

PART 204 NOx Budget Trading Program
Revised Proposal

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Subpart 204-1 NOx Budget Trading Program General Provisions

- §204-1.1 Purpose and authorization to the Administrator.**

This Part establishes the New York State component of the NO_x Budget Trading Program which is designed to mitigate the interstate transport of ozone and nitrogen oxides, an ozone precursor. The Department authorizes the Administrator to assist the Department in implementing the NO_x Budget Trading Program by performing the functions set forth for the Administrator in this Part.

§204-1.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200 of this Title apply to this Part.

(b) For the purposes of this Part, the following specific definitions apply:

(1) *Account certificate of representation.* The completed and signed submission required by Subpart 204-2 for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

(2) *Account number.* The identification number given by the Administrator to each NO_x Allowance Tracking System account.

(3) *Acid Rain emissions limitation.* As defined in 40 CFR §72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Act.

(4) *Allocate or allocation.* The determination by the Department of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

(5) *Annual average heat rate.* A measure of an electricity generating unit's thermal efficiency, expressed in Btu's per net kilowatt-hour, computed by dividing the heat input (based on total higher heating value Btu content of the fuel burned) for electricity generation by the resulting net kilowatt-hour generation during a calendar year. For co-generation facilities, the heat input for electricity generation is calculated by the sum of the heat input for combustion turbines, steam boilers (excluding backup boilers) and supplemental firing minus the net heat input of useful thermal energy provided for purposes other than electricity generation.

(6) *Automated data acquisition and handling system or DAHS.* That component of the CEMS, or other emissions monitoring system approved for use under Subpart 204-8, 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 204-8.

(7) *Boiler*. An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(8) *Combined cycle system*. 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.

(9) *Combustion turbine*. An enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), 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.

(10) *Commence commercial operation*. 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. For a unit that is a NOx Budget unit under §204-1.4 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 Subpart 204-9, for a unit that is not a NOx Budget unit under §204-1.4 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under §204-1.4 shall be the unit's date of commencement of commercial operation.

(11) *Commence operation*. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a NOx Budget unit under §204-1.4 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 Subpart 204-9, for a unit that is not a NOx Budget unit under §204-1.4 on the date of commencement of operation, the date the unit becomes a NOx Budget unit under §204-1.4 shall be the unit's date of commencement of operation.

(12) *Common stack*. A single flue through which emissions from two or more units are exhausted.

(13) *Compliance account*. A NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under Subpart 204-6, 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.

(14) *Compliance certification.* A submission to the Department or the Administrator, as appropriate, that is required under Subpart 204-4 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 204-2.

(15) *Continuous emission monitoring system or CEMS.* The equipment required under Subpart 204-8 to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR Part 75, in a continuous emission monitoring system:

- (i) Flow monitor;
- (ii) Nitrogen oxides pollutant concentration monitors;
- (iii) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Subpart 204-8;
- (iv) A continuous moisture monitor when such monitoring is required by Subpart 204-8; and
- (v) An automated data acquisition and handling system.

(16) *Control period.* The period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(17) *CPSTE or control period potential to emit.* The maximum capacity of a NOx Budget unit to emit NOx under its physical and operational design during a control period. Any physical or operational limitation on the capacity of a NOx Budget unit to emit NOx, including air pollution control equipment and/or a restriction on the hours of operation, or on the type or amount of material combusted shall be treated as part of the design if the limitation is enforceable by the Department and the Administrator.

(i) For electricity generating units and non-electricity generating units, the CPSTE can be no greater than the number to be determined by the following:

$$CPSTE \leq [(5/12thsABUhr \times BUER) + ((3,672 - 5/12thsABUhr) \times PER)] \times MRHHI$$
when PER and BUER are in pounds per million Btu; or,

$$CPSTE \leq (5/12thsABUhr \times BUER) + ((3,672 - 5/12thsABUhr) \times PER),$$
 when PER and BUER are in pounds per hour,
where:

“ABUhr” is number of hours it takes annually to combust the quantity of the backup fuel allowed under the unit’s permit which, if used as the only fuel for the unit, would be the number of hours in determining the emission rate potential for the unit.

“BUER” is the lowest emission rate applicable to the use of the backup fuel (in pounds per million Btu or pounds per hour based on inlet temperature of 47.5 degrees F) allowed under the unit’s permit which, if used as the only fuel for the unit, would be the emission rate in determining the emission rate potential for the unit.

“PER” is the lowest emission rate applicable to the use of the primary fuel (in pounds per million Btu or pounds per hour based on inlet temperature of 47.5 degrees F) allowed under the unit’s permit.

“MRHHI” is the maximum rated hourly heat input for the unit based upon an inlet air temperature of 47.5 degrees F for those units without temperature control.

(ii) For Portland cement kiln units, the CPPTE can be no greater than the number to be determined by the following:

$$\text{CPPTE} \leq 3,672 \times \text{ER}$$

where:

“ER” is the lowest applicable emission rate (in pounds per hour) allowed under the unit’s permit.

(18) *End use energy efficiency project.* A measure implemented at the customer level that uses a reduced amount of electricity, measured in kilowatt-hours to maintain or increase the level of energy service, including product output and comfort level. Examples of such a measure include, without limitation, installing new equipment or systems, modifying existing equipment or systems, or improving operation and maintenance procedures.

(19) *Energy Information Administration.* The Energy Information Administration of the United States Department of Energy.

(20) *Excess emissions.* Any tonnage of nitrogen oxides emitted by a NOx Budget unit during a control period that exceeds the NOx Budget emissions limitation for the unit.

(21) *Fossil fuel.* Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(22) *Fossil fuel-fired.* With regard to a unit: the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or 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.

(23) *General account*. A NOx Allowance Tracking System account, established under Subpart 204-6, that is not a compliance account or an overdraft account.

