

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF AIR RESOURCES**

**AIR POLLUTION CONTROL REGULATION NO. 41**

**NO<sub>x</sub> BUDGET TRADING PROGRAM**



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**AUTHORITY:** These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

OFFICE OF AIR RESOURCES  
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RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF AIR RESOURCES  
AIR POLLUTION CONTROL REGULATION NO. 41  
**NO<sub>x</sub> BUDGET TRADING PROGRAM**

**41.1. Definitions**

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

- 41.1.1 **"Account certificate of representation"** means the completed and signed submission required by section 41.6 for certifying the designation of a NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget source or a group of identified NO<sub>x</sub> Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO<sub>x</sub> Budget units at such source or sources with regard to matters under the NO<sub>x</sub> Budget Trading Program.
- 41.1.2 **"Account number"** means the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.
- 41.1.3 **"Acid Rain emissions limitation"** means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.
- 41.1.4 **"Allocate or allocation"** means the determination by the Department or the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> Budget unit or an allocation set-aside.
- 41.1.5 **"Automated data acquisition and handling system or DAHS"** means that component of the CEMS, or other emissions monitoring system approved for use under section 41.10, 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 section 41.10 and 41.11.
- 41.1.6 **"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.
- 41.1.7 **"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.

- 41.1.8 **"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.
- 41.1.9 **"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 section 41.14, for a unit that is a NOx Budget unit under section 41.3 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 section 41.13 or section 41.14, for a unit that is not a NOx Budget unit under section 41.3 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under section 41.3 shall be the unit's date of commencement of commercial operation.
- 41.1.10 **"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 section 41.14, for a unit that is a NOx Budget unit under section 41.3 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 section 41.13 or section 41.14, for a unit that is not a NOx Budget unit under section 41.3 on the date of commencement of operation, the date the unit becomes a NOx Budget unit under section 41.3 shall be the unit's date of commencement of operation.
- 41.1.11 **"Common stack"** means a single flue through which emissions from two or more units are exhausted.
- 41.1.12 **"Compliance certification"** means a submission to the Department or the Administrator, as appropriate, that is required under section 41.12 to report a NOx Budget source's or a NOx Budget unit's compliance or noncompliance with this regulation and that is signed by the NOx authorized account representative in accordance with section 41.6.
- 41.1.13 **"Compliance account"** means a NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under section 41.9, 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 NO<sub>x</sub> Budget emissions limitation.

- 41.1.14 **"Continuous emission monitoring system or CEMS"** means the equipment required under section 41.10 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 40 CFR Part 75, in a continuous emission monitoring system:
- (a) Flow monitor;
  - (b) Nitrogen oxides pollutant concentration monitors;
  - (c) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by section 41.10;
  - (d) A continuous moisture monitor when such monitoring is required by section 41.10; and
  - (e) An automated data acquisition and handling system.
- 41.1.15 **"Control period"** means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.
- 41.1.16 **"Emissions"** means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with sections 41.10 and 41.11.
- 41.1.17 **"Energy Information Administration"** means the Energy Information Administration of the United States Department of Energy.
- 41.1.18 **"Excess emissions"** means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> Budget unit during a control period that exceeds the NO<sub>x</sub> Budget emissions limitation for the unit.
- 41.1.19 **"Fossil fuel-fired"** means, with regard to a unit:
- (a) 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
  - (b) 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.

- 41.1.20 **"General account"** means a NO<sub>x</sub> Allowance Tracking System account, established under section 41.9 that is not a compliance account or an overdraft account.
- 41.1.21 **"Generator"** means a device that produces electricity.
- 41.1.22 **"Heat input"** means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with sections 41.10 and 41.11, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.
- 41.1.23 **"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:
- (a) For the life of the unit;
  - (b) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
  - (c) 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.
- 41.1.24 **"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.
- 41.1.25 **"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 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, 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 40 CFR Part 75, using the maximum potential

flowrate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).

- 41.1.26 **"Maximum potential NO<sub>x</sub> emission rate"** means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets.
- 41.1.27 **"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.
- 41.1.28 **"Monitoring system"** means any monitoring system that meets the requirements of section 41.10, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.
- 41.1.29 **"Most stringent State or Federal NO<sub>x</sub> emissions limitation"** means, with regard to a NO<sub>x</sub> Budget opt-in source, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.
- 41.1.30 **"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.
- 41.1.31 **"Non-title V permit"** means a federally enforceable permit administered by the Department pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and Air Pollution Control Regulation No. 29.
- 41.1.32 **"NO<sub>x</sub> allowance"** means an authorization by the Department or the Administrator under the NO<sub>x</sub> Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.
- 41.1.33 **"NO<sub>x</sub> allowance deduction or deduct NO<sub>x</sub> allowances"** means the permanent withdrawal of NO<sub>x</sub> allowances by the Administrator from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> Budget unit for a control period, determined in accordance with sections 41.10 and 41.11, or for any other allowance surrender obligation under this regulation.

- 41.1.34 **"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 sections 41.8 and 41.9, in a NOx Allowance Tracking System account.
- 41.1.35 **"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.
- 41.1.36 **"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.
- 41.1.37 **"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.
- 41.1.38 **"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 section 41.6, 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 section 41.9, to transfer or otherwise dispose of NOx allowances held in the general account.
- 41.1.39 **"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 paragraphs 41.9.5(a) and (b), *adjusted by any deductions of such NOx allowances* to account for excess emissions for a prior control period under paragraph 41.9.5(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 subsections 41.13.7 or 41.13.8.
- 41.1.40 **"NOx Budget opt-in permit"** means a NOx Budget permit covering a NOx Budget opt-in source.
- 41.1.41 **"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 section 41.13.

