

Department of State
Division of Publications
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Sequence Number: 10-12-12
 Rule ID(s): 5321-5322
 File Date: 10/10/12
 Effective Date: 11/8/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
Address:	9 th Floor, L&C Annex 401 Church Street Nashville, TN 37243-1531
Phone:	(615) 532-0617
Email:	travis.blake@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-03-27	Nitrogen Oxides
Rule Number	Rule Title
1200-03-27-.06	NO _x Budget Trading Program for State Implementation Plans

Chapter Number	Chapter Title
1200-03-37	Clean Air Mercury Rule
Rule Number	Rule Title
1200-03-37-.01	Clean Air Mercury Rule (40 CFR 60)

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 1200-03-27 Nitrogen Oxides

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.06 NO_x Budget Trading Program for State Implementation Plans so that as amended the rule shall read:

1200-03-27-.06 Reserved

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Repeal

Chapter 1200-03-37 Clean Air Mercury Rule

Chapter 1200-03-37 Clean Air Mercury Rule is repealed.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Elaine Boyd	✓				Elaine Boyd
Dr. Brian W. Christman				✓	
Dr. Wayne T. Davis	✓				Wayne T. Davis
Dr. Mary English				✓	
Stephen R. Gossett				✓	
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				Shawn Hawkins
Helen Hennon				✓	
Richard M. Holland	✓				Richard M. Holland
John Roberts	✓				John Roberts
Mayor Larry Waters	✓				Larry Waters
Alicia M. Wilson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/12/2012

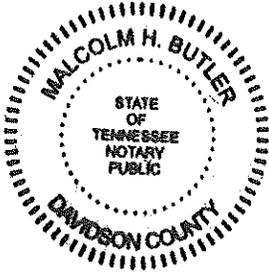
Rulemaking Hearing(s) Conducted on: (add more dates). 05/24/2012

Date: Sept. 10, 2012

Signature: [Handwritten Signature]

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: September 10, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter
10-7-12
Date

Department of State Use Only

Filed with the Department of State on: 10/10/12

Effective on: 11/8/13

[Handwritten Signature]
Tre Hargett
Secretary of State

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SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A comment was received on the proposed removal of Rule 1200-03-27-.06 (NO_x Budget Trading Program for State Implementation Plans). During the public comment period, U. S. EPA's Region 4 office discussed this rule change with the Division of Air Pollution Control. EPA stated that Tennessee may remove this rule, but the State must continue to meet its obligations under the NO_x SIP Call (40 CFR 51.121).

Response: Tennessee agrees that the State must continue to meet the requirements of the NO_x SIP Call (40 CFR 51.121). Tennessee is currently meeting these requirements by implementation and enforcement of the Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program (TAPCR 1200-03-27-.11, 40 CFR 96 Subparts AAAA through IIII, and 40 CFR 97 Subparts AAAA through IIII). Tennessee will continue to implement the requirements of the CAIR NO_x Ozone Season Trading Program until a CAIR replacement rule becomes effective. Upon final replacement of the CAIR Rule, Tennessee will meet its NO_x SIP Call obligations through the Transport Rule (40 CFR 97 Subpart BBBBB or a subsequent replacement) for electricity generating units (EGUs). For non-EGU boilers and combustion turbines, Tennessee will meet its NO_x SIP Call obligations by adoption of a SIP revision that addresses emissions from these sources.

There were no comments received for the proposed repeal of Rule 1200-03-37.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

The rule changes included in this document apply to electricity generating units and large boilers and combustion turbines, and the rule changes are projected to have no impact on small businesses. The businesses subject to this rule are listed below:

DuPont Old Hickory
Packaging Corporation of America
Tate & Lyle, Loudon
Bowater Newsprint-Calhoun Operation
Cargill Corn Milling
Eastman Chemical Company
The Valero Refining Company - Tennessee, LLC
TVA

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

No small business is impacted.

- (3) A statement of the probable effect on impacted small businesses and consumers:

No impact.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

None.

- (5) A comparison of the proposed rule with any federal or state counterparts:

Rule 1200-03-27-.06 NO_x Budget Trading Program for State Implementation Plans was originally adopted to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.

Chapter 1200-03-37 Clean Air Mercury Rule was mandated pursuant to 40 CFR 60 Subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units). The Federal rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097) and has been removed from the Code of Federal Regulations.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Not Applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rule changes are projected to have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

- | | |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Chapter 1200-03-27 Nitrogen Oxides is being amended by deleting Rule 1200-03-27-.06 NO _x Budget Trading Program for State Implementation Plans. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009. |
| 2. | Chapter 1200-03-37 Clean Air Mercury Rule is being repealed. This chapter was added to meet the EPA requirement for Tennessee to establish standards of performance for certain existing stationary sources pursuant to Section 111(d) of the Clean Air Act. These requirements were vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097). |

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

- | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Removal of Rule 1200-03-27-.06 is authorized by 40 CFR §51.121(r)(1): "Notwithstanding any provisions of paragraph (p) of this section, subparts A through I of part 96 of this chapter, and any State's SIP to the contrary, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of part 96 of this chapter, or in any emissions trading program in a State's SIP approved under paragraph (p) of this section, with regard to any ozone season that occurs after September 30, 2008." |
| 2. | Chapter 1200-03-37 Clean Air Mercury Rule was mandated pursuant to 40 CFR 60 Subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units). The Federal rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097) and has been removed from the Code of Federal Regulations. |

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Electricity generating units, fossil fuel-fired boilers and combustion turbines.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

- | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Removal of Rule 1200-03-27-.06: This rule was superseded by Rule 1200-03-27-.11 (CAIR NO _x Ozone Season Trading Program). The Federal rule underlying Rule 1200-03-27-.11 was vacated by the United States Court of Appeals for the District of Columbia Circuit on July 11, 2008 (case #05-1244). The court subsequently remanded the rule without vacature on December 23, 2008. |
| 2. | The Federal rule underlying Chapter 1200-03-37 was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097). |

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No increase or decrease is expected to result from these rule changes.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Travis Blake
Division of Air Pollution Control
9th Floor, L&C Annex
401 Church Street
Nashville, TN 37243-1531

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson
Legal Services Director
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
Nashville, TN 37243-1531
Alan.leiserson@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Division is not aware of any additional relevant information.

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Chapter Number	Chapter Title
1200-03-27	Nitrogen Oxides
Rule Number	Rule Title
1200-03-27-.06	NO _x Budget Trading Program for State Implementation Plans

Chapter Number	Chapter Title
1200-03-37	Clean Air Mercury Rule
Rule Number	Rule Title
1200-03-37-.01	Clean Air Mercury Rule (40 CFR 60)

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 1200-03-27 Nitrogen Oxides

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.06 NO_x Budget Trading Program for State Implementation Plans so that as amended the rule shall read:

1200-03-27-.06 Reserved NO_x Budget Trading Program for State Implementation Plans (40 CFR 96).

(1) ~~The provisions of 40 CFR Part 96 concerning the NO_x Trading Budget Program are hereby adopted by reference with the following revisions:~~

(a) ~~The provisions of Sec. 96.4(a)(1) as adopted for Tennessee are revised to read as follows:~~

~~With the exception of a unit under Sec. 96.4(a)(2) that prior to September 22, 2001 was allocated NO_x allowances as an industrial boiler, this allocation to be submitted to the EPA to be included in the state implementation plan, any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25MWe and sells any amount of electricity during a control period; or~~

(b) ~~The provisions of Sec. 96.2 concerning the terms "NO_x allowance" and "NO_x Budget emissions limitation" as adopted for Tennessee are revised to read as follows:~~

~~NO_x allowance means a limited authorization by the Administrator under the NO_x 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, except as provided under Sec. 96.54(f). No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under Sec. 96.4(b) or Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except Sec. 96.41, Sec. 96.42, or Sec. 96.88, "NO_x allowance" also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State NO_x Budget Trading Program established, and approved and administered by the Administrator, pursuant to the Federal regulation referred to in the definition of "NO_x Budget Trading Program" in Sec. 96.2.~~

~~NO_x Budget emissions limitation means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under Sec. 96.54 (a), (b), (e), and (f) adjusted to account for excess emissions for a prior control period under Sec. 96.54 (d) or to account for withdrawal from the NO_x Budget Program, or for a change in regulatory status, for a NO_x Budget opt-in source under Sec. 96.86 or Sec. 96.87.~~

(c) ~~The provisions of Sec. 96.5(c)(2) as adopted for Tennessee are revised to read as follows:~~

~~The Administrator will allocate NO_x allowances under subpart E of this part 96 to a unit exempt under this section. For each control period for which the unit is allocated one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NO_x allowances.~~

(d) ~~The provisions of Sec. 96.6(c)(1) as adopted for Tennessee are revised to read as follows:~~

~~The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under Sec. 96.54(a), (b), (e), or (f) as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the~~

~~control period from the unit, as determined in accordance with subpart H of this part 96, plus any amount necessary to account for actual heat input under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under Sec. 96.86 or Sec. 96.87.~~

~~(e) The provisions of Sec. 96.23(a) as adopted for Tennessee are revised to read as follows:~~

~~Each NOx Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22.~~

~~(f) The provisions of Sec. 96.40 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.40 State trading program budget.~~

~~The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period. The state trading program budget to be allocated to units under Sec. 96.4(a)(1) is 25814 tons/season, as specified for electricity-generating units in the state in the EPA's final published budgets for states under the EPA's NOx SIP call. The budget to be allocated to units under Sec. 96.4(a)(2) is 5666 tons/season, the total of budgets for non-EGU units subject to this rule 1200-03-27-06 and included in the EPA's inventory for the NOx SIP call. The portion of the state trading program budget allocated to units under Sec. 96.4(a)(2) shall be as set forth in the state implementation plan. The nitrogen oxides allowance (NOx allowance) allocated under Sec. 96.4(a)(2) must be subjected to a public hearing and submitted to the EPA for approval as a revision to the state implementation plan. The permitting authority may allocate additional allowances to NOx Budget units that have been generated through NOx emission reductions from industrial, mobile, and area source sectors that are permanent, enforceable, quantifiable, and surplus as determined by and approved by the Administrator and the permitting authority.~~

~~(g) The provisions of Sec. 96.41 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.41 Timing requirements for NOx allowance allocations.~~

- ~~1. The NOx allowance allocations for units that receive allocations under parts (h)2 and 3 of this paragraph for the control periods in 2004 through 2018 are as specified in Sec. 96.42.~~
- ~~2. By April 1, 2016, and April 1st of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this subparagraph. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this subparagraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.~~
- ~~3. By April 1, 2005 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the applicable allocation set aside for the prior control period.~~

~~(h) The provisions of Sec. 96.42 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.42 NOx allowance allocations.~~

- ~~1. (i) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:~~

- (I) ~~For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or for the control period in 1995 if the unit is under Sec. 96.4(a)(2); and~~
- (II) ~~For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.~~
- (ii) ~~The unit's total heat input for the control period in each year specified under subpart (i) of this part will be determined in accordance with the requirements for a continuous emission monitoring system if the NOx Budget unit was otherwise subject to the requirements for a continuous emission monitoring system for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements for a continuous emission monitoring system for the year.~~
2. ~~For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, a total number of NOx allowances equal to 95.7 percent, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:~~
- (i) ~~The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under part 1 of this subparagraph, rounded to the nearest whole NOx allowance as appropriate.~~
- (ii) ~~If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under subpart (i) of this part does not equal 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under this subpart (i) so that the total number of NOx allowances allocated equals 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under this subpart (i), and rounding to the nearest whole NOx allowance as appropriate.~~
3. ~~For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1st of the period used to calculate heat input a NOx allowance in the state implementation plan to be submitted to EPA for approval.~~
4. ~~For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, in accordance with the following procedures:~~
- (i) ~~The permitting authority will establish separate allocation set-aside for units under Sec. 96.4 (a)(1) and units under Sec. 96.4 (a)(2). For units under Sec. 96.4(a)(1) the allocation set-aside will be allocated NOx allowances equal to 4.3 percent of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate. For units under Sec. 96.4(a)(2), the allocation set-aside~~

for new source growth will be the NOx allowances remaining in the state trading program budget for units under Sec. 96.4(a)(2) after allocations are set for all NOx budget units under Sec. 96.40. For units under Sec. 96.4(a)(2) the allocation set-aside will also be established in the state implementation plan.