(24) *Generator*. A device that produces electricity.

(25) *Heat input*. The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with Subpart 204-8, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(26) *Higher heating value heat content*. Total gross calorific value of the fuel, or the total heat (in Btu/specified unit of fuel) produced when the fuel is completely combusted under standardized conditions, including the heat lost in the vaporization of water contained in the fuel.

(27) *In-plant efficiency measure*. A measure undertaken at a NOx Budget source that increases the overall energy efficiency of the facility. Examples of such a measure include, without limitation, improvements in thermal efficiency, more efficient production of electricity, or more efficient production of cement (or clinker).

(28) *Life-of-the-unit, firm power contractual arrangement*. 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:

(i) For the life of the unit;

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

(iii) 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.

(29) *Long dry kiln*. A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(30) *Long wet kiln*. A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(31) *Maximum clinker production.* The ability of a Portland cement kiln to produce a stated maximum amount of clinker per hour on a steady state basis, as determined by the physical design and physical characteristics of the kiln.

(32) *Maximum design heat input.* 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.

(33) *Maximum potential hourly heat input.* An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

(34) *Maximum potential NO_x emission rate.* The emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in percent 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.

(35) *Maximum rated hourly heat input.* Except as found at paragraph (17) of this subdivision, a unit-specific maximum hourly heat input (in mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(36) *Monitoring system.* Any monitoring system that meets the requirements of Subpart 204-8, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(37) *Most stringent State or Federal NO_x emissions limitation.* With regard to a NO_x Budget opt-in unit, 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.

(38) *Nameplate capacity.* 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.

(39) *Net kilowatt-hour generation.* Gross generation minus the plant use of

electricity or all electricity supplied to the electric power grid. For co-generation facilities, all electricity supplied to the electric power grid, the host site and other industrial and commercial customers, but excluding electricity used by the co-generation facility and fuel handling and processing equipment.

(40) *New York State Trading Program Budget*. The total number of NOx tons apportioned to all NOx Budget units in New York State, in accordance with the NOx Budget Trading Program, for use in a given control period.

(41) *NOx allowance*. An authorization by the Department under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(42) *NOx allowance deduction or deduct NOx allowances*. The permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with Subpart 204-8, or for the forfeit of NOx allowances as provided by this Part.

(43) *NOx allowances held or hold NOx allowances*. The NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with Subparts 204-6 and 204-7, in a NOx Allowance Tracking System account.

(44) *NOx Allowance Tracking System*. The system by which the Administrator records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

(45) *NOx Allowance Tracking System account*. An account in the NOx Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NOx allowances.

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

(47) *NOx authorized account representative*. For a NOx Budget source or NOx Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOx Budget units at the source, in accordance with Subpart 204-2, 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 204-6, to transfer or otherwise dispose of NOx allowances held in the general account.

(48) *NOx Budget emissions limitation.* For a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit for a control period.

(49) *NOx Budget opt-in permit.* A NOx Budget permit covering a NOx Budget opt-in unit.

(50) *NOx Budget opt-in unit.* A unit that has been elected to become a NOx Budget unit and whose NOx Budget opt-in permit has been issued and is in effect under Subpart 204-9.

(51) *NOx Budget permit.* The portion of the legally binding and federally enforceable written permit issued by the Department pursuant to Part 201 to a NOx Budget source or NOx Budget unit which specifies 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.

(52) *NOx Budget source.* A source that includes one or more NOx Budget units.

(53) *NOx Budget Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to this Part, corresponding regulations in other states promulgated in accordance with 40 CFR §51.121, and federal implementation plans promulgated in accordance with 40 CFR Part 97 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(54) *NOx Budget unit.* A unit that is subject to NOx Budget Trading Program requirements under §204-1.4 or §204-9.1.

(55) *Operating.* With regard to a unit under §204-9.1, having documented heat input or clinker production for more than 876 hours in the 6 months immediately preceding the submission of an application for a NOx Budget permit under §204-9.4(a).

(56) *Operator.* 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 §204-9.4 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(57) *Opt-in.* 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 204-9.

(58) *Overdraft account.* The NOx Allowance Tracking System account, established by the Administrator under Subpart 204-6, for each NOx Budget source where there are two or more NOx Budget units.

(59) *Owner.* Any of the following persons:

(i) 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 §204-9.4 is submitted and not denied or withdrawn; or

(ii) 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 §204-9.4 is submitted and not denied or withdrawn; or

(iii) 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 §204-9.4 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx Budget unit or the unit for which an application for a NOx Budget opt-in permit under §204-9.4 is submitted and not denied or withdrawn; or

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

(60) *Portland cement kiln.* A system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(61) *Precalciner kiln.* A kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(62) *Preheater kiln.* A kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(63) *Preheater/precincer kiln.* A pyroprocessing system comprised of three main units, a preheater followed by a precincer followed by a kiln. The preheater dries and preheats the feed in a series of cyclone vessels. The precincer begins the calcination of the feed in a separate vessel. The kiln completes the calcination and sintering of the feed to produce

clinker.

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

(65) *Recordation, record, or recorded.* With regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

(66) *Reference method.* Any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR Part 60.

(67) *Renewable energy project.* A power generation technology that produces electricity from wind energy, solar thermal energy, photovoltaics, methane waste, or sustainably managed biomass; but not the combustion or pyrolysis of solid waste.

(68) *Serial number.* When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator under §204-6.4(c).

(69) *Source.* 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 Act. For purposes of section 502(c) of the Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

(70) *State.* One of the 48 contiguous States and the District of Columbia, 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 establishes a corresponding regulation as part of the NO_x Budget Trading Program.

(71) *State trading program budget.* The total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

(72) *Submit or serve.* To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(i) In person;

(ii) By United States Postal Service; or

(iii) 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.