- 41.1.42 **"NOx Budget permit"** means the legally binding and federally enforceable written document, or portion of such document, issued by the Department under this regulation, 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.
- 41.1.43 **"NOx Budget source"** means a source that includes one or more NOx Budget units.
- 41.1.44 **"NOx Budget Trading Program"** means a multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.
- 41.1.45 **"NOx Budget"** unit means a unit that is subject to the NOx Budget Trading Program emissions limitation under sections 41.3 or 41.13.
- 41.1.46 **"Operating"** means, with regard to a unit under paragraph 41.7.4(d)(2) and subsection 41.13.1, 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 subsection 41.13.4.
- 41.1.47 **"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 subsection 41.13.4 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.
- 41.1.48 **"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 section 41.13.
- 41.1.49 **"Overdraft account"** means the NOx Allowance Tracking System account, established by the Administrator under section 41.9, for each NOx Budget source where there are two or more NOx Budget units.
- 41.1.50 **"Owner"** means any of the following persons:
- (a) 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 subsection 41.13.4 is submitted and not denied or withdrawn; or

- (b) 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 subsection 41.13.4 is submitted and not denied or withdrawn; or
- (c) 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 subsection 41.13.4 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 subsection 41.13.4 is submitted and not denied or withdrawn; or
- (d) 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.

41.1.51 **"Receive or receipt of"** means, when referring to the Department 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 Department or the Administrator in the regular course of business.

41.1.52 **"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.

41.1.53 **"Reference method"** means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR Part 60.

41.1.54 **"Serial number"** means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator,

under paragraph 41.9.4(c).

- 41.1.55 **"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."
- 41.1.56 **"State"** means one of the 48 contiguous States and the District of Columbia specified in 40 CFR 51.121, 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 40 CFR 51.121. To the extent a State incorporates by reference the provisions of 40 CFR Part 96, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.
- 41.1.57 **"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.
- 41.1.58 **"Submit or serve"** means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:
- (a) In person;
  - (b) By United States Postal Service; or
  - (c) 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.
- 41.1.59 **"Title V operating permit"** means an operating permit issued under Air Pollution Control Regulation No. 29.
- 41.1.60 **"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 sections 41.10 and 41.11, 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.

- 41.1.61 **"Unit"** means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.
- 41.1.62 **"Unit operating day"** means a calendar day in which a unit combusts any fuel.
- 41.1.63 **"Unit operating hour or hour of unit operation"** means any hour (or fraction of an hour) during which a unit combusts any fuel.
- 41.1.64 **"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 40 CFR Part 75 if the NO<sub>x</sub> Budget unit was otherwise subject to the requirements of 40 CFR Part 75 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 40 CFR Part 75 for the year.

## **41.2 NO<sub>x</sub> Emission Budget**

- 41.2.1 The NO<sub>x</sub> Budget Trading Program is established to limit total mass NO<sub>x</sub> emissions from NO<sub>x</sub> Budget sources during the control period of May 1 through September 30. The initial NO<sub>x</sub> Budget is as follows:
- (a) For 2003 and each year thereafter, through and including 2005, not to exceed 936 tons during each control period.
  - (b) *[Reserved]*

## **41.3 Applicability.**

### 41.3.1 General Applicability

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

- (a) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 15 MWe and sells any amount of electricity; or
- (b) 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.

### 41.3.2 Exempted Units

- (a) A unit that meets the general applicability requirements under subsection 41.3.1, that has a federally enforceable permit that meets the requirements of paragraph (b) of this subsection, shall not be a NOx Budget unit starting with the effective date of such federally enforceable permit.
- (b) For each control period, the federally enforceable permit must:
  - (1) Restrict the unit to burning only natural gas or fuel oil.
  - (2) 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.
  - (3) Calculate the unit's potential NOx mass emissions as follows:
    - (a) Select the default NOx emission rate in Table 1b of 40 CFR 75.19(c)(1)(ii) that has the highest default NOx emission factor of any type of fuel (natural gas or fuel oil) that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1) of this subsection; and
    - (b) Multiply the default NOx emission rate selected above by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the Department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under 41.1.26. The Department 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.
  - (4) 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.
  - (5) 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

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

- (c) The Department will notify the Administrator in writing of each whose federally enforceable permit issued by the Department includes such restrictions. The Department will also notify the Administrator in writing of each unit whose federally enforceable permit issued by the Department is revised to remove any such restriction, whose federally enforceable permit issued by the Department includes any such restriction that is no longer applicable, or which does not comply with any such restriction.
- (d) If, for any control period, the fuel use restriction under paragraph (b)(1) of this subsection or the operating hours restriction under paragraph (b)(2) subsection 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) of this subsection or the operating hours restriction under paragraph (b)(2) of this subsection, the unit shall be a NO<sub>x</sub> Budget unit, subject to the requirements of this regulation. Such unit shall be treated as commencing operation and, for a unit under paragraph (a) of subsection 41.3.1, 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.

## 41.4 General Provisions

### 41.4.1 Nitrogen oxides requirements.

- (a) The owners and operators of each NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit at the source shall hold NO<sub>x</sub> allowances available for compliance deductions under subsection 41.9.5, as of the NO<sub>x</sub> allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO<sub>x</sub> emissions for the control period from the unit, as determined in accordance with sections 41.10 and 41.11 of this regulation.