- ~~(ii) The NOx authorized account representative of a NOx Budget unit may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances, starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.~~
- ~~(iii) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period a NOx allowance in accordance with the following:
 - ~~(I) For NOx Budget units that commenced operation after May 1, 1996, and before January 1, 2001, an allowance that does not exceed any of the following three limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. NOx allowances granted under this provision may be transferred at the request of the NOx authorized account representative to NOx Budget units which are owned by the same entity as the NOx Budget unit for which the allocation is made and are within the state.~~
 - ~~(II) For NOx Budget units that commence operation after January 1, 2001, an allowance that does not exceed any of the following three limits: the product of the unit's maximum design heat input (in mmBtu/hr), the number of hours remaining in the control period starting with the first day of the control period on which the unit operated or is projected to operate, and 0.013 lb/mmBtu; the allowable NOx emission under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. No allocation shall be made to any unit that commences operation after January 1, 2001, with an emission rate greater than 0.013 lb/mmBtu.~~~~
- ~~(iv) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period a NOx allowance in an amount that does not exceed any of the three following limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan.~~
- ~~(v) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under subpart (ii) of this part in the order that a complete construction permit application is received by the permitting authority.
 - ~~(I) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part.~~
 - ~~(II) If the applicable allocation set-aside has an amount of NOx allowances not less than the number requested (as adjusted under item (I) above), the~~~~

~~permitting authority will allocate the amount of the NOx allowances requested (as adjusted under item (i)) to the NOx Budget unit.~~

~~(III) If the applicable allocation set-aside has a smaller amount of NOx allowances than the number requested (as adjusted under subpart (i) above), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.~~

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

~~(vi) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under subpart (v) of this part and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated to the NOx Budget unit.~~

~~5. For each NOx Budget unit that is allocated NOx allowances under part 4 of this subparagraph for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (c) to account for the actual emissions from the unit during the control period. After making this deduction for compliance for the control period for all such units that are allocated NOx allowances under part 4, the Administrator will notify the permitting authority of the NOx allowances that were not deducted for compliance, these allowances then to be treated as additions, or reversions, for this control period to the allocation set-aside for the control period. Following this notification, the permitting authority will allocate any NOx allowances remaining in the allocation set-asides for the control period to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:~~

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

~~where:~~

~~"Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies. Unit type is as described under Sec. 96.4(a)(1) and (2);~~

~~"Unit's NOx allowance allocation" is the number of NOx allowances allocated under part 2 or 3 of this subparagraph to the unit for the control period to which the allocation set-aside applies; and~~

~~"State trading program budget excluding allocation set-aside" is the State trading program budget apportioned to the unit type under Sec. 96.40 for the control period to which the allocation set-aside applies minus the allocation set-aside. Unit type is as described under Sec. 96.4(a)(1) and (2).~~

~~(i) The provisions of Sec. 96.53 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.53 Recordation of NOx allowance allocations.~~

~~1. The Administrator will record the NOx allowances for 2004 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for~~

~~2004 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).~~

- ~~2. By May 1, 2002, the Administrator will record the NOx allowances for 2005 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.4(b)(4)(ii) or Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2005 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).~~
- ~~3. By May 1, 2003, the Administrator will record the NOx allowances for 2006 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2006 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).~~
- ~~4. By May 1, 2004, the Administrator will record the NOx allowances for 2007 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2007 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).~~
- ~~5. Each year starting with 2005, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)), the Administrator will record:
 - ~~(i) NOx allowances, in the compliance account, as allocated to the unit under subpart E of this part 96 for the third year after the year of the control period for which such deductions were or could have been made;~~
 - ~~(ii) NOx allowances, in the general account specified by the owners and operators of the unit, as allocated under Sec. 96.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and~~
 - ~~(iii) NOx allowances, in the compliance account, as allocated to the unit under Sec. 96.88(a).~~~~
- ~~6. Serial numbers for allocated NOx allowances. When allocating NOx allowances to a NOx Budget unit 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.~~

~~(j) The provisions of Sec. 96.54 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.54 Compliance.~~

- ~~1. 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:
 - ~~(i) Were allocated for a control period in a prior year or the same year; and~~
 - ~~(ii) 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 Sec. 96.60 by the NOx allowance transfer deadline for that control period.~~~~

~~2. Deductions for compliance.~~

~~(i) Following the recordation, in accordance with Sec. 96.61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under part 1 of this subparagraph to cover the unit's NOx emissions (as determined in accordance with subpart H of this part 96), or to account for actual emissions under Sec. 96.42(e) for the control period:~~

~~(I) From the compliance account; and~~

~~(II) Only if no more NOx allowances available under part 1 of this subparagraph 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).~~

~~(ii) The Administrator will deduct NOx allowances first under item (i)(I) of this part and then under item (i)(II):~~

~~(I) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined; or~~

~~(II) Until no more NOx allowances available under subparagraph (a) of this paragraph remain in the respective account.~~

~~3. (i) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under part 2, 4, or 5 of this subparagraph. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~

~~(ii) 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 subpart (i) of this part, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:~~

~~(I) Those NOx allowances that were allocated for the control period to the unit under subpart E or I of this part 96;~~

~~(II) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation;~~

~~(III) Those NOx allowances that were allocated for a prior control period to the unit under subpart E or I of this part 96; and~~

~~(IV) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation.~~

4. ~~Deductions for excess emissions.~~

- ~~(i) After making the deductions for compliance under part 2 of this subparagraph, 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.~~
- ~~(ii) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.~~
- ~~(iii) Any allowance deduction required under this subparagraph shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:
 - ~~(I) For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~
 - ~~(II) Each ton of excess emissions is a separate violation.~~~~

5. ~~Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part 96:~~

- ~~(i) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~
- ~~(ii) Notwithstanding item 2(ii)(1) of this subparagraph, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under subpart 5(i) of this subparagraph) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part 96, 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.~~

6. ~~The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to part 2, 4, or 5 of this subparagraph.~~

~~(k) The provisions of Sec. 96.55 as adopted for Tennessee are revised to read as follows:~~

~~Sec. 96.55 Banking.~~

1. ~~NOx allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:~~

- ~~(i) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part 96, or subpart I of this part 96.~~

- ~~(ii) The Administrator will designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)) and that was allocated for that control period or a control period in a prior year.~~
- ~~2. Each year starting in 2005, after the Administrator has completed the designation of banked NOx allowances under subpart 1(ii) of this subparagraph 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:~~
- ~~(i) The Administrator will determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.~~
- ~~(ii) If the total number of banked NOx allowances determined, under subpart (i) of this part, 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 Sec. 96.54.~~
- ~~(iii) If the total number of banked NOx allowances determined, under subpart (i), 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 Sec. 96.54, except as follows:~~
- ~~(I) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts.~~
- ~~(II) The Administrator will multiply that ratio by 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 Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.~~
- ~~3. Any NOx Budget unit may reduce its NOx emission rate in the 2001, 2002, or 2003 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2004 to the unit in accordance with the following requirements.~~
- ~~(i) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) of this part shall monitor NOx emissions in accordance with subpart H of this part. Each budget unit for which early reduction credits are requested must have monitoring data for at least one control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during any control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.~~
- ~~(ii) NOx emission rate and heat input under subparts (iii) through (v) below shall be determined in accordance with subpart H of this part 96.~~

- ~~(iii) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) below shall reduce its NOx emission rate, for each control period for which early reduction credits are requested as follows:
 - ~~(i) For EGUs, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period, this emission rate for the 2000 control period having been established through monitoring in accordance with subpart H of this part 96.~~
 - ~~(ii) For non-EGUs, to less than 95 percent of the unit's NOx emission rate in the 2000, 2001, or 2002 control period, that control period being the earliest one for which monitoring data acceptable to the Administrator and the Technical Secretary establishes the NOx emission rate for that unit. For example, emission rate reductions achieved in the 2003 control period would be as compared to the 2000 control period if the NOx emission rate for the 2000 control period had been accepted by the Administrator and the Technical Secretary as having been established.~~~~
- ~~(iv) The NOx authorized account representative of a NOx Budget unit that meets the requirements of subparts (i) and (iii) of this part may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001, 2002, and/or 2003 in accordance with subpart (iii) of this part.
 - ~~(i) In the early reduction credit request, the NOx authorized account representative for EGUs may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the acid deposition control requirement for the unit type and the unit's NOx emission rate for such control period in lb/mmBtu, divided by 2000 lb/ton, and rounded to the nearest ton. For non-EGUs, the NOx authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the unit's emission rate prior to the NOx emission rate reduction in lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton; the difference must reflect only reductions additional to prior existing requirements.~~
 - ~~(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.~~~~
- ~~(v) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of subparts (i) and (iii) of this part and covered by early reduction requests meeting the requirements of item (iv)(i) of this part, in accordance with the following procedures:
 - ~~(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of subparts (i) and (iii) and item (iv)(ii) of this part are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of subparts (ii) and (iv) of this part.~~
 - ~~(ii) If the State's compliance supplement pool of 10565 tons/season has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 (as adjusted under item (v)(i) of this part), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each~~~~

~~early reduction credit requested (as adjusted under item (v)(1)). If the State's compliance supplement pool, after deduction of the early reduction credits for the 2001 control period, has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2002 (as adjusted under item (v)(1)), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under item (v)(1)). The same procedure will be followed for early reduction credit requests from the 2003 control period as from the 2002 control period.~~

- ~~(III) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for any control period (as adjusted under item (v)(1) of this part), the permitting authority will allocate NOx allowances for that control period to each NOx Budget unit covered by such accepted requests according to the following formula:~~

~~Unit's allocated early reduction credits = {(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)} x (Available NOx allowances from the State's compliance supplement pool)~~

~~where:~~

~~"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for the control period in accepted early reduction credit requests, as adjusted under item (v)(1).~~

~~"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for the control period in accepted early reduction credit requests, as adjusted under item (v)(1).~~

~~"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool with appropriate deductions made for any early reduction credits previously allocated.~~

- ~~(vi) By May 1, 2004, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under subpart (v) of this part. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparts (i) through (v) of this part.~~

- ~~(vii) NOx allowances recorded under subpart (vi) of this part may be deducted for compliance under Sec. 96.54 for the control periods in 2004 or 2005. Notwithstanding part 1 of this subparagraph, the Administrator will deduct as retired any NOx allowance that is recorded under subpart (vi) and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2004 or 2005.~~

- ~~(viii) NOx allowances recorded under subpart (vi) are treated as banked allowances in 2005 for the purposes of parts 1 and 2 of this subparagraph.~~

~~4. One thousand NOx tons of the State's compliance supplement pool is set aside to be allocated to units under Sec. 96.4(a)(2). If this specified amount of the compliance supplement pool is not all or in part allocated to units under Sec. 96.4(a)(2), then qualifying units under Sec. 96.4(a)(1) may be allocated these NOx tons.~~

~~5. The permitting authority may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension beyond the May 31, 2004 compliance deadline according to the following procedures:~~

- ~~(i) The permitting authority shall initiate the issuance process by the later date of September 30, 2002, or after the State issues credit according to the procedures in part 3 of this subparagraph.~~
- ~~(ii) The permitting authority shall complete the issuance process by no later than May 31, 2004.~~
- ~~(iii) The State shall issue credit to a source only if the source complies with all applicable requirements referred to in the definition of "NOx Budget Trading Program" in sec. 96.2.~~
- ~~(vi) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocation compliance supplement pool credits under this paragraph.~~

~~(l) The provisions of Sec. 96.70(b)(1) as adopted for Tennessee are revised to read as follows:~~

~~NOx Budget units for which the owner or operator intends to apply for early reduction credits under part (k)3 of this paragraph must comply with the requirements of this subpart by May 1, 2000, for credits to be earned from the 2001 control period; by May 1, 2001, for credits from the 2002 control period; and May 1, 2002, for credits from the 2003 control period.~~

~~(m) The provisions of Sec. 96.70(c) as adopted for Tennessee are revised to read as follows:~~

~~Reporting data prior to initial certification. The owner or operator of a NOx Budget unit under paragraph (b)(3), (b)(4), (b)(5), or (b)(6) of this section shall determine, record and report NOx mass emissions, heat input rate, and any other values required to determine NOx mass emissions (e.g., NOx emission rate and heat input rate, or NOx concentration and stack flow rate) in accordance with the provisions for reporting data prior to initial certification of the mass emission provisions for a continuous emission monitoring system, from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted optional SO₂ emission data protocol for gas-fired and oil-fired units and NOx emission estimation protocol for gas-fired peaking units and oil-fired peaking units under provisions for a continuous emission monitoring system, or low mass emission excepted monitoring methodology referred to in Sec. 96.71(b), is provisionally certified.~~

~~(n) The provisions of Sec. 96.71(b)(2) as adopted for Tennessee are revised to read as follows:~~

~~Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the continuous emission monitoring system QA and QC requirements, the owner or operator shall recertify the monitoring system according to the recertification approval process provisions for a continuous emission monitor system. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to the recertification approval process provisions mentioned above. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or complete replacement of an existing continuous emission monitoring system.~~

~~(o) The provisions of the opening and Sec. (1) of Sec. 96.71 (b)(3)(v)(A) as adopted for Tennessee are revised to read as follows:~~

~~The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under the disapproval provisions of the certification and recertification approval processes, the disapproval of certification application provisions for low mass emission units using excepted methodology referred to in Sec. 96.71(b), and the consequences of audits provisions of the QA and QC requirements for a continuous emission~~

~~monitoring system and continuing until the date and hour that the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certified tests successfully completed:~~

- ~~1. For units that the owner or operator intends to monitor or monitors for NO_x emission rate and heat input rate or intends to determine or determines NO_x mass emissions using the low mass emission excepted methodology specified in Sec. 96.71(b)(3)(ii), the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and~~

~~(p) The provisions of Sec. 96.71(c) as adopted for Tennessee are revised to read as follows:~~

~~Initial certification and recertification procedures for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements for a continuous emission monitoring system and the applicable requirements for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program as of the following dates:~~

- ~~1. For a unit that does not have monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application for low mass emissions excepted methodology, starting on the date of such submission until the completion of the period for the Administrator's review.~~
- ~~2. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application for low mass emissions excepted methodology for the unit and that reports data on an annual basis under Sec. 96.74(d), starting January 1 of the year after the year of such submission until the completion of the period for the Administrator's review.~~
- ~~3. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x Authorized Account Representative submits the certification application under for low mass emissions excepted methodology for the unit and that reports on a control season basis under Sec. 96.74(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.~~

~~(q) The provisions of Sec. 96.74(d)(1)(ii) as adopted for Tennessee are revised to read as follows:~~