(73) *Thermal efficiency.* The ratio of energy output (in Btu) to energy input (in Btu) based on the higher heating value heat content of the fuel.

(74) *Ton or tonnage.* 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 204-8, 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.

(75) *Unit.* A fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, or Portland cement kiln.

(76) *Unit operating day.* A calendar day in which a unit combusts any fuel.

(77) *Unit operating hour or hour of unit operation.* Any hour (or fraction of an hour) during which a unit combusts any fuel.

§204-1.3 Measurements, abbreviations, and acronyms.

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

- (a) Btu-British thermal unit.
- (b) hr-hour.
- (c) Kwh-kilowatt hour.
- (d) lb-pounds.
- (e) mmBtu-million Btu.
- (f) MWe-megawatt electrical.
- (g) CO₂-carbon dioxide.

(h) NO_x-nitrogen oxides.

(i) O₂-oxygen.

§204-1.4 Applicability.

(a) The following units shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this Part:

(1) *Electricity generating units.* Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity equal to or greater than 15 MWe and sells any amount of electricity;

(2) *Portland cement kiln units.* Any unit that is a Portland cement kiln having a maximum design heat input equal to or greater than 250 mmBtu/hr; or

(3) *Non-electricity generating units.* Any unit other than an electricity generating unit or a Portland cement kiln unit under paragraphs (a)(1) or (2) of this section, respectively, which has a maximum design heat input equal to or greater than 250 mmBtu/hr.

(b) *Limited exemption for certain NO_x Budget units.* Notwithstanding subdivision (a) of this section, a NO_x Budget unit under paragraphs (a)(1) or (3) of this section shall be subject only to the requirements of this subdivision (b) if the unit has a 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 subparagraphs (b)(1)(ii) and (iii) of this section) that limits the unit's potential NO_x mass emissions for the control period to 25 tons or less.

(1) For each control period under subdivision (b) of this section, the 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 NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions.

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

(a) Select the default NO_x emission rate in Table LM-2 of 40 CFR

75.19(c)(1)(ii) 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 NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in subparagraph (b)(1)(i) of this section; and

(b) Multiply the default NO_x emission rate under clause (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 Department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under §204-1.2. The Department may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(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 Department by November 1 of each year.

(2) The Department will notify the Administrator in writing of each unit under subdivision (a) of this section whose permit contains the fuel use restriction under subparagraph (b)(1)(i) and the operating hours restriction under subparagraphs (b)(1)(ii) and (iii) of this section. The Department will also notify the Administrator in writing of each unit under subdivision (a) of this section whose permit is revised to remove any such restriction, whose permit 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 subdivision (b) of this section, the fuel use restriction under subparagraph (b)(1)(i) of this section or the operating hours restriction under subparagraphs (b)(1)(ii) and (iii) of this section is removed from the unit's 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 subparagraph (b)(1)(i) of this section or the operating hours restriction under subparagraphs (b)(1)(ii) and (iii) of this section, the unit shall be subject to all applicable requirements of this Part.

§204-1.5 Shutdown or change in physical characteristics of a NO_x Budget unit.

(a) Any NO_x Budget unit that is permanently shutdown and has surrendered its permit

will no longer be deemed a NOx Budget unit and shall no longer be subject to the provisions of this Part applicable to NOx Budget units on the day on which the procedures set forth in subdivision (c)(1) are completed.

(b) Any NOx Budget unit, other than a NOx Budget opt-in unit, that has permanently changed its physical characteristics so that it no longer fits the physical description of a NOx Budget unit under §204-1.4(a) (for example, a non-electricity generating unit completes a physical plant change which reduces its maximum design heat input to below 250 mmBtu/hr) will no longer be deemed a NOx Budget unit and shall no longer be subject to the provisions of this Part applicable to NOx Budget units on the day on which the procedures set forth in subdivision (c)(2) are completed.

(c) (1) The NOx authorized account representative submits a statement to the Department (in a format prescribed by the Department) attesting to the fact that the unit is permanently shutdown and that the unit's permit has been surrendered to the Department. A copy of the statement must simultaneously be submitted to the Administrator.

(2) The NOx authorized account representative submits a statement to the Department (in a format prescribed by the Department) and the Administrator attesting to the fact that the physical characteristics of the unit have been permanently changed so that it no longer fits the physical description of a NOx Budget unit under §204-1.4(a). This statement must be accompanied by adequate information which details the changes to the physical characteristics of the unit. The Department, in consultation with the Administrator, will then determine whether the statement is valid. Upon the Department's determination that the statement is valid, the procedures of this paragraph are completed.

(d) Any NOx Budget unit which ceases to be deemed a NOx Budget unit pursuant to this section is not eligible for an allocation or distribution of NOx allowances pursuant to Subpart 204-5 following the completion of the procedures set forth in paragraphs (c)(1) or (c)(2) of this section.

§204-1.6 Standard requirements.

(a) *Permit Requirements.*

(1) The NOx authorized account representative of each NOx Budget unit shall:

(i) Submit to the Department a complete NOx Budget permit application under §204-3.3 in accordance with the deadlines specified in §204-3.2(b);

(ii) Submit in a timely manner any supplemental information that the

Department 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 unit shall have a NOx Budget permit and operate the unit in compliance with such NOx Budget permit.

(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 204-8.

(2) The emissions measurements recorded and reported in accordance with Subpart 204-8 shall be used to determine compliance by the unit with the NOx Budget emissions limitation under subdivision (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 §204-6.5, 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 204-8.

(2) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this Part, the Act, 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 204-5, 204-6, 204-7, and 204-9.

(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 Department 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, or the NOx Budget permit 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 NO_x allowance allocated by the Department under the NO_x Budget Trading Program does not constitute a property right.