- (b) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this regulation, the CAA, and applicable State law.
- (c) A NOx Budget unit shall be subject to the requirements under paragraph (a) of this subsection starting on the later of May 1, 2003 or the date on which the unit commences operation.
- (d) NOx allowances shall be held in, deducted from, or transferred among NOx Allowance Tracking System accounts in accordance with Sections 41.5, 41.8, 41.9, and 41.13 of this regulation.
- (e) A NOx allowance shall not be deducted, in order to comply with the requirements under paragraph (a) of this subsection, for a control period in a year prior to the year for which the NOx allowance was allocated.
- (f) A NOx allowance allocated by the Department 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 section 41.14 and no provision of law shall be construed to limit the authority of the United States or the State of Rhode Island to terminate or limit such authorization.
- (g) A NOx allowance allocated by the Department or the Administrator under the NOx Budget Trading Program does not constitute a property right.
- (h) Upon recordation by the Administrator under section 41.8, 41.9, or 41.13 of this regulation, 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.

#### 41.4.2 Excess emissions requirements.

- (a) The owners and operators of a NOx Budget unit that has excess emissions in any control period shall:
  - (1) Surrender the NOx allowances required for deduction under subsection 41.9.5(d)(1); and

- (2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under subsection 41.9.5(d)(3).

#### 41.4.3 Recordkeeping and Reporting Requirements.

- (a) 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 Department or the Administrator.
  - (1) 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 subsection 41.6.5; 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.
  - (2) All emissions monitoring information, in accordance with sections 41.10 and 41.11 of this regulation; provided that to the extent that section 41.11 of this regulation provides for a 3-year period for recordkeeping, the 3-year period shall apply.
  - (3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.
  - (4) 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.
- (b) 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 sections 41.10, 41.11, 41.12, or 41.13 of this regulation.

#### 41.4.4 Liability.

- (a) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under section 41.14 shall be subject to enforcement pursuant to applicable State or Federal law.
- (b) 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.
- (c) 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.
- (d) Each NOx Budget source and each NOx Budget unit shall meet the requirements of the NOx Budget Trading Program.
- (e) 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.
- (f) 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 sections 41.10 or 41.11 of this regulation, 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.

#### 41.4.5 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 section 41.14 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 Rhode Island State Implementation plan, a federally enforceable permit, or the CAA.

41.4.6 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 Rhode Island or Federal holiday, the time period shall be extended to the next business day.

**41.5 NOx Allowance Allocations**

41.5.1 Timing requirements for NOx allowance allocations.

- (a) By April 1, 2003 and April 1 of each year thereafter, the Department will submit to the Administrator the NOx allowance allocations for the control period in the year that is three years after the year of the applicable deadline for submission under this paragraph. If the Department fails to submit to the Administrator the NOx allowance allocations in accordance with this paragraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

41.5.2 (a) The initial allocation of allowances, for each control period, by budget source, for the allocation period 2003-2005 is as follows:

<u>Budget source</u>	<u>Allowance Allocation</u>
Ocean State Power	275
Pawtucket Power Associates	42
Manchester Street Station	262
Tiverton Power Associates	46

- (b) *[Reserved]*

**41.5.3 *[Reserved for a possible new source set aside or energy efficiency and renewable energy set aside.]***

**41.6 NOx Authorized Account Representative for NOx Budget Sources**

41.6.1 Authorization and responsibilities of the NOx authorized account representative.

- (a) Except as provided under subsection 41.6.2, 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 subsection 41.6.5, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, notwithstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the Department, 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 subsection 41.6.5 for a NOx authorized account representative of the source and the NOx Budget units at the source.
- (e) 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."*

The Department 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) of this subsection.

#### 41.6.2 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 subsection 41.6.5, 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 subsection and 41.6.1(a), 41.6.4, 41.6.5, and 41.9.2, whenever the term "NOx authorized account representative" is used in this regulation, the term shall be construed to include the alternate NOx authorized account representative.

#### 41.6.3 Changing the NOx authorized account representative and the alternate NOx authorized account representative.

- (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 subsection 41.6.5. 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 subsection 41.6.5. 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.

#### 41.6.4 Changes in the owners and operators.

- (a) 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 Department or the Administrator, as if the new owner or operator were included in such list.
- (b) 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.

#### 41.6.5 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 Department, 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 Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

#### 41.6.6 Objections concerning the NOx authorized account representative.

- (a) Once a complete account certificate of representation under subsection 41.6.5 has been submitted and received, the Department and the Administrator will rely on the account certificate of representation unless

and until a superseding complete account certificate of representation under subsection 41.6.5 is received by the Administrator.

- (b) Except as provided in subsection 41.6.3, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative shall affect any representation, action, inaction, or submission of the NO<sub>x</sub> authorized account representative or the finality of any decision or order by the Department or the Administrator under the NO<sub>x</sub> Budget Trading Program.
- (c) Neither the Department nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO<sub>x</sub> authorized account representative, including private legal disputes concerning the proceeds of NO<sub>x</sub> allowance transfers.

## **41.7 Permits**

### 41.7.1 Permit Requirements.

- (a) The NO<sub>x</sub> authorized account representative of each NO<sub>x</sub> Budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall:
  - (1) Submit to the Department a complete NO<sub>x</sub> Budget permit application under subsection 41.7.4 in accordance with the deadlines specified in subsection 41.7.3(b), (c) and (d);
  - (2) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a NO<sub>x</sub> Budget permit application and issue or deny a NO<sub>x</sub> Budget permit.
- (b) The owners and operators of each NO<sub>x</sub> Budget source required to have a federally enforceable permit and each NO<sub>x</sub> Budget unit required to have a federally enforceable permit at the source shall have a NO<sub>x</sub> Budget permit issued by the Department and operate the unit in compliance with such NO<sub>x</sub> Budget permit.
- (c) The owners and operators of a NO<sub>x</sub> Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO<sub>x</sub> Budget permit application, and to have a NO<sub>x</sub> Budget permit, under section 41.7 of this regulation for such NO<sub>x</sub> Budget source.