~~For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. 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, 2003; or~~

~~(r) The provisions of Sec. 96.74(d)(2)(ii) as adopted for Tennessee are revised to read as follows:~~

~~Submit quarterly reports covering the period May 1 through September 30 of each year and including the hourly data and results of QA tests required under the annual and ozone season monitoring and reporting requirements for a continuous emission monitoring system. The NO_x authorized account representative shall submit such quarterly reports, beginning with:~~

- ~~1. For a unit for which the owner or operator intends to apply or applies for early reduction credits, the calendar quarter that includes the date of initial provisional certification under~~

~~Sec. 96.71(b)(3)(iii) or Sec. 96.71(c). Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or~~

~~2. For a unit that commences operation on or before May 31, 2004, and that is not subject to paragraph (d)(2)(i) of this section, the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1, 2003; or~~

~~3. For a unit that commences operation after May 1, 2003 and during a 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 commences operation; or~~

~~4. For a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1 of the first control period after the unit commences operation.~~

~~(s) The provisions of Sec. 96.85(a) as adopted for Tennessee are revised to read as follows:~~

~~Each NOx Budget opt-in permit will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22.~~

~~(t) For the purpose of this rule, the provisions of part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the year 2002 are amended to refer to year 2003, those that refer to year 2003 are amended to refer to year 2004, and those that refer to year 2004 are amended to refer to year 2005. For example, the requirement in Sec. 96.70(b)(2) for units that commence operation before January 1, 2002, to comply with Subpart H by May 1, 2002, is amended by this paragraph to specify that units that commence operation before January 1, 2003, must comply by May 1, 2003. Also for the purpose of this rule, the provisions of Part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the specific date May 1, 2003, are amended to refer to the date May 31, 2004. For example, the specification in Sec. 96.6(c)(3) that a unit be subject to requirements starting on May 1, 2003, is amended by this paragraph to specify that the unit is subject starting on May 31, 2004, instead.~~

~~(u) The citations in this rule 1200-03-27-06, including in part 96 in this rule's paragraph (2), to sections within part 96 that are amended by paragraph (1) of this rule are to be taken as citations to those sections as amended by this paragraph.~~

~~(2) PART 96-NOx Budget Trading Program for State Implementation Plans~~

~~Subpart A-NOx Budget Trading Program General Provisions~~

~~Sec.~~

~~96.1 Purpose.~~

~~96.2 Definitions.~~

~~96.3 Measurements, abbreviations, and acronyms.~~

~~96.4 Applicability.~~

~~96.5 Retired unit exemption.~~

~~96.6 Standard requirements.~~

~~96.7 Computation of time.~~

~~Subpart B-Authorized Account Representative for NOx Budget Sources~~

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

~~96.11 Alternate NOx authorized account representative.~~

- ~~96.12 Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.~~
- ~~96.13 Account certificate of representation.~~
- ~~96.14 Objections concerning the NOx authorized account representative.~~

~~Subpart C--Permits~~

- ~~96.20 General NOx Budget permit requirements.~~
- ~~96.21 Submission of NOx Budget permit applications.~~
- ~~96.22 Information requirements for NOx Budget permit applications.~~
- ~~96.23 NOx Budget permit contents.~~
- ~~96.24 Effective date of initial NOx Budget permit.~~
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~~Subpart D--Compliance Certification~~

- ~~96.30 Compliance certification report.~~
- ~~96.31 Permitting authority's and Administrator's action on compliance certifications.~~

~~Subpart E--NOx Allowance Allocations~~

- ~~96.40 State trading program budget.~~
- ~~96.41 Timing requirements for NOx allowance allocations.~~
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~~Subpart F--NOx Allowance Tracking System~~

- ~~96.50 NOx Allowance Tracking System accounts.~~
- ~~96.51 Establishment of accounts.~~
- ~~96.52 NOx Allowance Tracking System responsibilities of NOx authorized account representative.~~
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~~Subpart J—Mobile and Area Sources [Reserved]
Authority: 42 U.S.C. 7401, 7403, 7410, and 7601~~

~~Subpart A—NOx Budget Trading Program General Provisions~~

~~Sec. 96.1 Purpose.~~

~~This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NOx Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for Sec. 96.4(b)), subparts B through D, subpart F (except for Sec. 96.55(e)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NOx Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.~~

~~Sec. 96.2 Definitions.~~

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

~~Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NOx authorized account representative for a NOx Budget source or a group of identified NOx Budget sources who is authorized to represent the owners and operators of such source or sources and of the NOx Budget units at such source or sources with regard to matters under the NOx Budget Trading Program.~~

~~Account number means the identification number given by the Administrator to each NOx Allowance Tracking System account.~~

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

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

~~Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NOx allowances to be initially credited to a NOx Budget unit or an allocation set aside.~~

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

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

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

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

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

~~Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 shall be the unit's date of commencement of commercial operation.~~

~~Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start up of a unit's combustion chamber. Except as provided in Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date of commencement of operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 shall be the unit's date of commencement of operation.~~

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

~~Compliance account means a NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under subpart F of this part, in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx Budget emissions limitation.~~

~~Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NOx Budget source's or a NOx Budget unit's compliance or noncompliance with this part and that is signed by the NOx authorized account representative in accordance with subpart B of this part.~~

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

~~Flow monitor;~~

~~Nitrogen oxides pollutant concentration monitors;~~

~~Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;~~

~~A continuous moisture monitor when such monitoring is required by subpart H of this part; and~~

~~An automated data acquisition and handling system.~~

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

~~Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part.~~

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

~~Excess emissions means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

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

~~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~~

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

~~General account means a NO_x Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.~~

~~Generator means a device that produces electricity.~~

~~Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

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

~~For the life of the unit;~~

~~For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

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

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

~~to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).~~

~~Maximum potential NO_x emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.~~

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

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

~~Most stringent State or Federal NO_x emissions limitation means, with regard to a NO_x Budget opt-in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

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

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

~~NO_x allowance means an authorization by the permitting authority or the Administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.~~

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

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

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

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

~~NO_x allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.~~

~~NO_x authorized account representative means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x~~

~~Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NOx Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NOx allowances held in the general account.~~

~~NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54(a) and (b), adjusted by any deductions of such NOx allowances to account for actual utilization under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.~~

~~NOx Budget opt-in permit means a NOx Budget permit covering a NOx Budget opt-in source.~~

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

~~NOx Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NOx Budget Trading Program requirements applicable to a NOx Budget source, to each NOx Budget unit at the NOx Budget source, and to the owners and operators and the NOx authorized account representative of the NOx Budget source and each NOx Budget unit.~~

~~NOx Budget source means a source that includes one or more NOx Budget units.~~

~~NOx Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to Sec. 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

~~NOx Budget unit means a unit that is subject to the NOx Budget Trading Program emissions limitation under Sec. 96.4 or Sec. 96.80.~~

~~Operating means, with regard to a unit under Secs. 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOx Budget permit under Sec. 96.83(a).~~

~~Operator means any person who operates, controls, or supervises a NOx Budget unit, a NOx Budget source, or unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Opt-in means to be elected to become a NOx Budget unit under the NOx Budget Trading Program through a final, effective NOx Budget opt-in permit under subpart I of this part.~~

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

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

- ~~(1) Any holder of any portion of the legal or equitable title in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or~~
- ~~(2) Any holder of a leasehold interest in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or~~

- ~~(3) Any purchaser of power from a NOx Budget unit or from a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lesser, or a person who has an equitable interest through such lesser, whose rental payments are not based, either directly or indirectly, upon the revenues or income from NOx Budget unit or the unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or~~
- ~~(4) With respect to any general account, any person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.~~

~~Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NOx Budget Trading Program in accordance with subpart C of this part.~~

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

~~Recordation, record, or recorded means, with regard to NOx allowances, the movement of NOx allowances by the Administrator from one NOx Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.~~

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

~~Serial number means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under Sec. 96.53(c).~~

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

~~State means one of the 48 contiguous States and the District of Columbia specified in Sec. 51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NOx Budget Trading Program pursuant to Sec. 51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.~~

~~State trading program budget means the total number of NOx tons apportioned to all NOx Budget units in a given State, in accordance with the NOx Budget Trading Program, for use in a given control period.~~

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

- ~~(1) In person;~~
- ~~(2) By United States Postal Service; or~~
- ~~(3) By other means of dispatch or transmission and delivery.~~

~~Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

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

~~Ton or tonnage means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NOx Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.~~

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

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

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

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

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

~~Utilization means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~

~~Sec. 96.3 Measurements, abbreviations, and acronyms.~~

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

- ~~— Btu—British thermal unit.~~
- ~~— hr—hour.~~
- ~~— Kwh—kilowatt hour.~~
- ~~— lb—pounds.~~
- ~~— mmBtu—million Btu.~~
- ~~— MWe—megawatt electrical.~~
- ~~— ton—2000 pounds.~~
- ~~— CO2—carbon dioxide.~~
- ~~— NOx—nitrogen oxides.~~
- ~~— O2—oxygen.~~

~~Sec. 96.4 Applicability.~~

- ~~(a) The following units in a State shall be NOx Budget units, and any source that includes one or more such units shall be a NOx Budget source, subject to the requirements of this part:~~

- ~~(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or~~
- ~~(2) Any unit that is not a unit under paragraph (a)(1) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.~~
- ~~(b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NOx mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NOx Budget unit.~~
- ~~(1) For each control period under paragraph (b) of this section, the federally enforceable permit must:~~
- ~~(i) Restrict the unit to burning only natural gas or fuel oil.~~
- ~~(ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NOx mass emissions by the unit's maximum potential hourly NOx mass emissions.~~
- ~~(iii) Require that the unit's potential NOx mass emissions shall be calculated as follows:~~
- ~~(A) Select the default NOx emission rate in Table 2 of Sec. 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NOx emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1)(i) of this section; and~~
- ~~(B) Multiply the default NOx emission rate under paragraph (b)(1)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under Sec. 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.~~
- ~~(iv) Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.~~
- ~~(v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.~~
- ~~(2) The permitting authority that issues the federally enforceable permit with the fuel use restriction under paragraph (b)(1)(i) and the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section will notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the~~

~~Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.~~

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

~~Sec. 96.5 Retired unit exemption.~~

- ~~(a) This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired.~~
- ~~(b) (1) Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, Secs. 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this part.~~
- ~~(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO_x Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section. After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.~~
- ~~(c) Special provisions.~~
- ~~(1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.~~
- ~~(2) (i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.~~
- ~~(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Sec. 96.22 for the unit not less~~

~~than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.~~

- ~~(3) The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under this section shall comply with the requirements of the NOx Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.~~
- ~~(4) A unit that is exempt under this section is not eligible to be a NOx Budget opt-in source under subpart I of this part.~~
- ~~(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.~~
- ~~(6) Loss of exemption.
 - ~~(i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:
 - ~~(A) The date on which the NOx authorized account representative submits a NOx Budget permit application under paragraph (c)(2) of this section; or~~
 - ~~(B) The date on which the NOx authorized account representative is required under paragraph (c)(2) of this section to submit a NOx Budget permit application.~~~~
 - ~~(ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.~~~~

~~Sec. 96.6 Standard requirements.~~

~~(a) Permit Requirements.~~

- ~~(1) The NOx authorized account representative of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall:
 - ~~(i) Submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 in accordance with the deadlines specified in Sec. 96.21(b) and (c);~~
 - ~~(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NOx Budget permit application and issue or deny a NOx Budget permit.~~~~
- ~~(2) The owners and operators of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall have a NOx Budget permit issued by the permitting authority and operate the unit in compliance with such NOx Budget permit.~~
- ~~(3) The owners and operators of a NOx Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOx Budget permit~~

application, and to have a NOx Budget permit, under subpart C of this part for such NOx Budget source.