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

(1) Forfeit the NO_x allowances required for deduction under §204-6.5(d)(1); and

(2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under §204-6.5(d)(3).

(e) *Recordkeeping and Reporting Requirements.*

(1) Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department or the Administrator.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with §204-2.4; 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 NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with Subpart 204-8; provided that to the extent that Subpart 204-8 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 NO_x Budget Trading Program.

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

(2) The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under Subparts 204-4, 204-8, or 204-9.

(f) *Liability.*

(1) 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.

(2) 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.

(3) 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 204-8, 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, or a NOx Budget permit, 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 provisions of applicable State and federal law and regulations.

§204-1.7 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 204-2 NOx Authorized Account Representative for NOx Budget Sources

§204-2.1 Authorization and responsibilities of the NOx authorized account representative.

(a) Except as provided under §204-2.2, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.

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

(c) Upon receipt by the Administrator of a complete account certificate of representation under §204-2.4, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, notwithstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the Department, the Administrator, or a court regarding the source or unit.

(d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under §204-2.4 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 Department and the Administrator will accept or act on a submission made on behalf of owners 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.

§204-2.2 Alternate NOx authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under §204-2.4, 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 §§204-2.1(a), 204-2.3, 204-2.4, and 204-6.2, 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.

§204-2.3 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 §204-2.4. 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 §204-2.4. 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 Department 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.

§204-2.4 Account certificate of representation.

(a) A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NOx Budget source and each NOx Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.

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

(4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on

behalf of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the Administrator, or a court regarding the source or unit.”

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

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

§204-2.5 Objections concerning the NOx authorized account representative.

(a) Once a complete account certificate of representation under §204-2.4 has been submitted and received, the Department and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under §204-2.4 is received by the Administrator.

(b) Except as provided in §204-2.3(a) or (b), no objection or other communication submitted to the Department 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 Department or the Administrator under the NOx Budget Trading Program.

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

Subpart 204-3 Permits

§204-3.1 General NOx Budget permit requirements.

(a) Each NOx Budget source must have a permit issued by the Department pursuant to Part 201 of this Title.

(b) Each NOx Budget permit shall contain all applicable NOx Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subdivision (a) of this section.

§204-3.2 Submission of NOx Budget permit applications.

(a) The NOx authorized account representative of any NOx Budget source shall submit to the Department a complete NOx Budget permit application under §204-3.3 by the applicable deadline in subdivision (b) of this section.

(b) (1) For any source, with one or more NOx Budget units under §204-1.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under §204-3.3 covering such NOx Budget units to the Department by May 1, 2002.

(2) For any source, with any NOx Budget unit under §204-1.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under §204-3.3 covering such NOx Budget unit to the Department by the later of May 1, 2002 or 12 months before the date on which the NOx Budget unit commences operation.

§204-3.3 Information requirements for NOx Budget permit applications.

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

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

(b) Identification of each NOx Budget unit at the NOx Budget source and whether it is a NOx Budget unit under §204-1.4 or under Subpart 204-9;

(c) The standard requirements under §204-1.6; and

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

for which this permit application is submitted under Subpart 204-9 is operating and is not a NOx Budget unit under 6 NYCRR §204-1.4.”

§204-3.4 NOx Budget permit contents.

(a) In addition to the requirements of Part 201 of this Title, each NOx Budget permit will contain, in a format prescribed by the Department, all elements required for a complete NOx Budget permit application under §204-3.3.

(b) Each NOx Budget permit shall incorporate all applicable requirements of this Part.

§204-3.5 Effective date of NOx Budget permit.

The NOx Budget permit covering a NOx Budget unit shall become effective upon issuance.

§204-3.6 NOx Budget permit revisions.

Revisions to a NOx Budget permit shall be done in accordance with Parts 201 and 621 of this Title.

Subpart 204-4 Compliance Certification

§204-4.1 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx authorized account representative of the source shall submit to the Department and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The NOx authorized account representative shall include in the compliance certification report under subdivision (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 §204-6.5 for the control period;

(3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx emissions that are not monitored separately or apportioned in accordance with Subpart 204-8, the percentage of NOx allowances that is to be deducted from each unit's compliance account under §204-6.5(e); and

(4) The compliance certification under subdivision (c) of this section.

(c) *Compliance certification.* In the compliance certification report under subdivision (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 204-8;

(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 204-8. 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 204-8 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 204-8, 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.

§204-4.2 Department's and Administrator's action on compliance certifications.

(a) The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the 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 subdivision (a) of this section.

Subpart 204-5 NOx Allowance Allocations

§204-5.1 New York State Trading Program Budget.

Except as may be modified in accordance with Subpart 204-9, the New York State Trading Program Budget allocated by the Department is 41,350 tons for each control period.

§204-5.2 Timing requirements for NOx allowance allocations.

(a) By September 30, 1999, the Department will submit to the Administrator the NOx allowance allocations, in accordance with §204-5.3, for the control period in 2003.

(b) By April 1, 2001 and April 1 of each year thereafter, the Department will submit to the Administrator the NOx allowance allocations, in accordance with §204-5.3, for the control period in the year that is three years after the year of the applicable deadline for submission under this subdivision (b). If the Department fails to submit to the Administrator the NOx allowance allocations in accordance with this subdivision (b), the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

§204-5.3 NOx allowance allocations.

(a) For purposes of allocating NO_x allowances to NO_x Budget units in the three sectors of NO_x budget units delineated under §204-1.4(a), the New York State Trading Program Budget initial figure of 41,350 set forth in §204-5.1 is divided into three sector budgets as follows:

(1) The total number NO_x allowances that may be allocated to electricity generating units under §204-1.4(a)(1) is 30,405. This figure represents the Electricity Generating Unit Sector Budget.

