of a NOx 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 NOx emissions rate shall be calculated as the unit’s total NOx mass 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 NOx emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NOx Budget opt-in permit on the NOx authorized account representative of the unit.

(e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx 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 NOx Budget opt-in permit under § 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.

(f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt in the unit under paragraph (e) of this section, the permitting authority will issue the draft NOx Budget opt-in permit in accordance with § 96.20.

(g) Not withstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NOx Budget opt-in source under § 96.80, the permitting authority will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with § 96.20.

(h) Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under § 96.83 at any time prior to the issuance of the final

NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under § 96.83.

(i) Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the permitting authority. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

§ 96.85 NOx Budget opt-in permit contents.

(a) Each NOx Budget opt-in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx 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 NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt-in permit or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is

located.

§ 96.86 Withdrawal from NOx Budget Trading Program.

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

(b) Conditions for withdrawal. Before a 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 another application for a NOx Budget opt-in permit under § 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.

§ 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.

(ii)(A) 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.

(iii) (A) For every control period during which the NOx Budget permit revised 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) Notwithstanding paragraph (b)(1)(iii)(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.

(2)(i) 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 unit’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 NOx authorized account representative shall ensure that 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 includes the NOx allowances necessary for completion of such deduction. 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.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NOx Budget opt-in source’s compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under § 96.54, 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.

§ 96.88 NOx allowance allocations to opt-in units.

(a) NOx allowance allocation. (1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the permitting authority will allocate NOx allowances to the NOx 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 NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NOx allowances to the NOx 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 NOx Budget opt-in source has an approved NOx Budget opt-in permit, the NOx Budget opt-in source will be allocated NOx allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:

(i) The NOx Budget opt-in source’s baseline heat input determined pursuant to § 96.84(c); or

(ii) The NOx 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 NOx allocations are being calculated.

(2) The permitting authority will allocate NOx allowances to the NOx 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 NOx Budget opt-in source’s baseline NOx emissions rate (in lb/mmBtu) determined pursuant to § 96.84(c); or

(ii) The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.

Subpart J - Mobile and Area Sources [RESERVED]