~~(b) Monitoring requirements.~~

- ~~(1) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx Budget source and each NOx Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.~~
- ~~(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NOx Budget emissions limitation under paragraph (c) of this section.~~

~~(c) Nitrogen oxides requirements.~~

- ~~(1) The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under Sec. 96.42(e) for the control period.~~
- ~~(2) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this part, the CAA, and applicable State law.~~
- ~~(3) A NOx Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.~~
- ~~(4) NOx allowances shall be held in, deducted from, or transferred among NOx Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.~~
- ~~(5) A NOx allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NOx allowance was allocated.~~
- ~~(6) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NOx Budget Trading Program. No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.~~
- ~~(7) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program does not constitute a property right.~~
- ~~(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from a NOx Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOx Budget permit of the NOx Budget unit by operation of law without any further review.~~

~~(d) Excess emissions requirements.~~

- ~~(1) The owners and operators of a NOx Budget unit that has excess emissions in any control period shall:
 - ~~(i) Surrender the NOx allowances required for deduction under Sec. 96.54(d)(1); and~~~~

- ~~(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under Sec. 96.54(d)(3).~~
- ~~(e) Recordkeeping and Reporting requirements.~~
 - ~~(1) Unless otherwise provided, the owners and operators of the NOx Budget source and each NOx Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.
 - ~~(i) The account certificate of representation for the NOx authorized account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Sec. 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative.~~
 - ~~(ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.~~
 - ~~(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.~~
 - ~~(iv) Copies of all documents used to complete a NOx Budget permit application and any other submission under the NOx Budget Trading Program or to demonstrate compliance with the requirements of the NOx Budget Trading Program.~~~~
 - ~~(2) The NOx authorized account representative of a NOx Budget source and each NOx Budget unit at the source shall submit the reports and compliance certifications required under the NOx Budget Trading Program, including those under subparts D, H, or I of this part.~~
- ~~(f) Liability.~~
 - ~~(1) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under Sec. 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.~~
 - ~~(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NOx Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.~~
 - ~~(3) No permit revision shall excuse any violation of the requirements of the NOx Budget Trading Program that occurs prior to the date that the revision takes effect.~~
 - ~~(4) Each NOx Budget source and each NOx Budget unit shall meet the requirements of the NOx Budget Trading Program.~~
 - ~~(5) Any provision of the NOx Budget Trading Program that applies to a NOx Budget source (including a provision applicable to the NOx authorized account representative of a NOx Budget source) shall also apply to the owners and operators of such source and of the NOx Budget units at the source.~~
 - ~~(6) Any provision of the NOx Budget Trading Program that applies to a NOx Budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part,~~

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

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

~~Sec. 96.7 Computation of time.~~

- ~~(a) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.~~
- ~~(b) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.~~
- ~~(c) Unless otherwise stated, if the final day of any time period, under the NOx Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.~~

~~Subpart B NOx Authorized Account Representative for NOx Budget Sources~~

~~Sec. 96.10 Authorization and responsibilities of the NOx authorized account representative.~~

- ~~(a) Except as provided under Sec. 96.11, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.~~
- ~~(b) The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source.~~
- ~~(c) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, notwithstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.~~
- ~~(d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under Sec. 96.13 for a NOx authorized account representative of the source and the NOx Budget units at the source.~~
- ~~(e) (1) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative: "I am~~

~~authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."~~

- ~~(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.~~

~~Sec. 96.11 Alternate NOx authorized account representative.~~

- ~~(a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.~~
- ~~(b) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, any representation, action, inaction, or submission by the alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.~~
- ~~(c) Except in this section and Secs. 96.10(a), 96.12, 96.13, and 96.51, whenever the term "NOx authorized account representative" is used in this part, the term shall be construed to include the alternate NOx authorized account representative.~~

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

- ~~(a) Changing the NOx authorized account representative. The NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.~~
- ~~(b) Changing the alternate NOx authorized account representative. The alternate NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.~~
- ~~(c) Changes in the owners and operators.~~
- ~~(1) In the event a new owner or operator of a NOx Budget source or a NOx Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound~~

by the account certificate of representation, the representations, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

- ~~(2) Within 30 days following any change in the owners and operators of a NOx Budget source or a NOx Budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.~~

~~Sec. 96.13 Account certificate of representation.~~

- ~~(a) A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:~~
- ~~(1) Identification of the NOx Budget source and each NOx Budget unit at the source for which the account certificate of representation is submitted.~~
 - ~~(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.~~
 - ~~(3) A list of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source.~~
 - ~~(4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."~~
 - ~~(5) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.~~
- ~~(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~Sec. 96.14 Objections concerning the NOx authorized account representative.~~

- ~~(a) Once a complete account certificate of representation under Sec. 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under Sec. 96.13 is received by the Administrator.~~
- ~~(b) Except as provided in Sec. 96.12(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative~~

~~shall affect any representation, action, inaction, or submission of the NOx authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NOx Budget Trading Program.~~

- ~~(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOx authorized account representative, including private legal disputes concerning the proceeds of NOx allowance transfers.~~

~~Subpart C—Permits~~

~~Sec. 96.20 General NOx Budget trading program permit requirements.~~

- ~~(a) For each NOx Budget source required to have a federally enforceable permit, such permit shall include a NOx Budget permit administered by the permitting authority.~~
- ~~(1) For NOx Budget sources required to have a title V operating permit, the NOx Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.~~
- ~~(2) For NOx Budget sources required to have a non-title V permit, the NOx Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the Administrator.~~
- ~~(b) Each NOx Budget permit (including a draft or proposed NOx Budget permit, if applicable) shall contain all applicable NOx Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.~~

~~Sec. 96.21 Submission of NOx Budget permit applications.~~

- ~~(a) Duty to apply. The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 by the applicable deadline in paragraph (b) of this section.~~
- ~~(b) (1) For NOx Budget sources required to have a title V operating permit:~~
- ~~(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.~~
- ~~(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative~~

shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

~~(2) For NOx Budget sources required to have a non-title V permit:~~

~~(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.~~

~~(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.~~

~~(c) Duty to reapply.~~

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

~~(2) For a NOx Budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.~~

~~Sec. 96.22 Information requirements for NOx Budget permit applications.~~

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

~~(a) Identification of the NOx Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;~~

~~(b) Identification of each NOx Budget unit at the NOx Budget source and whether it is a NOx budget unit under Sec. 96.4 or under subpart I of this part;~~

~~(c) The standard requirements under Sec. 96.6; and~~

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

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

- (2) ~~If the application is for an initial NOx Budget opt-in permit, "I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2."~~

~~Sec. 96.23 NOx Budget permit contents.~~

- (a) ~~Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22 as approved or adjusted by the permitting authority.~~
- (b) ~~Each NOx Budget permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.~~

~~Sec. 96.24 Effective date of initial NOx Budget permit.~~

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

- (a) ~~May 1, 2003;~~
- (b) ~~May 1 of the year in which the NOx Budget unit commences operation, if the unit commences operation on or before May 1 of that year;~~
- (c) ~~The date on which the NOx Budget unit commences operation, if the unit commences operation during a control period; or~~
- (d) ~~May 1 of the year following the year in which the NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.~~

~~Sec. 96.25 NOx Budget permit revisions.~~

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

~~Subpart D--Compliance Certification~~

~~Sec. 96.30 Compliance certification report.~~

- (a) ~~Applicability and deadline. For each control period in which one or more NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.~~
- (b) ~~Contents of report. The NOx authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NOx Budget emissions limitation for the control period covered by the report:~~

- ~~(1) Identification of each NOx Budget unit;~~
 - ~~(2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under Sec. 96.54 for the control period;~~
 - ~~(3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under Sec. 96.54(e); and~~
 - ~~(4) The compliance certification under paragraph (c) of this section.~~
- ~~(c) Compliance certification. In the compliance certification report under paragraph (a) of this section, the NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx Budget Trading Program applicable to the unit, including:~~
- ~~(1) Whether the unit was operated in compliance with the NOx Budget emissions limitation;~~
 - ~~(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOx emissions to the unit, in accordance with subpart H of this part;~~
 - ~~(3) Whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;~~
 - ~~(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and~~
 - ~~(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.~~

~~Sec. 96.31 Permitting authority's and Administrator's action on compliance certifications.~~

- ~~(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOx Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.~~
- ~~(b) The Administrator may deduct NOx allowances from or transfer NOx allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.~~

~~Sec. 96.40 State trading program budget.~~

~~The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NO_x emissions apportioned to the NO_x Budget units under Sec. 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.~~

~~Sec. 96.41 Timing requirements for NO_x allowance allocations.~~

- ~~(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO_x allowance allocations, for the control periods in 2003, 2004, and 2005.~~
- ~~(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO_x allowance allocations, in accordance with Sec. 96.42, for the control periods in 2018 through 2032. If the permitting authority fails to submit to the Administrator the NO_x allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NO_x allowances as were allocated for the preceding control period.~~
- ~~(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO_x allowance allocations, in accordance with Sec. 96.42, for any NO_x allowances remaining in the allocation set aside for the prior control period.~~

~~Sec. 96.42 NO_x allowance allocations.~~

- ~~(a) (1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under Sec. 96.4 will be:
 - ~~(i) For a NO_x allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or the control period in 1995 if the unit is under Sec. 96.4(a)(2); and~~
 - ~~(ii) For a NO_x allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NO_x allocation is being calculated.~~~~
- ~~(2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NO_x Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~
- ~~(b) For each control period under Sec. 96.41, the permitting authority will allocate to all NO_x Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO_x allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO_x emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:
 - ~~(1) The permitting authority will allocate NO_x allowances to each NO_x Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO_x allowance as appropriate.~~
 - ~~(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under Sec. 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons~~~~

~~of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (b)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.~~

~~(c) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to non-electric generating units under Sec. 96.40 in accordance with the following procedures:~~

~~(1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.~~

~~(2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (c)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.~~

~~(d) For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:~~

~~(1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NOx allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate.~~

~~(2) The NOx authorized account representative of a NOx Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.~~

- ~~(3) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period NOx allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.~~
- ~~(4) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period NOx allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.~~
- ~~(5) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.~~
- ~~(i) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.~~
- ~~(ii) If the allocation set aside for the control period for which NOx allowances are requested has an amount of NOx allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NOx Budget unit.~~
- ~~(iii) If the allocation set aside for the control period for which NOx allowances are requested has a smaller amount of NOx allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set aside to the NOx Budget unit.~~
- ~~(iv) Once an allocation set aside for a control period has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.~~
- ~~(6) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx Budget unit.~~
- ~~(e) For a NOx Budget unit that is allocated NOx allowances under paragraph (d) of this section for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NOx allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:~~
- ~~NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(1) = (Unit's NOx allowances allocated for control period) (Unit's actual control period utilization x 0.15 lb/mmBtu); and~~

~~NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(2) = (Unit's NOx allowances allocated for control period) (Unit's actual control period utilization x 0.17 lb/mmBtu)~~

~~Where:~~

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

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

- ~~(f) After making the deductions for compliance under Sec. 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NOx allowances remain in the allocation set aside for the control period. The permitting authority will allocate any such NOx allowances to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:~~

~~Unit's share of NOx allowances remaining in allocation set aside = Total NOx allowances remaining in allocation set aside x (Unit's NOx allowance allocation <divide> (State trading program budget excluding allocation set aside))~~

~~Where:~~

~~"Total NOx allowances remaining in allocation set aside" is the total number of NOx allowances remaining in the allocation set aside for the control period to which the allocation set aside applies;~~

~~"Unit's NOx allowance allocation" is the number of NOx allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set aside applies; and~~

~~"State trading program budget excluding allocation set aside" is the State trading program budget under Sec. 96.40 for the control period to which the allocation set aside applies multiplied by 95 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NOx allowance as appropriate.~~

~~Subpart F—NOx Allowance Tracking System~~

~~Sec. 96.50 NOx Allowance Tracking System accounts.~~

- ~~(a) Nature and function of compliance accounts and overdraft accounts. Consistent with Sec. 96.51(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with one or more NOx Budget units. Allocations of NOx allowances pursuant to subpart E of this part or Sec. 96.88 and deductions or transfers of NOx allowances pursuant to Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.~~
- ~~(b) Nature and function of general accounts. Consistent with Sec. 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.~~

~~Sec. 96.51 Establishment of accounts.~~

- ~~(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Sec. 96.13, the Administrator will establish:~~
- ~~(1) A compliance account for each NOx Budget unit for which the account certificate of representation was submitted; and~~

~~(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NOx Budget units.~~

~~(b) General accounts.~~

~~(1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:~~

~~(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative;~~

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

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

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

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

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

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

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

~~(ii) The NOx authorized account representative and any alternate NOx authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOx allowances held in the general account in all matters pertaining to the NOx Budget Trading Program, 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.~~

~~(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx~~

~~authorized account representative for the persons having an ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."~~

- ~~(iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.~~
- ~~(3) (i) An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.~~
 - ~~(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.~~
- ~~(4) (i) The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~
 - ~~(ii) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~
 - ~~(iii) (A) In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders,~~

actions, and inactions of the Administrator, as if the new person were included in such list.

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

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

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

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

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

~~Sec. 96.52 NOx Allowance Tracking System responsibilities of NOx authorized account representative.~~

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

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

~~Sec. 96.53 Recordation of NOx allowance allocations.~~

~~(a) The Administrator will record the NOx allowances for 2003 in the NOx Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NOx allowances allocated under Sec. 96.88(a)(1) for each NOx Budget opt-in source in its compliance account.~~

~~(b) Each year, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54, the Administrator will record NOx allowances, as allocated to the unit under subpart E of this part or under Sec. 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subpart E of this part, in the allocation set-aside for~~

~~the year after the last year for which allowances were previously allocated to an allocation set aside.~~

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

~~Sec. 96.54 Compliance.~~

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

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

~~(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.~~

- ~~(b) Deductions for compliance.~~

~~(1) Following the recordation, in accordance with Sec. 96.61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this section to cover the unit's NOx emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under Sec. 96.42(e), for the control period:~~

~~(i) From the compliance account; and~~

~~(ii) Only if no more NOx allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).~~

~~(2) The Administrator will deduct NOx allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:~~

~~(i) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NOx allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period; or~~

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

- ~~(c) (1) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d),~~

~~or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~

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

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

~~(ii) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;~~

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

~~(iv) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.~~

~~(d) Deductions for excess emissions.~~

~~(1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.~~

~~(2) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.~~

~~(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:~~

~~(i) For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~

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

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

~~(1) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~

~~(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period.~~

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

~~Sec. 96.55 Banking.~~

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

~~(1) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part.~~

~~(2) The Administrator will designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54.~~

~~(b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this section and before May 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 section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.~~

~~(3) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:~~

~~(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.~~

~~(ii) The Administrator will multiply the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx~~

allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.