(2) The total number NO_x allowances that may be allocated to Portland cement kiln units under §204-1.4(a)(2) is 8,085 tons. This figure represents the Portland Cement Kiln Unit Sector Budget.

(3) The total number NO_x allowances that may be allocated to non-electricity generating units under §204-1.4(a)(3) is 2,860 tons. This figure represents the Non-Electricity Generating Unit Sector Budget.

(b) *Electricity generating units.* 92 percent of the Electricity Generating Unit Sector Budget established in paragraph (a)(1) of this section is available for allocation to electricity generating units under §204-1.4(a)(1) which are not eligible to receive NO_x allowances from the New Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this section. From this 92 percent portion of the Electricity Generating Unit Sector Budget, Unit 002682000009 is allocated 9 NO_x allowances, Unit 002682000010 is allocated 9 NO_x allowances, Unit 002682000011 is allocated zero NO_x allowances, and Unit 002682000012 is allocated 184 NO_x allowances. Except for Units 002682000009, 002682000010, 002682000011, and 002682000012, the Department will determine the number of NO_x allowances to be allocated to each electricity generating unit from this 92 percent portion of the Electricity Generating Unit Sector Budget pursuant to the following procedures:

(1) *First round calculation.*

(i) *Units which have not previously received NO_x allowances from the Department general account established for the distribution of NO_x allowances allocated to the New Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this section.* For the 2003 control period, multiply the greatest heat input experienced by the unit for any single control period during the 1995 through 1998 time frame; and for the 2004 control period and every control period thereafter, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the Department must submit the NO_x allocations to the Administrator pursuant to §204-5.2(b) by:

(a) For units having a nameplate capacity greater than 25 MWe, 0.15 lb/mmBtu (0.17 lb/mmBtu for Units 05065100BLR1, 05065100BLR2, 05065100BLR3, 05065100BLR4 and 05065100BLR5); or

(b) For units having a nameplate capacity greater than or equal to 15 MWe and equal to or less than 25 MWe, the greater of:

(1) 0.15 lb/mmBtu; or

(2) the lowest applicable emission rate.

(ii) *Units which have previously received NOx allowances from the Department general account established for the distribution of NOx allowances allocated to the New Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this section.* For every control period for which NOx allowances will be allocated, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by 0.15 lb/mmBtu.

(2) *Second round calculation.* Determine the allocation factor by dividing the total of the 92 percent portion of the Electricity Generating Unit Sector Budget minus the 202 NOx allowances for Units 002682000009, 002682000010, 002682000011, and 002682000012 by the sum of the first round calculation results for all the units.

(3) *Third round calculation.* Multiply the allocation factor by each unit's first round calculation result.

(4) *Fourth round calculation.* The number of NOx allowances to be allocated to each unit will be the lesser of:

(i) the number representing the unit's CPPTE, or

(ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned NOx allowances remaining in the 92 percent portion of the Electricity Generating Unit Sector Budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

Note: In this fourth round calculation NOx allowances may initially remain unassigned because the CPPTE limitation of subparagraph (b)(4)(i) of this section may affect some units sooner than others leaving some NOx allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned NOx allowances.

(c) *Portland cement kiln units.* 92 percent of the Portland Cement Kiln Unit Sector Budget established in paragraph (a)(2) of this section is available for allocation to Portland cement

kiln units under §204-1.4(a)(1) which are not eligible to receive NOx allowances from the New Portland Cement Kiln Unit Sector Set-Aside Allocation under subdivision (f) of this section. The Department will determine the number of NOx allowances to be allocated to individual Portland cement kiln units from this 92 percent portion of the Portland Cement Kiln Unit Sector Budget pursuant to the following procedures:

(1) *First round calculation.*

(i) *Units which have not previously received NOx allowances from the Department general account established for the distribution of NOx allowances allocated to the New Portland Cement Kiln Unit Sector Set-Aside Allocation under subdivision (e) of this section.* For the 2003 control period, multiply the greatest clinker production rate (ton-clinker) experienced by the unit for any control period during the 1996 through 1998 time frame; and for the 2004 control period and every control period thereafter, multiply the greatest clinker production rate experienced by the unit for any control period among the three control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by the greater of:

(a) The product of 0.7 multiplied by the unit's uncontrolled emission rate (lb/ton-clinker) as of 1995; or

(b) (1) For any long wet kiln, 6.0 lb/ton-clinker.

(2) For any long dry kiln, 5.1 lb/ton-clinker.

(3) For any preheater kiln, 3.8 lb/ton-clinker.

(4) For any preheater/precalciner or precalciner kiln, 2.8 lb/ton-clinker.

(ii) *Units which have previously received NOx allowances from the Department general account established for the distribution of NOx allowances allocated to the New Portland Cement Kiln Unit Sector Set-Aside Allocation under subdivision (e) of this section.* For every control period for which NOx allowances will be allocated, multiply the greatest clinker production rate (ton-clinker) experienced by the unit for any single control period among the three control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by the lesser of:

(a) The lowest applicable emission rate (in lb/ton-clinker); or

(b) (1) For any long wet kiln, 6.0 lb/ton-clinker.

(2) For any long dry kiln, 5.1 lb/ton-clinker.

(3) For any preheater kiln, 3.8 lb/ton-clinker.

(4) For any preheater/precalciner or precalciner kiln, 2.8 lb/ton-clinker.

(2) *Second round calculation.* Determine the allocation factor by dividing the 92 percent portion of the Portland Cement Kiln Unit Sector Budget by the sum of the first round calculation results for all units.

(3) *Third round calculation.* Multiply the allocation factor by each unit's first round calculation result.