#### 41.7.2 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 Department.
  - (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 Air Pollution Control Regulation No. 29, except as provided otherwise by this section or section 41.13 of this regulation.
  - (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 Department's regulations promulgated to administer non-title V permits, except as provided otherwise by this section or section 41.13 of this regulation.
- (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 subsection.

#### 41.7.3 NOx Budget permit applications.

- (a) The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the Department a complete NOx Budget permit application under subsection 41.7.4 by the applicable deadline in paragraph (b) or (c) of this subsection.
- (b) For NOx Budget sources required to have a title V operating permit:
  - a. For any source, with one or more NOx Budget units under subsection 41.3.1 that commences operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget units to the Department before November 1, 2001.
  - b. For any source, with any NOx Budget unit under subsection 41.3.1 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such

NOx Budget unit to the Department at least 18 months before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

- (c) For NOx Budget sources required to have a non-title V permit:
  - a. For any source, with one or more NOx Budget units under subsection 41.3.1 that commences operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget units to the Department before November 1, 2001.
  - b. For any source, with any NOx Budget unit under subsection 41.3.1 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget unit to the Department at least 18 months before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.
- (d) 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 subsection 41.7.4 for the NOx Budget source covering the NOx Budget units at the source in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit renewals.
  - (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 subsection 41.7.4 for the NOx Budget source covering the NOx Budget units at the source in accordance with the Department's non-title V permits regulations addressing permit renewal.

#### 41.7.4 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 Department:

- (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 NO<sub>x</sub> Budget unit at the NO<sub>x</sub> Budget source and whether it is a NO<sub>x</sub> Budget unit under subsection 41.3.1 or under section 41.13 of this regulation;
- (c) The standard requirements under 40 CFR 96.6; and
- (d) For each NO<sub>x</sub> Budget opt-in unit at the NO<sub>x</sub> Budget source, the following certification statements by the NO<sub>x</sub> authorized account representative:
  - (1) *"I certify that each unit for which this permit application is submitted under section 41.13 of Air Pollution Control Regulation No. 41 is not a NO<sub>x</sub> Budget unit under section 41.3 and is not covered by a retired unit exemption under section 41.14 that is in effect."*
  - (1) If the application is for an initial NO<sub>x</sub> Budget opt-in permit:  
  
*"I certify that each unit for which this permit application is submitted under section 41.13 of Air Pollution Control Regulation No. 41 is currently operating, as that term is defined under section 41.1"*

#### 41.7.5 NO<sub>x</sub> Budget permit contents.

- (a) Each NO<sub>x</sub> Budget permit (including any draft or proposed NO<sub>x</sub> Budget permit, if applicable) will contain, in a format prescribed by the Department, all elements required for a complete NO<sub>x</sub> Budget permit application under subsection 41.7.4 as approved or adjusted by the Department.
- (b) Each NO<sub>x</sub> Budget permit is deemed to incorporate automatically the definitions of terms under section 41.1 and, upon recordation by the Administrator under sections 41.8, 41.9, or 41.13 of this regulation, every allocation, transfer, or deduction of a NO<sub>x</sub> allowance to or from the compliance accounts of the NO<sub>x</sub> Budget units covered by the permit or the overdraft account of the NO<sub>x</sub> Budget source covered by the permit.

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

The initial NO<sub>x</sub> Budget permit covering a NO<sub>x</sub> Budget unit for which a complete

NOx Budget permit application is timely submitted under the applicable provision of subsection 41.7.3(b) or (c) or 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.

#### 41.7.7 NOx Budget permit revisions.

- (a) For a NOx Budget source with a title V operating permit, except as provided in subsection 41.7.5(b), the Department will revise the NOx Budget permit, as necessary, in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit revisions.
- (b) For a NOx Budget source with a non-title V permit, except as provided in subsection 41.7.5(b), the Department will revise the NOx Budget permit, as necessary, in accordance with the Department's non-title V permits regulations addressing permit revisions.

## 41.8 NOx Allowance Transfers

### 41.8.1 Submission of NOx allowance transfers.

The NOx authorized account representatives seeking recordation of a NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOx allowance transfer shall include the following elements in a format specified by the Administrator:

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each NOx allowance to be transferred;  
and
- (c) The printed name and signature of the NOx authorized account

representative of the transferor account and the date signed.

#### 41.8.2 EPA recordation.

- (a) Within 5 business days of receiving a NOx allowance transfer, except as provided in paragraph (b) of this subsection, the Administrator will record a NOx allowance transfer by moving each NOx allowance from the transferor account to the transferee account as specified by the request, provided that:
  - (1) The transfer is correctly submitted under section 41.8;
  - (2) The transferor account includes each NOx allowance identified by serial number in the transfer; and
  - (3) The transfer meets all other requirements of this regulation.
- (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 subsection 41.9.4(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.

#### 41.8.3 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a NOx allowance transfer under subsection 41.8.2, the Administrator will notify each party to the transfer. Notice will be given to the NOx authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a NOx allowance transfer that fails to meet the requirements of subsection 41.8.2(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.

## **41.9 NOx Allowance Tracking System**

### 41.9.1 NOx Allowance Tracking System accounts.

- (a) Nature and function of compliance accounts and overdraft accounts. Consistent with subsection 41.9(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with two or more NOx Budget units. Allocations of NOx allowances pursuant to section 41.5 or subsection 41.13.9 and deductions or transfers of NOx allowances pursuant to subsections 41.12.2, 41.9.5, 41.9.7, section 41.8, or section 41.13 will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.
- (b) Nature and function of general accounts. Consistent with subsection 41.9.2(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to section 41.8 will be recorded in the general account in accordance with this section.