- ~~(c) Any NOx Budget unit may reduce its NOx emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2003 to the unit in accordance with the following requirements:~~
- ~~(1) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NOx emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.~~
 - ~~(2) NOx emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.~~
 - ~~(3) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NOx emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period.~~
 - ~~(4) The NOx authorized account representative of a NOx Budget unit that meets the requirements of paragraphs (c)(1) and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.
 - ~~(i) In the early reduction credit request, the NOx authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.~~
 - ~~(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.~~~~
 - ~~(5) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:
 - ~~(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.~~
 - ~~(ii) If the State's compliance supplement pool has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).~~~~

- ~~(iii) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NOx allowances to each NOx Budget unit covered by such accepted requests according to the following formula:~~

~~Unit's allocated early reduction credits = ((Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)) x (Available NOx allowances from the State's compliance supplement pool)~~

~~where:~~

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

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

~~"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.~~

- ~~(6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.~~

- ~~(7) NOx allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under Sec. 96.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the Administrator will deduct as retired any NOx allowance that is recorded under paragraph (c)(6) of this section and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2003 or 2004.~~

- ~~(8) NOx allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.~~

~~Sec. 96.56 Account error.~~

~~The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NOx Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NOx authorized account representative for the account.~~

~~Sec. 96.57 Closing of general accounts.~~

- ~~(a) The NOx authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NOx Allowance Tracking System and by correctly submitting for recordation under Sec. 96.60 an allowance transfer of all NOx allowances in the account to one or more other NOx Allowance Tracking System accounts.~~

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

Subpart G—NO_x Allowance Transfers

~~Sec. 96.60 Submission of NO_x allowance transfers.~~

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

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

~~Sec. 96.61 EPA recordation.~~

~~(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:~~

- ~~(1) The transfer is correctly submitted under Sec. 96.60;~~
- ~~(2) The transferor account includes each NO_x allowance identified by serial number in the transfer; and~~
- ~~(3) The transfer meets all other requirements of this part.~~

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

~~(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.~~

~~Sec. 96.62 Notification.~~

~~(a) Notification of recordation. Within 5 business days of recordation of a NO_x allowance transfer under Sec. 96.61, the Administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.~~

~~(b) Notification of non-recordation. Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of Sec. 96.61(a), the Administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:~~

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

~~(c) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.~~

Subpart H—Monitoring and Reporting

~~Sec. 96.70 General requirements.~~

~~The owners and operators, and to the extent applicable, the NOx authorized account representative of a NOx Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in Sec. 96.2 and in Sec. 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be replaced by the terms "NOx Budget unit," "NOx authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in Sec. 96.2.~~

~~(a) Requirements for installation, certification, and data accounting. The owner or operator of each NOx Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:~~

~~(1) Install all monitoring systems required under this subpart for monitoring NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with Secs. 75.72 and 75.76.~~

~~(2) Install all monitoring systems for monitoring heat input, if required under Sec. 96.76 for developing NOx allowance allocations.~~

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

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

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

~~(1) NOx Budget units for which the owner or operator intends to apply for early reduction credits under Sec. 96.55(d) must comply with the requirements of this subpart by May 1, 2000.~~

~~(2) Except for NOx Budget units under paragraph (b)(1) of this section, NOx Budget units under Sec. 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2002.~~

~~(3) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:~~

~~(i) May 1, 2002; or~~

~~(ii) The earlier of:~~

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

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

~~(4) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on a control season basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:~~

~~(i) The earlier of:~~

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

- ~~(B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.~~
- ~~(ii) However, if the applicable deadline under paragraph (b)(4)(i) does not occur during a control period, then the next May 1 immediately following the date determined in accordance with paragraph (b)(4)(i) of this section.~~
- ~~(5) For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:~~
- ~~(i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;~~
- ~~(ii) However, if the unit reports on a control season basis under Sec. 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (b)(5)(i) of this section.~~
- ~~(6) For a unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.~~
- ~~(c) Reporting data prior to initial certification.~~
- ~~(1) The owner or operator of a NOx Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.~~
- ~~(2) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NOx mass, heat input (if required for purposes of allocations) and any other values required to determine NOx Mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of Sec. 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.~~
- ~~(d) Prohibitions.~~
- ~~(1) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 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 Sec. 96.75.~~
- ~~(2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.~~
- ~~(3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.~~
- ~~(4) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission~~

~~monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:~~

- ~~(i) During the period that the unit is covered by a retired unit exemption under Sec. 96.5 that is in effect;~~
- ~~(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or~~
- ~~(iii) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Sec. 96.71(b)(2).~~

~~Sec. 96.71 Initial certification and recertification procedures~~

~~(a) The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:~~

~~(1) If, prior to January 1, 1998, the Administrator approved a petition under Sec. 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under Sec. 75.66 of this chapter for an alternative to a requirement in Sec. 75.17 of this chapter, the NO_x authorized account representative shall resubmit the petition to the Administrator under Sec. 96.75(a) to determine if the approval applies under the NO_x Budget Trading Program.~~

~~(2) For any additional CEMS required under the common stack provisions in Sec. 75.72 of this chapter, or for any NO_x concentration CEMS used under the provisions of Sec. 75.71(a)(2) of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.~~

~~(b) The owner or operator of a NO_x 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 Sec. 75.19 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in Sec. 75.72 of this chapter, or that uses a NO_x concentration CEMS under Sec. 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.~~

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

~~(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of~~

~~Sec. 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system according to Sec. 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to Sec. 75.20(b) of this chapter. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.~~

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

~~(i) Notification of certification. The NOx authorized account representative shall submit to the permitting authority, the appropriate and EPA Regional Office a written notice of the dates of certification in accordance with Sec. 96.73.~~

~~(ii) Certification application. The NOx authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.~~

~~(iii) Except for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the provisional certification date for a monitor shall be determined using the procedures set forth in Sec. 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.~~

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

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

~~(B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification application. If the NOx authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.~~

- ~~(C) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.~~
- ~~(D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with Sec. 96.72(b).~~
- ~~(v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:~~
- ~~(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under Sec. 75.20(a)(5)(i) of this chapter:~~
- ~~(1) For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit.~~
- ~~(2) For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;~~
- ~~(B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section; and~~
- ~~(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.~~
- ~~(c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under Sec. 75.19 of this chapter. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under Sec. 75.19 of this chapter shall meet the applicable general operating requirements of Sec. 75.10 of this chapter, the applicable requirements of Sec. 75.19 of this chapter, and the applicable certification requirements of Sec. 96.71 of this chapter, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of the following dates:~~
- ~~(1) For units that are reporting on an annual basis under Sec. 96.74(d);~~

- ~~(i) For a unit that has commences operation before its compliance deadline under Sec. 96.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or~~
- ~~(ii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for permitting authority review; or~~
- ~~(2) For units that are reporting on a control period basis under Sec. 96.74(b)(3)(ii) of this part:~~
 - ~~(i) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or~~
 - ~~(ii) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or~~
 - ~~(iii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.~~
 - ~~(iv) For a unit that has not operated after its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority's review.~~
- ~~(d) Certification/recertification procedures for alternative monitoring systems. The NOx authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall apply for certification to the permitting authority prior to use of the system under the NOx Trading Program. The NOx authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and Sec. 75.20(f) of this chapter.~~

~~Sec. 96.72 Out of control periods.~~

- ~~(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of part 75 of this chapter.~~
- ~~(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under Sec. 96.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of~~

~~the audit, the permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in Sec. 96.71 for each disapproved system.~~

~~Sec. 96.73 Notifications.~~

~~The NOx authorized account representative for a NOx Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with Sec. 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.~~

~~Sec. 96.74 Recordkeeping and reporting.~~

~~(a) General provisions.~~

- ~~(1) The NOx authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of Sec. 96.10(e).~~
- ~~(2) If the NOx authorized account representative for a NOx Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and which includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, the submission must also be signed by the designated representative or the alternative designated representative.~~

~~(b) Monitoring plans.~~

- ~~(1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.~~
- ~~(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.~~

~~(c) Certification applications. The NOx authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under Sec. 96.71 including the information required under subpart H of part 75 of this chapter.~~

~~(d) Quarterly reports. The NOx authorized account representative shall submit quarterly reports, as follows:~~

- ~~(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NOx budget unit chooses to meet the annual reporting requirements of this subpart H, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:~~

- ~~(i) For units that elect to comply with the early reduction credit provisions under Sec. 96.55 of this part, the calendar quarter that includes the date of initial provisional~~

~~certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~

- ~~(ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or~~
 - ~~(iii) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.~~
- ~~(2) If a NO_x budget unit is not subject to an Acid Rain emission limitation, then the NO_x authorized account representative shall either:~~
- ~~(i) Meet all of the requirements of part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in paragraph (d)(1) of this section; or~~
 - ~~(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under Sec. 75.74(d)(3) through September 30 of each year in accordance with the provisions of Sec. 75.74(b) of this chapter. The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:
 - ~~(A) For units that elect to comply with the early reduction credit provisions under Sec. 96.55, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~
 - ~~(B) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or~~
 - ~~(C) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or~~
 - ~~(D) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~
 - ~~(E) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under~~~~

~~Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~

- ~~(3) The NOx authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and Sec. 75.64 of this chapter.~~
- ~~(i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack) as well as information required in subpart G of part 75 of this chapter.~~
- ~~(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack).~~
- ~~(4) Compliance certification. The NOx authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~
- ~~(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and~~
- ~~(ii) For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with Sec. 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and~~
- ~~(iii) For a unit that is reporting on a control period basis under Sec. 96.74(d) the NOx emission rate and NOx concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NOx emissions.~~

~~Sec. 96.75 Petitions.~~

- ~~(a) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.~~
- ~~(1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.~~
- ~~(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter, the petition is governed by paragraph (b) of this section.~~
- ~~(b) The NOx authorized account representative of a NOx Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.~~

- ~~(1) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter or a NOx concentration CEMS used under 75.71(a)(2) of this chapter.~~
- ~~(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.~~

~~Sec. 96.76 Additional requirements to provide heat input data for allocations purposes.~~

- ~~(a) The owner or operator of a unit that elects to monitor and report NOx Mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source located in a state developing source allocations based upon heat input.~~
- ~~(b) The owner or operator of a unit that monitors and reports NOx mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source that is applying for early reduction credits under Sec. 96.55.~~

~~Subpart I—Individual Unit Opt-ins~~

~~Sec. 96.80 Applicability.~~

~~A unit that is in the State, is not a NOx Budget unit under Sec. 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NOx Budget opt-in source. A unit that is a NOx Budget unit, is covered by a retired unit exemption under Sec. 96.5 that is in effect, or is not operating is not eligible to become a NOx Budget opt-in source.~~

~~Sec. 96.81 General.~~

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

~~Sec. 96.82 NOx authorized account representative.~~

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

~~Sec. 96.83 Applying for NOx Budget opt-in permit.~~

- ~~(a) Applying for initial NOx Budget opt-in permit. In order to apply for an initial NOx Budget opt-in permit, the NOx authorized account representative of a unit qualified under Sec. 96.80 may submit to the permitting authority at any time, except as provided under Sec. 96.86(g):~~
 - ~~(1) A complete NOx Budget permit application under Sec. 96.22;~~
 - ~~(2) A monitoring plan submitted in accordance with subpart H of this part; and~~
 - ~~(3) A complete account certificate of representation under Sec. 96.13, if no NOx authorized account representative has been previously designated for the unit.~~
- ~~(b) Duty to reapply. The NOx authorized account representative of a NOx Budget opt-in source shall submit a complete NOx Budget permit application under Sec. 96.22 to renew the NOx~~

Budget opt-in permit in accordance with Sec. 96.21(e) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

~~Sec. 96.84 Opt-in process.~~

~~The permitting authority will issue or deny a NOx Budget opt-in permit for a unit for which an initial application for a NOx Budget opt-in permit under Sec. 96.83 is submitted, in accordance with Sec. 96.20 and the following:~~

- ~~(a) Interim review of monitoring plan. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx Budget opt-in permit under Sec. 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.~~
- ~~(b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NOx Budget unit" prior to issuance of a NOx Budget opt-in permit covering the unit.~~
- ~~(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx emissions (in lb) for the control period divided by the unit's baseline heat rate.~~
- ~~(d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NOx Budget opt-in permit on the NOx authorized account representative of the unit.~~
- ~~(e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx authorized account representative of the unit must submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under Sec. 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.~~
- ~~(f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt-in the unit under paragraph (e) of this section, the permitting authority will issue the draft NOx Budget opt-in permit in accordance with Sec. 96.20.~~
- ~~(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NOx Budget opt-in source under Sec. 96.80, the permitting authority will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with Sec. 96.20.~~
- ~~(h) Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under Sec. 96.83 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under Sec. 96.83.~~
- ~~(i) Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the~~

permitting authority. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

~~Sec. 96.85 NOx Budget opt-in permit contents.~~

- ~~(a) Each NOx Budget opt-in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22 as approved or adjusted by the permitting authority.~~
- ~~(b) Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt-in permit or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located.~~

~~Sec. 96.86 Withdrawal from NOx Budget Trading Program.~~

- ~~(a) Requesting withdrawal. To withdraw from the NOx Budget Trading Program, the NOx authorized account representative of a NOx Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.~~
- ~~(b) Conditions for withdrawal. Before a NOx Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NOx Budget Trading Program and the NOx Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
 - ~~(1) For the control period immediately before the withdrawal is to be effective, the NOx authorized account representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with Sec. 96.30.~~
 - ~~(2) If the NOx Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, the full amount required under Sec. 96.54(d) for the control period.~~
 - ~~(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to that source under Sec. 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.~~~~
- ~~(c) A NOx Budget opt-in source that withdraws from the NOx Budget Trading Program shall comply with all requirements under the NOx Budget Trading Program concerning all years for which such NOx Budget opt-in source was a NOx Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.~~
- ~~(d) Notification.
 - ~~(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NOx allowances required), the permitting authority will issue a notification to the NOx authorized account representative of the NOx~~~~