(4) *Fourth round calculation.* The number of NOx allowances to be allocated to each unit will be the lesser of:

(i) the number representing the unit's CPPTE, or

(ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned NOx allowances remaining in the 92 percent portion of the Portland Cement Kiln Unit Sector Budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

Note: In this fourth round calculation NOx allowances may initially remain unassigned because the CPPTE limitation of subparagraph (c)(4)(i) of this section may affect some units sooner than others leaving some NOx allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned NOx allowances.

(d) *Non-electricity generating units.* 82 percent of the Non-Electricity Generating Unit Sector Budget established in paragraph (a)(3) of this section is available for allocation to non-electricity generating units under §204-1.4(a)(1) which are not eligible to receive NOx allowances from the New Non-Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this section. The Department will determine the number of NOx allowances to be allocated to each non-electricity generating unit from this 82 percent portion of the Non-Electricity Generating Unit Sector Budget pursuant to the following procedures:

(1) *First round calculation.*

(i) *Units which have not previously received NOx allowances from the Department general account established for the distribution of NOx allowances allocated to the New Non-Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this*

section.

(a) For the control periods in 2003 through 2007 NOx allowances will be allocated as follows:

	Unit No.	NOx allowances
(1)	010025000013	125
(2)	010025000014	125
(3)	010025000015	306
(4)	010025000016	36
(5)	010025000041	268
(6)	010025000042	268
(7)	010025000043	342
(8)	010025000044	251
(9)	880024000018	53
(10)	054099000044	227
(11)	0540880N01PB	124
(12)	002496BLR071	38
(13)	002496BLR072	38
(14)	002496BLR081	38
(15)	002496BLR082	38
(16)	002500BLR001	17
(17)	002500BLR002	17
(18)	002500BLR003	17

(b) For the 2008 control period and every control period thereafter,

(1) If the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is less than or equal to 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by 0.17 lb/mmBtu.

(2) If the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is greater than 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 .

(ii) *Units which have previously received NOx allowances from the Department general account established for the distribution of NOx allowances allocated to the New Non-Electricity Generating Unit Sector Set-Aside Allocation under subdivision (e) of this section.* For every control period for which NOx allowances will be allocated, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the Department must submit the NOx allocations to the Administrator pursuant to §204-5.2(b) by 0.17 lb/mmBtu.

(2) *Second round calculation.*

(i) When the sum of the first round calculation results for all non-electricity generating units is greater than or equal to the number representing the 82 percent portion of the Non-Electricity Generating Unit Sector Budget:

(a) For units covered by clause (d)(1)(i)(a) or subclause (d)(1)(i)(b)(1) of this section, the allocation factor is one.

(b) For units covered by subclause (d)(1)(i)(b)(2) and subparagraph (d)(1)(ii) of this section, determine the allocation factor by dividing the total of the 82 percent portion of the Non-Electricity Generating Unit Sector Budget minus the sum of the first round calculation results for units covered by subclause (d)(1)(i)(b)(1) by the sum of the first round calculation results for units covered by subclause (d)(1)(i)(b)(2) and subparagraph (d)(1)(ii).

(ii) When the sum of the first round calculation results for all non-

electricity generating units is less than the number representing the 82 percent portion of the Non-Electricity Generating Unit Sector Budget, determine the allocation factor by dividing the 82 percent portion of the Non-Electricity Generating Unit Sector Budget by the sum of the first round calculations for all non-electricity generating units.

(3) *Third round calculation.* Multiply the allocation factor by each unit's first round calculation result.

(4) *Fourth round calculation.* The number of NO_x allowances to be allocated to each unit will be the lesser of:

(i) the number representing the unit's CPPTE, or

(ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned NO_x allowances remaining in the 82 percent portion of the Non-Electricity Generating Unit Sector Budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

Note: In this fourth round calculation NO_x allowances may initially remain unassigned because the CPPTE limitation of subparagraph (d)(4)(i) of this section may affect some units sooner than others leaving some NO_x allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned NO_x allowances.

(e) *New unit sector set-aside allocations.* For each control period, the Department will determine NO_x allowances distributions to any NO_x Budget unit under §204-1.4 that commenced operation, or is projected to commence operation, in New York State on or after May 1, 1998, in accordance with the following procedures:

(1) The Department will establish individual new unit sector set-aside allocations for each control period. These set-aside allocations are as follows:

(i) *New Electricity Generating Unit Sector Set-Aside Allocation.* The new electricity generating unit set-aside allocation will consist of 5 percent of the Electricity Generating Unit Sector Budget set forth at paragraph (a)(1) of this section.

(ii) *New Portland Cement Kiln Unit Sector Set-Aside Allocation.* The new Portland cement kiln unit set-aside allocation will consist of 5 percent of the Portland Cement Kiln Unit Sector Budget set forth at paragraph (a)(2) of this section.

(iii) *New Non-Electricity Generating Unit Sector Set-Aside Allocation.*

The New Non-Electricity Generating Unit Set-Aside Allocation will consist of 15 percent of the Non-Electricity Generating Unit Sector Budget set forth at paragraph (a)(3) of this section.

(2) The Department will open and manage individual general accounts for each of the new unit sector set-aside allocations established in paragraph (e)(1) of this section.

(3) Only NOx Budget units under §204-1.4(a) may receive NOx allowances from the new unit sector set-aside allocations established in paragraph (e)(1) of this section. No unit that becomes a NOx Budget unit by opting-in under Subpart 204-9 may receive NOx allowances from these new unit sector set-aside allocations.

(4) NOx allowances may be transferred to NOx Budget units for no more than four control periods, 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 the NOx Budget unit will receive an allocation pursuant to subdivisions (b), (c), or (d) of this section.