### 41.9.2 Establishment of accounts.

- (a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under subsection 41.6.5, 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:

- a. 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;
- b. At the option of the NOx authorized account representative, organization name and type of organization;
- c. 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;
- d. 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."*

- e. The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.
- f. Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the Administrator. Neither the Department 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 subsection:
- a. The Administrator will establish a general account for the person or persons for whom the application is submitted.
  - b. 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, notwithstanding 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.
  - c. 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."*

- d. 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) c. of this subsection.
- (3)
- a. 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.
  - b. Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this subsection, 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)
- a. 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 subsection. 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.
  - b. 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 subsection. 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.

- c. 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.
  - d. 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)
- a. Once a complete application for a general account under paragraph (b)(1) of this subsection 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 subsection is received by the Administrator.
  - b. Except as provided in paragraph (b)(4) of this subsection, 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.

- c. 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 subsection.

#### 41.9.3 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.

#### 41.9.4 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 section 41.5. The Administrator will also record the NOx allowances allocated under subsection 41.13.9(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

subsection 41.9.5, the Administrator will record NOx allowances, as allocated to the unit under section 41.5 or under subsection 41.13.9(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 section 41.5, 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.

#### 41.9.5 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 subsection 41.8.1 by the NOx allowance transfer deadline for that control period.
- (b) Deductions for compliance.
  - (1) Following the recordation, in accordance with subsection 41.8.2, 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 subsection to cover the unit's NOx emissions (as determined in accordance with sections 41.10 and 41.11):
    - a. From the compliance account; and

- b. Only if no more NOx allowances available under paragraph (a) of this subsection 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) a. of this subsection and then under paragraph (b)(1) b. of this subsection:
- a. Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with sections 41.10 and 41.11, from the unit for the control period for which compliance is being determined; or
  - b. Until no more NOx allowances available under paragraph (a) of this subsection remain in the respective account.
- (c) Identification of NOx allowances by serial number.
- (1) 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 subsection. Such identification shall be made in the compliance certification report submitted in accordance with subsection 41.12.1.
  - (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 subsection, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:
    - a. Those NOx allowances that were allocated for the control

period to the unit under sections 41.5 or 41.13;

- b. Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to section 41.8, in order of their date of recordation;
- c. Those NOx allowances that were allocated for a prior control period to the unit under sections 41.5 or 41.13; and
- d. Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to section 41.8, in order of their date of recordation.

(d) Deductions for excess emissions.

- (1) After making the deductions for compliance under paragraph (b) of this subsection, 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 subsection 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:
  - a. 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.

- b. 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 sections 41.10 and 41.11:
  - (1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with subsection 41.12.1.
  - (2) Notwithstanding paragraph (b)(2) a. of this subsection, the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this subsection) of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with sections 41.10 and 41.11, 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.
- (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 subsection.

#### 41.9.6 Banking.

- (a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:
  - (1) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO<sub>x</sub> allowance is deducted or transferred under subsections 41.12.2, 41.9.5, 41.9.7, section 41.8, or section 41.13.
  - (2) The Administrator will designate, as a "banked" NO<sub>x</sub> allowance, any NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to subsection 41.9.5.

- (b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this subsection and before May 1 of 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 subsection, 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 subsection 41.9.5.
  - (3) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this subsection, 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 subsection 41.9.5, except as follows:
    - a. 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 subsection, to be held in compliance accounts, overdraft accounts, or general accounts.
    - \*b. 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 subsection 41.9.5. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with subsection 41.9.5, 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 subsection 41.9.5.

#### 41.9.7 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.

#### 41.9.8 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 subsection 41.8.1 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 subsection 41.8.1 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.

### **41.10 Monitoring**

#### 41.10.1 Monitoring requirements.

- (a) 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 this section and in subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 41.1 and in 40 CFR 72.2 shall apply, and the terms "affected unit", "designated representative", and "continuous emission monitoring system"(or "CEMS") in 40 CFR Part 75 shall be replaced by the terms

"NOx Budget unit", "NOx authorized account representative", and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in section 41.1.

- (b) The emissions measurements recorded and reported in accordance with this section shall be used to determine compliance by the unit with the NOx Budget emissions limitation under subsection 41.4.1.

#### 41.10.2 General Requirements.

- (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 section 41.13:
  - (1) Install all monitoring systems required under this section for monitoring NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with 40 CFR Parts 75.71 and 75.72.
  - (2) Install all monitoring systems for monitoring heat input, if required under subsection 41.11.6 for developing NOx allowance allocations.
  - (3) Successfully complete all certification tests required under subsection 41.10.3 and meet all other provisions of this section and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (a)(1) and (2) of this subsection.
  - (4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this subsection.
- (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 under section 41.3 that commence operation before January 1, 2002, must comply with the requirements of this section by May 1, 2002.
  - (3) NOx Budget units under section 41.3 that commence operation on or after January 1, 2002 and that report on an annual basis under subsection 41.11.4 must comply with the requirements of this

section by the later of the following dates:

- a. May 1, 2002; or
- b. the earlier of:
  - (i) 180 days after the date on which the unit commences operation or,
  - (ii) For units under paragraph 41.3.1(a), 90 days after the date on which the unit commences commercial operation.

(4) NOx Budget units under section 41.3 that commence operation on or after January 1, 2002 and that report on a control season basis under subsection 41.11.4 must comply with the requirements of this section by the later of the following dates:

- a. the earlier of
  - (i) 180 days after the date on which the unit commences operation or,
  - (ii) for units under paragraph 41.3.1(a), 90 days after the date on which the unit commences commercial operation.
- b. However, if the applicable deadline under paragraph (b)(4) a. subsection does not occur during a control period, May 1; immediately following the date determined in accordance with paragraph (b)(4) a. of this subsection.