~~Budget opt-in source of the acceptance of the withdrawal of the NOx Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.~~

- ~~(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source that the NOx Budget opt-in source's request to withdraw is denied. If the NOx Budget opt-in source's request to withdraw is denied, the NOx Budget opt-in source shall remain subject to the requirements for a NOx Budget opt-in source.~~
- ~~(e) Permit amendment. After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NOx Budget permit covering the NOx Budget opt-in source to terminate the NOx Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NOx Budget opt-in source shall continue to be a NOx Budget opt-in source until the effective date of the termination.~~
- ~~(f) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the NOx Budget opt-in source's request to withdraw, the NOx authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.~~
- ~~(g) Ability to return to the NOx Budget Trading Program. Once a NOx Budget opt-in source withdraws from the NOx Budget Trading Program and its NOx Budget opt-in permit is terminated under this section, the NOx authority account representative may not submit another application for a NOx Budget opt-in permit under Sec. 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.~~

~~Sec. 96.87 Change in regulatory status.~~

- ~~(a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx Budget opt-in source's regulatory status, within 30 days of such change.~~
- ~~(b) Permitting authority's and Administrator's action.~~
 - ~~(1) (i) When the NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the permitting authority will revise the NOx Budget opt-in source's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under Sec. 96.23 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4.~~
 - ~~(ii) (A) The Administrator will deduct from the compliance account for the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, NOx allowances equal in number to and allocated for the same or a prior control period as:
 - ~~(1) Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for any control period after the last control period during which the unit's NOx Budget opt-in permit was effective; and~~
 - ~~(2) If the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for the control period multiplied by the ratio of the~~~~

number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

- (B) ~~The NOx authorized account representative shall ensure that the compliance account of the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, includes the NOx allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.~~
- (iii) (A) ~~For every control period during which the NOx Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NOx Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NOx allowance allocations under Sec. 96.42, as a unit that commenced operation on the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NOx allowances under Sec. 96.42.~~
- (B) ~~Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1)(i) of this section under Sec. 96.42 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under Sec. 96.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.~~
- (2) (i) ~~When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under Sec. 96.83(b), the Administrator will deduct from the NOx Budget opt-in unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt-in source under Sec. 96.88 for any control period after the last control period for which the NOx Budget opt-in permit is effective. The NOx authorized account representative shall ensure that the NOx Budget opt-in source's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.~~
- (ii) ~~After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NOx Budget opt-in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under Sec. 96.54, the Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.~~

Sec. 96.88 NOx allowance allocations to opt-in units.

~~(a) NOx allowance allocation.~~

~~(1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.~~

~~(2) By no later than December 31, after the first control period for which the NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.~~

~~(b) For each control period for which the NOx Budget opt-in source has an approved NOx Budget opt-in permit, the NOx Budget opt-in source will be allocated NOx allowances in accordance with the following procedures:~~

~~(1) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:~~

~~(i) The NOx Budget opt-in source's baseline heat input determined pursuant to Sec. 96.84(c); or~~

~~(ii) The NOx Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NOx allocations are being calculated.~~

~~(2) The permitting authority will allocate NOx allowances to the NOx Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:~~

~~(i) The NOx Budget opt-in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to Sec. 96.84(c); or~~

~~(ii) The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.~~

Subpart J—Mobile and Area Sources [Reserved]

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Repeal

Chapter 1200-03-37
Clean Air Mercury Rule

Chapter 1200-03-37 Clean Air Mercury Rule is repealed.

~~1200-3-37-.01 Clean Air Mercury Rule (40 CFR 60).~~

~~(1) The provisions of 40 CFR Part 60 concerning the Clean Air Mercury Rule are hereby adopted by reference.~~

~~PART 60—Standards of Performance for New Stationary Sources~~

~~Subpart HHHH—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam-Generating Units~~

§60.4101 Purpose

~~§60.4102 Definitions~~
~~§60.4103 Measurements, abbreviations, and acronyms~~
~~§60.4104 Applicability~~
~~§60.4105 Retired unit exemption~~
~~§60.4106 Standard requirements~~
~~§60.4107 Computation of time~~
~~§60.4108 Appeal procedures~~
~~§60.4110 Authorization and Responsibilities of Hg designated representative~~
~~§60.4111 Alternate Hg designated representative~~
~~§60.4112 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators~~
~~§60.4113 Certificate of representation~~
~~§60.4114 Objections concerning Hg designated representative~~
~~§60.4120 General Hg budget trading program permit requirements~~
~~§60.4121 Submission of Hg budget permit applications~~
~~§60.4122 Information requirements for Hg budget permit applications~~
~~§60.4123 Hg budget permit contents and item~~
~~§60.4124 Hg budget permit revisions~~
~~§60.4130 Reserved~~
~~§60.4140 State trading budgets~~
~~§60.4141 Timing requirements for Hg allowance allocations~~
~~§60.4142 Hg allowance allocations~~
~~§60.4150 Reserved~~
~~§60.4151 Established of accounts~~
~~§60.4152 Responsibilities of Hg authorized account representative~~
~~§60.4153 Recordation of Hg allowance allocations~~
~~§60.4154 Compliance with Hg budget emissions limitation~~
~~§60.4155 Banking~~
~~§60.4156 Account error~~
~~§60.4157 Closing of general accounts~~
~~§60.4160 Submission of Hg allowance transfers~~
~~§60.4161 EPA recordation~~
~~§60.4162 Notification~~
~~§60.4170 General requirements~~
~~§60.4171 Initial certification and recertification procedures~~
~~§60.4172 Out of control periods~~
~~§60.4173 Notifications~~
~~§60.4174 Recordkeeping and reporting~~
~~§60.4175 Petitions~~
~~§60.4176 Additional requirements to provide heat input data~~

~~Hg Budget Trading Program General Provisions~~

~~§ 60.4101 Purpose.~~

~~This subpart establishes the model rule comprising general provisions and the designated representative, permitting, allowance, and monitoring provisions for the State mercury (Hg) Budget Trading Program, under section 111 of the Clean Air Act (CAA) and §60.24(h)(6), as a means of reducing national Hg emissions. The owner or operator of a unit or a source shall comply with the requirements of this subpart as a matter of Federal law only if the State with jurisdiction over the unit and the source incorporates by reference this subpart or otherwise adopts the requirements of this subpart in accordance with §60.24(h)(6), the State submits to the Administrator one or more revisions of the State plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of this subpart in accordance with §60.24(h)(6), then the State authorizes the Administrator to assist the State in implementing the Hg Budget Trading Program by carrying out the functions set forth for the Administrator in this subpart.~~

~~§ 60.4102 Definitions.~~

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

~~Account number means the identification number given by the Administrator to each Hg Allowance Tracking System account.~~

~~Acid rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.~~

~~Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.~~

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

~~Allocate or allocation means the determination by the permitting authority or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit or a new unit set aside under §§60.4140 through 60.4142.~~

~~Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with §60.4154.~~

~~Alternate Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with §§60.4110 through 60.4114, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program.~~

~~Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under §§60.4170 through 60.4176, 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 §§60.4170 through 60.4176.~~

~~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.~~

~~Bottoming cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.~~

~~CAIR NOX Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and §51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.~~

~~CAIR NOX Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 of this chapter and §51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.~~

~~CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and §51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.~~

~~Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) and (incorporated by reference, see §60.17).~~

~~Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~Coal-fired means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.~~

~~Cogeneration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:~~

- ~~(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~
- ~~(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:
 - ~~(i) For a topping-cycle cogeneration unit,
 - ~~(A) Useful thermal energy not less than 5 percent of total energy output; and~~
 - ~~(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.~~~~
 - ~~(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.~~~~

~~Combustion turbine means:~~

- ~~(1) An enclosed device comprising 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; and~~
- ~~(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.~~

~~Commence commercial operation means, with regard to a unit serving a generator:~~

- ~~(1) 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 §60.4105.
 - ~~(i) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.~~
 - ~~(ii) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~~~
- ~~(2) Notwithstanding paragraph (1) of this definition and except as provided in §60.4105, for a unit that is not a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of~~

~~commercial operation shall be the date on which the unit becomes a Hg Budget unit under §60.4104.~~

- ~~(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.~~
- ~~(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~Commence operation means:~~

- ~~(1) 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 §60.4105.~~
 - ~~(i) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.~~
 - ~~(ii) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.~~
- ~~(2) Notwithstanding paragraph (1) of this definition and except as provided in §60.4105, for a unit that is not a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a Hg Budget unit under §60.4104.~~
 - ~~(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.~~
 - ~~(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~Common stack means a single flue through which emissions from 2 or more units are exhausted.~~

~~Compliance account means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under §§60.4150 through 60.4157, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with §60.4154.~~

~~Continuous emission monitoring system or CEMS means the equipment required under §§60.4170 through 60.4176 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of CEMS required under §§60.4170 through 60.4176:~~

- ~~(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);~~
- ~~(2) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter ($\mu\text{g}/\text{dscm}$);~~
- ~~(3) A moisture monitoring system, as defined in §75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O .~~
- ~~(4) A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2 ; and~~
- ~~(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 , in percent O_2 .~~

~~Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.~~

~~Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with §§60.4170 through 60.4176.~~

~~Excess emissions means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.~~

~~General account means a Hg Allowance Tracking System account, established under §60.4151, that is not a compliance account.~~

~~Generator means a device that produces electricity.~~

~~Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~Heat input means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with §§60.4170 through 60.4176 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~Heat input rate means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.~~

~~Hg allowance means a limited authorization issued by the permitting authority or the Administrator under §§60.4140 through 60.4142 to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under the provisions of a State plan that adopt the requirements of this subpart and are approved by the Administrator in accordance with §60.24(h)(6) shall not be a "Hg allowance."~~

~~Hg allowance deduction or deduct Hg allowances means the permanent withdrawal of Hg allowances by the Administrator from a compliance account in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with §§60.4150 through 60.4157 and §§60.4170 through 60.4176, or to account for excess emissions.~~

~~Hg allowances held or hold Hg allowances means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with §§60.4150 through 60.4162, in a Hg Allowance Tracking System account.~~

~~Hg Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.~~

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

~~Hg authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with §60.4152, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.~~

~~Hg Budget emissions limitation means, for a Hg Budget source, the equivalent in ounces of the Hg allowances available for deduction for the source under §60.4154(a) and (b) for a control period.~~

~~Hg Budget permit means the legally binding and Federally enforceable written document, or portion of such document, issued by the permitting authority under §§60.4120 through 60.4124, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.~~

~~Hg Budget source means a source that includes one or more Hg Budget units.~~

~~Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with this subpart and §60.24(h)(6), as a means of reducing national Hg emissions.~~

~~Hg Budget unit means a unit that is subject to the Hg Budget Trading Program under §60.4104.~~

~~Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with §§60.4110 through 60.4114, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program.~~

~~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 generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

~~(1) For the life of the unit;~~

~~(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~(3) For a period no less 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.~~

~~Lignite means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)e1 (incorporated by reference, see §60.17).~~

~~Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.~~

~~Monitoring system means any monitoring system that meets the requirements of §§60.4170 through 60.4176, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.~~

~~Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.~~

~~Operator means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Ounce means 2.84×10^2 micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with §§60.4170 through 60.4176, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.~~

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

~~(1) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:~~

~~(i) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;~~

~~(ii) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or~~

~~(iii) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, 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) on the revenues or income from such Hg Budget unit;~~
~~or~~

~~(2) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.~~

~~Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg~~

~~Budget Trading Program in accordance with §§60.4120 through 60.4124 or, if no such agency has been so authorized, the Administrator.~~

~~Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.~~

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

~~Recordation, record, or recorded means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.~~

~~Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in §75.22 of this chapter.~~

~~Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:~~

- ~~(1) Atmospheric or pressurized fluidized bed combustion;~~
- ~~(2) Integrated gasification combined cycle;~~
- ~~(3) Magnetohydrodynamics;~~
- ~~(4) Direct and indirect coal-fired turbines;~~
- ~~(5) Integrated gasification fuel cells; or~~
- ~~(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.~~

~~Serial number means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.~~

~~Sequential use of energy means:~~

- ~~(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or~~
- ~~(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.~~

~~Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."~~

~~State means:~~

- ~~(1) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to §60.24(h)(6); or~~

- ~~(2) For purposes of referring to geographic areas, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country.~~

~~Subbituminous means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)e1 (incorporated by reference, see §60.17).~~

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

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

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

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

~~Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.~~

~~Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.~~

~~Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.~~

~~Unit means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.~~

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

~~Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.~~

~~Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:~~

- ~~(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;~~
- ~~(2) Used in a heat application (e.g., space heating or domestic hot water heating); or~~
- ~~(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).~~

~~Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.~~

~~§ 60.4103 Measurements, abbreviations, and acronyms.~~

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

Btu—British thermal unit.
CO₂—carbon dioxide.
H₂O—water.
Hg—mercury.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
lb—pound.
MMBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
NO_x—nitrogen oxides.
O₂—oxygen.
ppm—parts per million.
scfh—standard cubic feet per hour.
SO₂—sulfur dioxide.
yr—year.