(5) The NOx authorized account representative of a NOx Budget unit may submit a written request to the Department to reserve for the NOx Budget unit a number of NOx allowances in the relevant new unit sector set-aside allocation general account in an amount no greater than the number representing the unit's CPPTE. The reservation request must be submitted prior to May 1 of the control period to which the reservation request pertains. The Department will not consider any request for the reservation of NOx allowances that is submitted prior to the issuance to the NOx Budget unit of all permits and authorizations by the Department that are necessary for operation of the NOx Budget unit. The reservation request must include information detailing the CPPTE of the NOx Budget unit.

(6) Subject to the number of NOx allowances allocated to each general account established pursuant to paragraph (e)(2) of this section, following Department approval of the request for reservation of NOx allowances, the Department will reserve NOx allowances in the relevant new unit sector set-aside allocation general account for each control period preceding the control period for which the NOx Budget unit will receive an allocation pursuant to subdivisions (b), (c), or (d) of this section in an amount no greater than the NOx Budget unit's CPPTE.

(7) If more than one NOx Budget unit requests the reservation of NOx allowances and the number of requested NOx allowances exceeds the allocation to the relevant new unit sector set-aside allocation general account, the Department will reserve NOx allowances from the account for the units in the order in which the NOx Budget units submitted approvable reservation requests. For the purposes of this paragraph, requests will be considered simultaneous if they are made in the same calendar quarter. Should approvable reservation requests in excess of the allocation to the relevant new unit sector set-aside allocation general account be submitted in the same calendar quarter by different NOx Budget units, the Department

will reserve NOx allowances for those units on a basis proportional to the number of NOx allowances requested by each NOx Budget unit.

(8) By September 30 of each year, the Department will transfer reserved NOx allowances to the compliance account of the relevant NOx Budget unit in an amount no greater than the number representing the unit's CPPTE.

(9) *Flowback of undistributed NOx allowances from the new unit sector set-aside allocations.* After making the deductions for compliance under §204-6.5(b) or (e) for a control period, the Department will determine whether any NOx allowances remain in the new unit sector set-aside allocation general accounts for the control period. Subject to the condition that no NOx allowances will be transferred to a NOx Budget unit's compliance account which are in excess of the unit's CPPTE, the Department will transfer any such remaining NOx allowances from the relevant new unit sector set-aside allocation general accounts to the compliance account of each NOx Budget unit that was allocated NOx allowances pursuant to subdivisions (b), (c), or (d) of this section using the methodology:

Existing NOx Budget unit's share of NOx allowances remaining in the relevant new unit sector set-aside allocation general account = Total NOx allowances remaining in the relevant new unit sector set-aside allocation general account x (the individual NOx Budget unit's NOx allowance allocation determined in accordance with subdivision (b), (c), or (d) of this section ÷ the available portion of the relevant Sector Budget)

Where:

“Total NOx allowances remaining in relevant new unit sector set-aside allocation general account” is the total number of NOx allowances remaining in the new unit sector set-aside allocation general account (established under paragraph (e)(2) of this section) for the particular control period and Sector Budget to which the new unit sector set-aside allocation applies;

“the individual NOx Budget unit's NOx allowance allocation” is the number of NOx allowances allocated under subdivisions (b), (c) or (d) of this section to the individual NOx Budget unit for the control period to which the relevant new unit sector set-aside allocation applies; and

“available portion of the Sector Budget” is that portion of the relevant Sector Budget available for allocation to NOx Budget units under subdivisions (b), (c), or (d) of this section (for example, 92 percent of the Electricity Generating Unit Sector Budget is available for allocation to electricity generating units under subdivision (b) of this section).

Note: In this flowback methodology NOx allowances may initially remain unassigned because the CPPTE limitation under this subdivision may affect some units sooner than others leaving some NOx allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order

to allocate all remaining unassigned NOx allowances.

The Department will only transfer NOx allowances in whole ton increments. The Department will continue to hold any fractional shares of NOx allowances in the name of the NOx Budget unit as banked NOx allowances until they may be combined with other fractional shares of NOx allowances in future years and then transferred as whole ton increments.

(f) *Energy Efficiency and Renewable Energy Set-Aside Allocation.* The Energy Efficiency and Renewable Energy Set-Aside Allocation will consist of 3 percent of the New York State Trading Program Budget set forth in §204-5.1. For each control period, the Department will determine NOx allowance distributions from the Energy Efficiency and Renewable Energy Set-Aside Allocation in accordance with the following procedures.

(1) The Department will open and manage a general account for the Energy Efficiency and Renewable Energy Set-Aside Allocation for each control period.

(2) Project sponsors of any of the following types of projects in New York State may be eligible for the receipt of NOx allowances from the Energy Efficiency and Renewable Energy Set-Aside Allocation:

(i) End-use efficiency projects.

(ii) Renewable energy projects.

(iii) In-plant energy efficiency projects.

(iv) Fossil fuel fired electricity generating units which produce electricity more efficiently than the annual average heat rate attributable to all fossil fuel fired electricity generated in New York State and non-electricity generating units which exceed a thermal efficiency greater than 80 percent.

(3) The NOx authorized account representative of a project sponsor may submit a written request to the Department to reserve a number of NOx allowances in the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account. The reservation request must be submitted by July 1 after the control period for which the request is being made and must include information to assure that projects demonstrate creditable NOx emissions reductions or avoidances during the control period in accordance with Department measurement and verification protocols.

(4) The Department will give first priority in reserving NOx allowances in the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account to sponsors of eligible end-use energy efficiency projects and renewable energy projects. Project sponsors of in-plant energy efficiency projects or fossil fuel fired electricity generating units which achieve an annual average heat rate that is more efficient than the annual average heat rate

attributable to all fossil fuel fired electricity generated in New York State shall only have reservation requests granted after the Department has satisfied all approved NOx allowance reservation requests related to end-use energy efficiency projects and renewable energy projects.