(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 subsection or section 41.13:

- a. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue
- b. However, if the unit reports on a control season basis under subsection 41.11.4 and the applicable deadline under paragraph (b)(5) a. of this subsection does not occur during the control period, May 1 immediately following the

applicable deadline in paragraph (b)(5) a. of this subsection.

- (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 section 41.13.

(c) Reporting data prior to initial certification.

- (1) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this subsection 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 40 CFR 75.70(g), 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 40 CFR 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 subsection 41.11.5.
- (2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR 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 section and 40 CFR Part 75 except as provided for in 40 CFR 75.74.
- (3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR 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 section and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

- (4) No owner or operator of a NO<sub>x</sub> Budget unit s or a non-NO<sub>x</sub> Budget unit monitored under 40 CFR 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 section, except under any one of the following circumstances:
- a. During the period that the unit is covered by a retired unit exemption under section 41.14 that is in effect;
  - b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR Part 75, by the Department, for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
  - c. The NO<sub>x</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subsection 41.10.3(b)(2).

41.10.3 Initial certification and recertification procedures

- (a) The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:
- (1) If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO<sub>x</sub> authorized account representative shall resubmit the petition to the Administrator under subsection 41.11.5(a) to determine if the approval applies under the NO<sub>x</sub> Budget Trading Program.
  - (2) For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO<sub>x</sub> concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (b) of this subsection.

- (b) The owner or operator of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of paragraph (c) of this subsection and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall also meet the requirements of paragraph (d) of this subsection. The owner or operator of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO<sub>x</sub> concentration CEMS under 40 CFR 75.71(a)(2) 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 40 CFR Part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection 41.10.2(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 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 Department determines significantly affects the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). 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 Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). 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.
- a. Notification of certification. The NO<sub>x</sub> authorized account representative shall submit to the Department, the appropriate EPA Regional Office and the Administrator a written notice of the dates of certification in accordance with subsection 41.10.5.
  - b. Certification application. The NO<sub>x</sub> authorized account representative shall submit to the Department a certification application for each monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.
  - c. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO<sub>x</sub> Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (b)(3) b. of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.
  - d. Certification application formal approval process. The Department 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) b. of this subsection. In the event the Department does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance

requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NO<sub>x</sub> Budget Trading Program.

- (i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.
- (ii) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3) b. of this subsection has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the NO<sub>x</sub> authorized account representative must submit the additional information required to complete the certification application. If the NO<sub>x</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under paragraph (b)(3) d. (iii) of this subsection.
- (iii) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3) d. (ii) of this subsection has been met, the Department 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 Department 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) e. of this subsection for each monitoring system or component thereof which is disapproved for initial certification.

(iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 41.10.4(b).

e. Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under paragraph (b)(3) d. (iii) of this subsection or a notice of disapproval of certification status under paragraph (b)(3) d. (iv) of this subsection, then:

(i) 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 40 CFR 75.20(a)(5)(i):

(A) For units using or intending to monitor for NO<sub>x</sub> emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO<sub>x</sub> emission rate and the maximum potential hourly heat input of the unit.

(B) For units intending to monitor for NO<sub>x</sub> mass emissions using a NO<sub>x</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR Part 75;

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

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the

monitoring system, as indicated in the Department'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 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of subsection 41.10.3, except that the excepted methodology shall be deemed provisionally certified for use under the NO<sub>x</sub> Budget Trading Program, as of the following dates:

- (1) For units that are reporting on an annual basis under subsection 41.11.4(b)(1):
  - a. For a unit that has commences operation before its compliance deadline under subsection 41.10.3(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or
  - b. For a unit that commences operation after its compliance deadline under subsection 41.10.3(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for Department review, or
- (2) For units that are reporting on a control period basis under subsection 41.11.4(b)(2):
  - a. For a unit that commenced operation before its compliance deadline under subsection 41.10.3(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 40 CFR 75.19 until the completion of the period for the Department review; or
  - b. For a unit that commenced operation before its compliance

deadline under subsection 41.10.3(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 40 CFR 75.19 until the completion of the period for the Department review; or

- c. For a unit that commences operation after its compliance deadline under subsection 41.10.3(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 Department's review.
  - d. For a unit that has not operated after its compliance deadline under subsection 41.10.3(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 40 CFR 75.19 until the completion of the period for the Department's review.
- (d) Certification/recertification procedures for alternative monitoring systems. The NO<sub>x</sub> authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the Department under subpart E of 40 CFR Part 75 shall apply for certification to the Department prior to use of the system under the NO<sub>x</sub> Trading Program. The NO<sub>x</sub> authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this subsection. 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 subsection and 40 CFR 75.20(f).

#### 41.10.4 Out of control periods.

- (a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR Part 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR Part 75.
- (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 subsection 41.10.3 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department 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 Department or the Administrator. By issuing the notice of disapproval, the Department 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 subsection 41.10.3 for each disapproved system.

41.10.5 Notifications.

The NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

**41.11 Recordkeeping and reporting.**

41.11.1 General provisions

- (a) The NO<sub>x</sub> authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subsection 41.6.1(e).
- (b) If the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR Part 75 and which includes data and information required under this section, section 41.10 or subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission must also be signed by the designated representative or the alternative designated representative.

41.11.2 Monitoring Plans.

- (a) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR Part 75.
- (b) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR Part 75.

41.11.3 Certification Applications.

- (a) The NOx authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under subsection 41.10.3 including the information required under subpart H of 40 CFR Part 75.