~~§ 60.4104—Applicability.~~

~~The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this subpart:~~

- ~~(a) Except as provided in paragraph (b) of this section, a unit serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.~~
- ~~(b) or a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.~~

~~§ 60.4105—Retired unit exemption.~~

- ~~(a) (1) Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, §60.4102, §60.4103, §60.4104, §60.4106(c)(4) through (8), §60.4107, and §§60.4150 through 60.4162.~~
- ~~(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority otherwise responsible for administering any Hg Budget permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.~~
- ~~(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under §§60.4120 through 60.4124 covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.~~

~~(b) Special provisions.~~

- ~~(1) A unit exempt under paragraph (a) of this section shall not emit any mercury, starting on the date that the exemption takes effect.~~

- ~~(2) The permitting authority will allocate Hg allowances under §§60.4140 through 60.4142 to a unit exempt under paragraph (a) of this section.~~
- ~~(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of 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 before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.~~
- ~~(4) The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Hg 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.~~
- ~~(5) A unit exempt under paragraph (a) of 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 Hg designated representative of the source submits a complete Hg Budget permit application under §60.4122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.~~
- ~~(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:
 - ~~(i) The date on which the Hg designated representative submits a Hg Budget permit application for the unit under paragraph (b)(5) of this section;~~
 - ~~(ii) The date on which the Hg designated representative is required under paragraph (b)(5) of this section to submit a Hg Budget permit application for the unit; or~~
 - ~~(iii) The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.~~~~
- ~~(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under §§60.4170 through 60.4176, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.~~

~~§ 60.4106 Standard requirements.~~

~~(a) Permit Requirements.~~

- ~~(1) The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:
 - ~~(i) Submit to the permitting authority a complete Hg Budget permit application under §60.4122 in accordance with the deadlines specified in §60.4121(a) and (b); and~~
 - ~~(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.~~~~
- ~~(2) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under §§60.4120 through 60.4124 for the source and operate the source and the unit in compliance with such Hg Budget permit.~~

~~(3) The owners and operators of a Hg Budget source that is not required to have a title V operating permit and each Hg Budget unit that is not required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under §§60.4120 through 60.4124 for such Hg Budget source and such Hg Budget unit.~~

~~(b) Monitoring, reporting, and recordkeeping requirements.~~

~~(1) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§60.4170 through 60.4176.~~

~~(2) The emissions measurements recorded and reported in accordance with §§60.4170 through 60.4176 shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under paragraph (c) of this section.~~

~~(c) Mercury emission requirements.~~

~~(1) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under §60.4154(a) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with §§60.4170 through 60.4176.~~

~~(2) A Hg Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under §60.4170(b)(1) or (2).~~

~~(3) A Hg allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the Hg allowance was allocated.~~

~~(4) Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with §§60.4160 through 60.4162.~~

~~(5) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under §60.4105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.~~

~~(6) A Hg allowance does not constitute a property right.~~

~~(7) Upon recordation by the Administrator under §§60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the source that includes the Hg Budget unit.~~

~~(d) Excess emissions requirements.~~

~~(1) If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:~~

~~(i) The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under §60.4154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and~~

~~(ii) Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.~~

~~(2) [Reserved]~~

~~(e) Recordkeeping and reporting requirements.~~

~~(1) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg 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 before the end of 5 years, in writing by the permitting authority or the Administrator.~~

~~(i) The certificate of representation under §60.4113 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; 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 certificate of representation under §60.4113 changing the Hg designated representative.~~

~~(ii) All emissions monitoring information, in accordance with §§60.4170 through 60.4176, provided that to the extent that §§60.4170 through 60.4176 provides for a 3-year period for recordkeeping, the 3-year period shall apply.~~

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

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

~~(2) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under §§60.4170 through 60.4176.~~

~~(f) Liability.~~

~~(1) Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.~~

~~(2) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.~~

~~(3) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.~~

~~(g) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under §60.4105 shall be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.~~

~~§ 60.4107 Computation of time.~~

~~(a) Unless otherwise stated, any time period scheduled, under the Hg 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 Hg 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 Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.~~

~~§ 60.4108 Appeal procedures.~~

~~The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program shall be the procedures set forth in part 78 of this chapter. The terms "subpart HHHH of this part," "§60.4141(b)(2) or (c)(2)," "§60.4154," "§60.4156," "§60.4161," "§60.4175," "Hg allowances," "Hg Allowance Tracking System Account," "Hg designated representative," "Hg authorized account representative," and "§60.4106" apply instead of the terms "subparts AA through II of part 96 of this chapter," "§96.141(b)(2) or (c)(2)," "§96.154," "§96.156," "§96.161," "§96.175," "CAIR NO_x allowances," "CAIR NO_x Allowance Tracking System account," "CAIR designated representative," "CAIR authorized account representative," and "§96.106."~~

~~Hg Designated Representative for Hg Budget Sources~~

~~§ 60.4110 Authorization and Responsibilities of Hg designated representative.~~

- ~~(a) Except as provided under §60.4111, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.~~
- ~~(b) The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in §60.4113(a)(4)(iv).~~
- ~~(c) Upon receipt by the Administrator of a complete certificate of representation under §60.4113, the Hg designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.~~
- ~~(d) No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under §60.4113 for a Hg designated representative of the source and the Hg Budget units at the source.~~
- ~~(e) (1) Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."~~
- ~~(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.~~

~~§ 60.4111 Alternate Hg designated representative.~~

- ~~(a) A certificate of representation under §60.4113 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.~~
- ~~(b) Upon receipt by the Administrator of a complete certificate of representation under §60.4113, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.~~
- ~~(c) Except in this section and §§60.4102, 60.4110(a) and (d), 60.4112, 60.4113, 60.4151, and 60.4174, whenever the term "Hg designated representative" is used in this subpart, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.~~

~~§ 60.4112 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.~~

- ~~(a) Changing Hg designated representative. The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.~~
- ~~(b) Changing alternate Hg designated representative. The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.~~
- ~~(c) Changes in owners and operators.
 - ~~(1) In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under §60.4113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.~~
 - ~~(2) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under §60.4113 amending the list of owners and operators to include the change.~~~~

~~§ 60.4113 Certificate of representation.~~

- ~~(a) A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the Administrator:
 - ~~(1) Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted.~~~~

- ~~(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.~~
- ~~(3) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.~~
- ~~(4) The following certification statements by the Hg designated representative and any alternate Hg designated representative:~~
- ~~(i) "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source."~~
- ~~(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."~~
- ~~(iii) "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."~~
- ~~(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."~~
- ~~(5) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.~~
- ~~(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~§ 60.4114 Objections concerning Hg designated representative.~~

- ~~(a) Once a complete certificate of representation under §60.4113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under §60.4113 is received by the Administrator.~~
- ~~(b) Except as provided in §60.4112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the Administrator under the Hg Budget Trading Program.~~
- ~~(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers.~~

Permits

~~§ 60.4120 General Hg budget trading program permit requirements.~~

- ~~(a) For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this section and §§60.4121 through 60.4124.~~
- ~~(b) Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.~~

~~§ 60.4121 Submission of Hg budget permit applications.~~

- ~~(a) Duty to apply. The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under §60.4122 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.~~
- ~~(b) Duty to Reapply. For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under §60.4122 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.~~

~~§ 60.4122 Information requirements for Hg budget permit applications.~~

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

- ~~(a) Identification of the Hg Budget source;~~
- ~~(b) Identification of each Hg Budget unit at the Hg Budget source; and~~
- ~~(c) The standard requirements under §60.4106.~~

~~§ 60.4123 Hg budget permit contents and term.~~

- ~~(a) Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under §60.4122.~~
- ~~(b) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under §60.4102 and, upon recordation by the Administrator under §§60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.~~
- ~~(c) The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.~~

~~§ 60.4124 Hg budget permit revisions.~~

~~Except as provided in §60.4123(b), the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.~~

~~§ 60.4130 [Reserved]~~

Hg Allowance Allocations

~~§ 60.4140 State trading budgets.~~

~~The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:~~

State	State trading budget (tons)	
	2010-2017	2018 and thereafter
Alaska	0.005	0.002
Alabama	1.289	0.509
Arkansas	0.516	0.204
Arizona	0.454	0.179
California	0.041	0.016
Colorado	0.706	0.279
Connecticut	0.053	0.021
Delaware	0.072	0.028
District of Columbia	0	0
Florida	1.233	0.487
Georgia	1.227	0.484
Hawaii	0.024	0.009
Idaho	0	0
Iowa	0.727	0.287
Illinois	1.594	0.629
Indiana	2.098	0.828
Kansas	0.723	0.285
Kentucky	1.525	0.602
Louisiana	0.601	0.237
Massachusetts	0.172	0.068
Maryland	0.49	0.193
Maine	0.001	0.001
Michigan	1.303	0.514
Minnesota	0.695	0.274
Missouri	1.393	0.55
Mississippi	0.291	0.116
Montana	0.378	0.149
Navajo Nation Indian country	0.601	0.237
North Carolina	1.133	0.447
North Dakota	1.564	0.617
Nebraska	0.421	0.166
New Hampshire	0.063	0.025
New Jersey	0.153	0.06
New Mexico	0.299	0.118
Nevada	0.285	0.112
New York	0.393	0.155
Ohio	2.057	0.812
Oklahoma	0.721	0.285
Oregon	0.076	0.03
Pennsylvania	1.78	0.702
Rhode Island	0	0
South Carolina	0.58	0.229
South Dakota	0.072	0.029
Tennessee	0.944	0.373
Texas	4.657	1.838
Utah	0.506	0.2
Ute Indian Tribe Indian country	0.06	0.024
Virginia	0.592	0.234

Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.354
West Virginia	1.394	0.55
Wyoming	0.952	0.376

~~§ 60.4141—Timing requirements for Hg allowance allocations.~~

~~(a) By October 31, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.~~

~~(b) (1) By October 31, 2008 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.~~

~~(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (b)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017.~~

~~(c) (1) By October 31, 2010 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.~~

~~(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017 and except that any Hg Budget unit that would otherwise be allocated Hg allowances under §60.4142(a) and (b), as well as under §60.4142(a), (c), and (d), for the applicable control period will be assumed to be allocated no Hg allowances under §60.4142(a), (c), and (d) for the applicable control period.~~

~~§ 60.4142—Hg allowance allocations.~~

~~(a) (1) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under paragraph (b) of this section for each Hg Budget unit will be:~~

~~(i) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:~~

~~(A) Any portion of the unit's control period heat input for the year that results from the unit's combustion of lignite, multiplied by 3.0;~~

~~(B) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and~~

- ~~(C) Any portion of the unit's control period heat input for the year that is not covered by paragraph (a)(1)(i)(A) or (B) of this section, multiplied by 1.0.~~
- ~~(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.~~
- ~~(2) (i) A unit's control period heat input for a calendar year under paragraphs (a)(1)(i) of this section, and a unit's total ounces of Hg emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year. The unit's types and amounts of fuel combusted, under paragraph (a)(1)(i) of this section, will be based on the best available data reported to the permitting authority for the unit.~~
- ~~(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:~~
- ~~(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~
- ~~(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or~~
- ~~(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.~~
- ~~(b) (1) For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of Hg allowances equal to 95 percent for a control period in 2010 through 2014, and 97 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 (except as provided in paragraph (d) of this section).~~
- ~~(2) The permitting authority will allocate Hg allowances to each Hg Budget unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of Hg allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.~~
- ~~(c) For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:~~

- ~~(1) The permitting authority will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated Hg allowances equal to 5 percent for a control period in 2010 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140.~~
- ~~(2) The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under paragraph (b) of this section. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.~~
- ~~(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the control period immediately before such control period.~~
- ~~(4) The permitting authority will review each Hg allowance allocation request under paragraph (c)(2) of this section and will allocate Hg allowances for each control period pursuant to such request as follows:
 - ~~(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.~~
 - ~~(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.~~
 - ~~(iii) If the amount of Hg allowances in the new unit set aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.~~
 - ~~(iv) If the amount of Hg allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of Hg allowances in the new unit set aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.~~
 - ~~(v) The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.~~~~
- ~~(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated Hg allowances remain in the new unit set aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for 2010 through 2014, and 97 percent for 2014 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140, and rounded to the nearest whole allowance as appropriate.~~

Hg Allowance Tracking System

~~§ 60.4150 [Reserved]~~

~~§ 60.4151 Establishment of accounts.~~

~~(a) Compliance accounts. Upon receipt of a complete certificate of representation under §60.4113, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.~~

~~(b) General accounts.~~

~~(1) Application for general account.~~

~~(i) Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.~~

~~(ii) 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 Hg authorized account representative and any alternate Hg authorized account representative;~~

~~(B) Organization name and type of organization, if applicable;~~

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

~~(D) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg 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 Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.~~

~~(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~(2) Authorization of Hg authorized account representative.~~

- ~~(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:
 - ~~(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.~~
 - ~~(B) The Hg authorized account representative and any alternate Hg 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 Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.~~
 - ~~(C) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.~~~~
- ~~(ii) Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg 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."~~
- ~~(iii) 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)(ii) of this section.~~
- ~~(3) Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.
 - ~~(i) The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.~~
 - ~~(ii) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.~~~~

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

~~(B) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg 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 Hg allowances in the general account to include the change.~~

~~(4) Objections concerning Hg authorized account representative.~~

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

~~(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.~~

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

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

~~§ 60.4152 Responsibilities of Hg authorized account representative.~~

~~Following the establishment of a Hg 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 Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.~~

~~§ 60.4153 Recordation of Hg allowance allocations.~~

~~(a) By December 1, 2006, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at a source, as submitted by the permitting authority in accordance with §60.4141(a), for the control periods in 2010, 2011, 2012, 2013, and 2014.~~

~~(b) By December 1, 2008, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with §60.4141(b), for the control period in 2015.~~

- ~~(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a Hg Budget source's compliance account under §60.4154, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with §60.4141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.~~
- ~~(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with §60.4141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.~~
- ~~(e) Serial numbers for allocated Hg allowances. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.~~