41.11.4 Quarterly reports.

The NOx authorized account representative shall submit quarterly reports, as follows:

- (a) 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 section, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:
  - (1) For units commencing operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection 41.10.3(b)(3) c or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or
  - (2) 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.
- (b) If a NOx budget unit is not subject to an Acid Rain emission limitation, then the NOx authorized account representative shall either:

- (1) Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in paragraph (a) of this subsection; or
- (2) 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 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b). The NO<sub>x</sub> authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:
  - a. For units commencing operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection 41.10.3(b)(3) c, or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or
  - b. For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or
  - c. For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection 41.10.3(b)(3) c 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.
  - d. For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit

commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection 41.10.3(b)(3) c 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.

- (c) The NO<sub>x</sub> authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR 75.64.
  - (1) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NO<sub>x</sub> Budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR Part 75.
  - (2) 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 40 CFR Part 75 for each NO<sub>x</sub> Budget unit (or group of units using a common stack).
- (d) Compliance certification. The NO<sub>x</sub> authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
  - (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this section, section 41.10 and 40 CFR Part 75, including the quality assurance procedures and specifications; and
  - (2) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO<sub>x</sub> emissions; and

- (3) For a unit that is reporting on a control period basis under subsection 41.11.4 the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

#### 41.11.5 Petitions

- (a) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this section and section 41.10.
  - (1) Application of an alternative to any requirement of this section or section 41.10 is in accordance with the section only to the extent that the petition is approved by the Administrator, in consultation with the Department.
  - (2) Notwithstanding paragraph (a)(1) of this subsection, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by paragraph (b) of this subsection.
- (b) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the Administrator requesting approval to apply an alternative to any requirement of this section and section 41.10.
  - (1) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO<sub>x</sub> concentration CEMS used under 40 CFR 75.71(a)(2).
  - (2) Application of an alternative to any requirement of this section or section 41.10 is in accordance with the section only to the extent the petition under paragraph (b) of this subsection is approved by both the Department and the Administrator.

## 41.12 Compliance Certification

### 41.12.1 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 Department 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 subsection 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 subsection 41.9.5 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 section 41.10, the percentage of allowances that is to be deducted from each unit's compliance account under subsection 41.9.5(e); and
  - (4) The compliance certification under paragraph (c) of this subsection.
- (c) Compliance certification. In the compliance certification report under paragraph (a) of this subsection, 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 NO<sub>x</sub> emissions to the unit, in accordance with sections 41.10 and 41.11;
- (3) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with sections 41.10 and 41.11. 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 section 41.10 and 41.11 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 section 41.10 and 41.11, if any, has changed; and
- (5) If a change is required to be reported under paragraph (c)(4) of this subsection, 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.

41.12.2 Department's and Administrator's action on compliance certifications.

- (a) The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.
- (b) The Administrator may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this subsection.

### **41.13 Individual Opt-ins.**

#### 41.13.1 Applicability.

A unit that is in the State, is not a NOx Budget unit under section 41.3, vents all of its emissions to a stack, and is operating, may qualify, under this section, to become a NOx Budget opt-in source. A unit that is a NOx Budget unit, is covered by a retired unit exemption under section 41.14 that is in effect, or is not operating is not eligible to become a NOx Budget opt-in source.

#### 41.13.2 General.

Except otherwise as provided in this regulation, a NOx Budget opt-in source shall be treated as a NOx Budget unit for purposes of applying sections 41.1 through 41.12 of this regulation.

#### 41.13.3 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.

#### 41.13.4 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 subsection 41.13.1 may submit to the Department at any time, except as provided under subsection 41.13.7(g):
  - (1) A complete NOx Budget permit application under subsection 41.7.4;
  - (2) A monitoring plan submitted in accordance with section 41.10; and
  - (3) A complete account certificate of representation under subsection 41.6.5, 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 subsection 41.7.4 to renew the NOx Budget opt-in permit in accordance with subsection 41.7.3(c) and, if applicable, an updated monitoring plan in accordance with section 41.10.

41.13.5 Opt-in process.

The Department 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 subsection 41.13.4 is submitted, in accordance with subsection 41.7.2 and the following:

- (a) Interim review of monitoring plan. The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx Budget opt-in permit under subsection 41.13.4. 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 sections 41.10 and 41.11. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.
- (b) If the Department determines that the unit's monitoring plan is sufficient under paragraph (a) of this subsection and after completion of monitoring system certification under section 41.10, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with section 41.10 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 subsection, 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 subsection, the Department 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 Department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under subsection 41.13.4. The Department 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 subsection, the Department will issue the draft NOx Budget opt-in permit in accordance with subsection 41.7.2.
- (g) Notwithstanding paragraphs (a) through (f) of this subsection, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the Department determines that the unit does not qualify as a NOx Budget opt-in source under subsection 41.13.1, the Department will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with subsection 41.7.2.
- (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 subsection 41.13.4 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 subsection 41.13.4.
- (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 Department. 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.

#### 41.13.6 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 subsection 41.7.3 as approved or adjusted by the Department.
- (b) Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under subsection 41.1 and, upon recordation by the Administrator under sections 41.8, 41.9 and 41.13, 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.

41.13.7 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 Department 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 subsection may withdraw from the NOx Budget Trading Program and the NOx Budget opt-in permit may be terminated under paragraph (e) of this subsection, 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 Department an annual compliance certification report in accordance with subsection 41.12.1.
  - (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 subsection 41.9.5(d) for the control period.
  - (3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this subsection 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 subsection 41.13.9 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 subsection are met (including deduction of the full amount of NOx allowances required), the Department 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 subsection are not met, the Department 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 Department issues a notification under paragraph (d)(1) of this subsection that the requirements for withdrawal have been met, the Department 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 subsection. 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 Department 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 subsection.
- (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 subsection 41.13.4 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.

41.13.8 Change in regulatory status.

- (a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under section 41.3, the NOx authorized account representative shall notify in writing the Department and the Administrator of such change in the NOx Budget opt-in source's regulatory status, within 30 days of such change.
- (b) Department's and Administrator's action.
  - (1) When the NOx Budget opt-in source becomes a NOx Budget unit under section 41.3, the Department will revise the NOx Budget opt-in source's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under subsection 41.7.5 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under section 41.3.
  - (2) The Administrator will deduct from the compliance account for the NOx Budget unit under paragraph (b)(1) of this subsection, 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:
    - a. Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under subsection 41.13.9 for any control period after the last control period during which the unit's NOx Budget opt-in permit was effective; and
    - b. If the effective date of the NOx Budget permit revision under paragraph (b)(1) of this subsection is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under subsection 41.13.9 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) of this subsection, divided by the total number of days in the control period.

- (3) The NO<sub>x</sub> authorized account representative shall ensure that the compliance account of the NO<sub>x</sub> Budget unit under paragraph (b)(1) of this section, or the overdraft account of the NO<sub>x</sub> Budget source where the unit is located, includes the NO<sub>x</sub> allowances necessary for completion of the deduction under paragraph (b)(2) of this subsection. If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.
- (4) For every control period during which the NO<sub>x</sub> Budget permit revised under paragraph (b)(1) of this subsection is effective, the NO<sub>x</sub> Budget unit under paragraph (b)(1) of this subsection will be treated, solely for purposes of NO<sub>x</sub> allowance allocations under section 41.5, as a unit that commenced operation on the effective date of the NO<sub>x</sub> Budget permit revision under paragraph (b)(1) of this subsection and will be allocated NO<sub>x</sub> allowances under subsection 41.5.
- (5) Notwithstanding paragraph (b)(4) of this subsection, if the effective date of the NO<sub>x</sub> Budget permit revision under paragraph (b)(1) of this subsection is during a control period, the following number of NO<sub>x</sub> allowances will be allocated to the NO<sub>x</sub> Budget unit under paragraph (b)(1) of this subsection under section 41.5 for the control period: the number of NO<sub>x</sub> allowances otherwise allocated to the NO<sub>x</sub> Budget unit under section 41.5 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) of this subsection, divided by the total number of days in the control period.
- (6) When the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget opt-in source does not renew its NO<sub>x</sub> Budget opt-in permit under subsection 41.13.4(b), the Administrator will deduct from the NO<sub>x</sub> Budget opt-in unit's compliance account, or the overdraft account of the NO<sub>x</sub> Budget source where the NO<sub>x</sub> Budget opt-in source is located, NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as any NO<sub>x</sub> allowances allocated to the NO<sub>x</sub> Budget opt-in source under subsection 41.13.9 for any control period after the last control period for which the NO<sub>x</sub> Budget opt-in permit is effective. The NO<sub>x</sub> authorized account representative shall ensure that the NO<sub>x</sub> Budget opt-in source's compliance account or the overdraft account of the NO<sub>x</sub> Budget

source where the 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.

- (7) After the deduction under paragraph (b)(6) of this subsection 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 subsection 41.9.5, 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.

41.13.9 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 Department 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 subsection.
  - (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 Department 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 subsection.
- (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:

- a. The NOx Budget opt-in source's baseline heat input determined pursuant to subsection 41.13.5(c); or
  - b. The NOx Budget opt-in source's heat input, as determined in accordance with section 41.10, 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 Department 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 subsection multiplied by the lesser of:
- a. The NOx Budget opt-in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to subsection 41.13.5(c); or
  - b. The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.

#### **41.14 Retired unit exemption.**

- 41.14.1 This section applies to any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired.
- 41.14.2 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, sections 41.1, 41.3, 41.5, 41.8, 41.9, and subsection 41.4.6.
- 41.14.3 The exemption under subsection 41.14.2 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 section 41.6) shall submit a statement to the Department 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 Department) that the unit is permanently retired and will comply with the requirements of subsection 41.14.5.
- 41.14.4 After receipt of the notice under subsection 41.14.3, the Department will

amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections 41.14.2 and 41.14.5.

41.14.5 Special provisions.

- (a) 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 section 41.5.
- (b) 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 subsection 41.7.4 for the unit not less than 18 months prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.
- (c) 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 subsection 41.7.4 for the unit not less than 18 months prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.
- (d) 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.
- (e) A unit that is exempt under this section is not eligible to be a NOx Budget opt-in source under section 41.13.
- (f) 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 Department or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

- (g) Loss of exemption.
  - (1) On the earlier of the following dates, a unit exempt under subsection 41.14.2 shall lose its exemption:
    - a. The date on which the NOx authorized account representative submits a NOx Budget permit application under subsection 41.14.5(b) or (c); or
    - b. The date on which the NOx authorized account representative is required under subsection 41.14.5(b) or (c) to submit a NOx Budget permit application.
  - (2) For the purpose of applying monitoring requirements under section 41.10, 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.

## **41.15 General Provisions**

### **41.15.1 Purpose**

The purpose of this regulation is to specify the requirements of a nitrogen oxides budget trading program

### **41.15.2 Authority**

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

### **41.15.3 Application**

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

### **41.15.4 Severability**

If any provision of this regulation or the application thereof to any person or

circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

41.15.5 Effective Date

The foregoing regulation, "NOx Budget Trading Program", as amended, after due notice, is hereby adopted and filed with the Secretary of State this 29th day of June, 2007 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

W. Michael Sullivan, PhD., Director  
Department of Environmental Management

**Notice Given on: February 21, 2007**

**Public Hearing held: March 23, 2007**

**Filing Date: June 29, 2007**

**Effective Date: July 19, 2007**