~~§ 60.4154 Compliance with Hg budget emissions limitation.~~

- ~~(a) Allowance transfer deadline. The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:~~
 - ~~(1) Were allocated for the control period in the year or a prior year;~~
 - ~~(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under §§60.4160 through 60.4162 by the allowance transfer deadline for the control period; and~~
 - ~~(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.~~
- ~~(b) Deductions for compliance. Following the recordation, in accordance with §§60.4160 through 60.4162, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under paragraph (a) of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:~~
 - ~~(1) Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with §§60.4170 through 60.4176, from all Hg Budget units at the source for the control period; or~~
 - ~~(2) If there are insufficient Hg allowances to complete the deductions in paragraph (b)(1) of this section, until no more Hg allowances available under paragraph (a) of this section remain in the compliance account.~~
- ~~(c) (1) Identification of Hg allowances by serial number. The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.~~
 - ~~(2) First-in, first-out. The Administrator will deduct Hg allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case~~

~~of a partial identification of Hg allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:~~

- ~~(i) Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then~~
- ~~(ii) Any Hg allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to §§60.4160 through 60.4162, in the order of recordation.~~

~~(d) Deductions for excess emissions.~~

~~(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.~~

~~(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law.~~

~~(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.~~

~~(f) Administrator's action on submissions.~~

~~(1) The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.~~

~~(2) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.~~

~~§ 60.4155 Banking.~~

~~(a) Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.~~

~~(b) Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under §60.4154, §60.4156, or §§60.4160 through 60.4162.~~

~~§ 60.4156 Account error.~~

~~The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.~~

~~§ 60.4157 Closing of general accounts.~~

~~(a) The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §60.4160 through 60.4162 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.~~

~~(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed 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 Hg allowances into the account under §60.4160 through 60.4162 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.~~

~~Hg Allowance Transfers~~

~~§ 60.4160 Submission of Hg allowance transfers.~~

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

- ~~(a) The account numbers for both the transferor and transferee accounts;~~
- ~~(b) The serial number of each Hg allowance that is in the transferor account and is to be transferred; and~~
- ~~(c) The name and signature of the Hg authorized account representative of the transferor account and the date signed.~~

~~§ 60.4161 EPA recordation.~~

- ~~(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Hg allowance transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:
 - ~~(1) The transfer is correctly submitted under §60.4160; and~~
 - ~~(2) The transferor account includes each Hg allowance identified by serial number in the transfer.~~~~
- ~~(b) A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under §60.4154 for the control period immediately before such allowance transfer deadline.~~
- ~~(c) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.~~

~~§ 60.4162 Notification.~~

- ~~(a) Notification of recordation. Within 5 business days of recordation of a Hg allowance transfer under §60.4161, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.~~
- ~~(b) Notification of non-recordation. Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of §60.4161(a), the Administrator will notify the Hg 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 Hg allowance transfer for recordation following notification of non-recordation.~~

~~Monitoring and Reporting~~

~~§ 60.4170 General requirements.~~

~~The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter. For purposes of complying with such requirements, the definitions in §60.4102 and in §72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "Hg Budget unit," "Hg designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in §60.4102. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under §75.82(b)(2)(i) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.~~

- ~~(a) Requirements for installation, certification, and data accounting. The owner or operator of each Hg Budget unit shall:~~
- ~~(1) Install all monitoring systems required under this section and §§60.4171 through 60.4176 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration, as applicable, in accordance with §§75.81 and 75.82 of this chapter);~~
 - ~~(2) Successfully complete all certification tests required under §60.4171 and meet all other requirements of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and~~
 - ~~(3) Record, report, and quality assure the data from the monitoring systems under paragraph (a)(1) of this section.~~
- ~~(b) Compliance deadlines. The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.~~
- ~~(1) For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.~~
 - ~~(2) For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:
 - ~~(i) January 1, 2009; or~~
 - ~~(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.~~~~
 - ~~(3) For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (b)(1) or (2) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.~~
- ~~(c) Reporting data.~~
- ~~(1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any~~

other parameters required to determine Hg mass emissions and heat input in accordance with §75.80(g) of this chapter.

- ~~(2) The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.~~

~~(d) Prohibitions.~~

- ~~(1) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section and §§60.4171 through 60.4176 without having obtained prior written approval in accordance with §60.4175.~~
- ~~(2) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter.~~
- ~~(3) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg 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, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter.~~
- ~~(4) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:~~
- ~~(i) During the period that the unit is covered by an exemption under §60.4105 that is in effect;~~
- ~~(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or~~
- ~~(iii) The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §60.4171(e)(3)(i).~~

~~§ 60.4171 Initial certification and recertification procedures.~~

- ~~(a) The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under §60.4170(a)(1) if the following conditions are met:~~
- ~~(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and~~
- ~~(2) The applicable quality assurance and quality control requirements of §75.21 of this chapter and appendix B to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.~~

- ~~(b) The recertification provisions of this section shall apply to a monitoring system under §60.4170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.~~
- ~~(c) Except as provided in paragraph (a) of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) under §75.15) under §60.4170(a)(1). The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under §75.81(b) of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (d) or (e) of this section respectively.~~
- ~~(1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system under §60.4170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §60.4170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.~~
- ~~(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbent trap monitoring system) under §75.15, under §60.4170(a)(1) that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality assurance and quality control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorbent trap monitoring system) under §75.15, whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.~~
- ~~(3) Approval process for initial certification and recertification. Paragraphs (c)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §60.4170(a)(1). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in §75.20(b)(5) of this chapter in lieu of the procedures in paragraph (c)(3)(v) of this section.~~
- ~~(i) Notification of certification. The Hg designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with §60.4173.~~
- ~~(ii) Certification application. The Hg designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.~~
- ~~(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (c)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by~~

~~issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.~~

- ~~(iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (c)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.~~
- ~~(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.~~
- ~~(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (c)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.~~
- ~~(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (c)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under §75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (c)(3)(v) of this section for each monitoring system that is disapproved for initial certification.~~
- ~~(D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with §60.4172(b).~~
- ~~(v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph (c)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (c)(3)(iv)(D) of this section, then:~~
- ~~(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under §75.20(a)(4)(iii), or §75.21(e) of this chapter and continuing until the applicable date and hour specified under §75.20(a)(5)(i) of this chapter:~~
- ~~(1) For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter; and~~
- ~~(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum~~

~~potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.~~

~~(3) For a disapproved excepted monitoring system (sorbent trap monitoring system) under §75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter.~~

~~(B) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (c)(3)(i) and (ii) of this section.~~

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

~~(d) Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under §75.81(b) of this chapter. The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under §75.81(b) of this chapter shall meet the applicable certification and recertification requirements in §75.81(c) through (f) of this chapter.~~

~~(e) Certification/recertification procedures for alternative monitoring systems. The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of §75.20(f) of this chapter.~~

~~§ 60.4172 Out of control periods.~~

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

~~(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §60.4171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system 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 for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in §60.4171 for each disapproved monitoring system.~~

~~§ 60.4173 Notifications.~~

~~The Hg designated representative for a Hg Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with §75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.~~

~~§ 60.4174 Recordkeeping and reporting.~~

~~(a) General provisions.~~

- ~~(1) The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section and the requirements of §60.4110(e)(1).~~
 - ~~(2) If a Hg Budget unit is subject to an Acid Rain emission limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or CAIR NO_x Ozone Season Trading Program, and the Hg designated representative who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this section, §§60.4170 through 60.4173, §60.4175, §60.4176, or subpart I of part 75 of this chapter is not the same person as the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, for the unit under part 72 of this chapter and the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or CAIR NO_x Ozone Season Trading Program, then the submission must also be signed by the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, as applicable.~~
- ~~(b) Monitoring plans. The owner or operator of a Hg Budget unit shall comply with requirements of §75.84(e) of this chapter.~~
- ~~(c) Certification applications. The Hg designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under §60.4171, including the information required under §75.63 of this chapter.~~
- ~~(d) Quarterly reports. The Hg designated representative shall submit quarterly reports, as follows:~~
- ~~(1) The Hg designated representative shall report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - ~~(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or~~
 - ~~(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under §60.4170(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.~~~~
 - ~~(2) The Hg designated 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 §75.84(f) of this chapter.~~
 - ~~(3) For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or CAIR NO_x Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, §§60.4170 through 60.4173, §60.4175, and §60.4176.~~
- ~~(e) Compliance certification. The Hg designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) 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, §§60.4170 through 60.4173, §60.4175, §60.4176, and part 75 of this chapter, including the quality assurance procedures and specifications; and~~
 - ~~(2) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours~~

~~where Hg data are substituted in accordance with §75.34(a)(1) of this chapter, the Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter, or quality-assured SO₂ emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system, or quality-assured NO_x emission data recorded in accordance with part 75 of this chapter document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate Hg emissions.~~

~~§ 60.4175—Petitions.~~

~~The Hg designated representative of a Hg unit may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of §§60.4170 through 60.4174 and §60.4176. Application of an alternative to any requirement of §§60.4170 through 60.4174 and §60.4176 is in accordance with this section and §§60.4170 through 60.4174 and §60.4176 only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.~~

~~§ 60.4176—Additional requirements to provide heat input data.~~

~~The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.~~

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Elaine Boyd	X				
Dr. Brian W.Christman				X	
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett				X	
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
John Roberts	X				
Mayor Larry Waters	X				
Alicia M. Wilson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/12/2012

Rulemaking Hearing(s) Conducted on: (add more dates). 05/24/2012

Date: _____

Signature: _____

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A comment was received on the proposed removal of Rule 1200-03-27-.06 (NO_x Budget Trading Program for State Implementation Plans). During the public comment period, U. S. EPA's Region 4 office discussed this rule change with the Division of Air Pollution Control. EPA stated that Tennessee may remove this rule, but the State must continue to meet its obligations under the NO_x SIP Call (40 CFR 51.121).

Response: Tennessee agrees that the State must continue to meet the requirements of the NO_x SIP Call (40 CFR 51.121). Tennessee is currently meeting these requirements by implementation and enforcement of the Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program (TAPCR 1200-03-27-.11, 40 CFR 96 Subparts AAAA through IIII, and 40 CFR 97 Subparts AAAA through IIII). Tennessee will continue to implement the requirements of the CAIR NO_x Ozone Season Trading Program until a CAIR replacement rule becomes effective. Upon final replacement of the CAIR Rule, Tennessee will meet its NO_x SIP Call obligations through the Transport Rule (40 CFR 97 Subpart BBBBBB or a subsequent replacement) for electricity generating units (EGUs). For non-EGU boilers and combustion turbines, Tennessee will meet its NO_x SIP Call obligations by adoption of a SIP revision that addresses emissions from these sources.

There were no comments received for the proposed repeal of Rule 1200-03-37.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

The rule changes included in this document apply to electricity generating units and large boilers and combustion turbines, and the rule changes are projected to have no impact on small businesses. The businesses subject to this rule are listed below:

DuPont Old Hickory
Packaging Corporation of America
Tate & Lyle, Loudon
Bowater Newsprint-Calhoun Operation
Cargill Corn Milling
Eastman Chemical Company
The Valero Refining Company - Tennessee, LLC
TVA

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

No small business is impacted.

- (3) A statement of the probable effect on impacted small businesses and consumers:

No impact.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

None.

- (5) A comparison of the proposed rule with any federal or state counterparts:

Rule 1200-03-27-.06 NO_x Budget Trading Program for State Implementation Plans was originally adopted to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.

Chapter 1200-03-37 Clean Air Mercury Rule was mandated pursuant to 40 CFR 60 Subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units). The Federal rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097) and has been removed from the Code of Federal Regulations.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Not Applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rule changes are projected to have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

1. Chapter 1200-03-27 Nitrogen Oxides is being amended by deleting Rule 1200-03-27-.06 NO_x Budget Trading Program for State Implementation Plans. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.
2. Chapter 1200-03-37 Clean Air Mercury Rule is being repealed. This chapter was added to meet the EPA requirement for Tennessee to establish standards of performance for certain existing stationary sources pursuant to Section 111(d) of the Clean Air Act. These requirements were vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

1. Removal of Rule 1200-03-27-.06 is authorized by 40 CFR §51.121(r)(1): "Notwithstanding any provisions of paragraph (p) of this section, subparts A through I of part 96 of this chapter, and any State's SIP to the contrary, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of part 96 of this chapter, or in any emissions trading program in a State's SIP approved under paragraph (p) of this section, with regard to any ozone season that occurs after September 30, 2008."
2. Chapter 1200-03-37 Clean Air Mercury Rule was mandated pursuant to 40 CFR 60 Subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units). The Federal rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097) and has been removed from the Code of Federal Regulations.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Electricity generating units, fossil fuel-fired boilers and combustion turbines.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

1. Removal of Rule 1200-03-27-.06: This rule was superseded by Rule 1200-03-27-.11 (CAIR NO_x Ozone Season Trading Program). The Federal rule underlying Rule 1200-03-27-.11 was vacated by the United States Court of Appeals for the District of Columbia Circuit on July 11, 2008 (case #05-1244). The court subsequently remanded the rule without vacature on December 23, 2008.
2. The Federal rule underlying Chapter 1200-03-37 was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No increase or decrease is expected to result from these rule changes.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Travis Blake

Division of Air Pollution Control
9th Floor, L&C Annex
401 Church Street
Nashville, TN 37243-1531

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson
Legal Services Director
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
Nashville, TN 37243-1531
Alan.leiserson@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Division is not aware of any additional relevant information.