(5) If more than one project sponsor of an end-use energy efficiency project or renewable energy project requests the reservation of NOx allowances and the number of NOx allowances that are subject to Department approved requests exceeds the number of NOx allowances in the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account, the Department will reserve NOx allowances from the account for the project sponsors in the order in which the project sponsors submitted approvable reservation requests. For the purposes of this paragraph, requests will be considered simultaneous if they are made in the same calendar quarter. Should approvable reservation requests in excess of the allocation to the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account be submitted in the same calendar quarter by different project sponsors, the Department will reserve NOx allowances for those project sponsors on a basis proportional to the number of NOx allowances requested by each project sponsor.

(6) If after the Department has satisfied all approvable NOx allowance reservation requests related to end-use energy efficiency projects and renewable energy projects, more than one in-plant energy efficiency project or unit which produces electricity more efficiently than the annual average heat rate attributable to all fossil fuel-fired electricity generated in New York State requests the reservation of NOx allowances and the number of NOx allowances that are subject to Department approved reservation requests exceeds the number of NOx allowances remaining in the Energy Efficiency and Renewable Energy Set-Aside Allocation general account, the Department will reserve NOx allowances in the account for the project sponsors in the order in which the project sponsors submitted approvable reservation requests. For the purposes of this paragraph, requests will be considered simultaneous if they are made in the same calendar quarter. Should approvable reservation requests in excess of the remaining allocation to the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account be submitted in the same calendar quarter by different project sponsors, the Department will reserve NOx allowances for those project sponsors on a basis proportional to the number of NOx allowances requested by each project sponsor.

(7) Project sponsors of end-use energy efficiency projects, renewable energy projects, and/or in-plant energy efficiency projects may request the reservation of NOx allowances for any control period, or portion thereof, that is within five years following project implementation.

(8) The Department will distribute NOx allowances from the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account to the general account of a project sponsor within two years from the start of the control period for which the request was made.

(9) No NOx allowances will be reserved or distributed for the early implementation of projects. Project sponsors may receive NOx allowances only for projects achieving creditable NOx emissions reductions or avoidances during control periods starting on May 1, 2003.

(10) *Flowback of undistributed NOx allowances from the Energy Efficiency and Renewable Energy Set-Aside Allocations.* After making the distributions to project sponsors under this subdivision and subject to the condition that no NOx allowances will be transferred to a NOx Budget unit's compliance account which are in excess of the unit's CPPTE, the Department will transfer any remaining NOx allowances from the relevant Energy Efficiency and Renewable Energy Set-Aside Allocation general account to the compliance account of each NOx Budget unit that was allocated NOx allowances pursuant to subdivisions (b), (c), or (d) of this section using the following:

Existing NOx Budget Unit's share of NOx allowances remaining in the Energy Efficiency and Renewable Energy Set-Aside Allocation general account = Total NOx allowances remaining in the Energy Efficiency and Renewable Energy Set-Aside Allocation general account x (the individual NOx Budget Unit's NOx allowance allocation ÷ the sum of available portions of the Sector Budget)

Where:

“Total NOx allowances remaining in Energy Efficiency and Renewable Energy Set-Aside Allocation general account” is the total number of NOx allowances remaining in the Energy Efficiency and Renewable Energy Set-Aside Allocation general account (established under paragraph (f)(1) of this section) for the particular control period and Sector Budget to which the set-aside allocation applies;

“the individual NOx Budget Unit's NOx allowance allocation” is the number of NOx allowances allocated under subdivisions (b), (c) or (d) of this section to the individual NOx Budget unit for the control period to which the Energy Efficiency and Renewable Energy Set-Aside Allocation applies; and

“available portion of the Sector Budget” is that portion of the relevant Sector Budget available for allocation to NOx Budget Units under subdivisions (b), (c), or (d) of this section (for example, 92 percent of the Electricity Generating Unit Sector Budget is available for allocation to electricity generating units under subdivision (b) of this section).

Note: In this flowback methodology NOx allowances may initially remain unassigned because the CPPTE limitation under this subdivision may affect some units sooner than others leaving some NOx allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order to allocate all remaining unassigned NOx allowances.

The Department will only transfer NOx allowances in whole ton increments. The Department will continue to hold any fractional shares of NOx allowances in the name of the NOx Budget unit as banked NOx allowances until they may be combined with other fractional shares of NOx allowances in future years and then transferred as whole ton increments.

(g) *Compliance supplement pool.* The Department will distribute no more than 2,370 NOx allowances from the compliance supplement pool established by the Administrator under 40 CFR §51.121 in accordance with the following procedures:

(1) For all NOx Budget units which are also budget sources under the provisions of Subpart 227-3, the Department will determine the total number of banked NOx allowances of 2000, 2001 and 2002 vintage existing in accounts held by all of those budget sources by April 1, 2003.

(2) If the total number of banked NOx allowances determined pursuant to paragraph (g)(1) of this section is equal to or less than 2,370, the Department will distribute one NOx allowance from the compliance supplement pool to the compliance account of each NOx Budget unit for each banked NOx allowance remaining in the accounts of that unit held pursuant to the provisions of Subpart 227-3.

(3) If the total number of banked NOx allowances determined pursuant to paragraph (g)(1) of this section is greater than 2,370, the Department will distribute NOx allowances from the compliance supplement pool to the compliance accounts of each NOx Budget unit using the following:

Number of NOx allowances distributed from the compliance supplement pool to the compliance account of each NOx Budget = Number of banked NOx allowances in accounts of NOx Budget units as budget sources under Subpart 227-3 x $(2,370 \div \text{total number of banked NOx allowances in compliance accounts or compliance overdraft accounts of NOx Budget units as budget sources under Subpart 227-3})$

(4) By May 1, 2003, the Department will submit to the Administrator the allocations of NOx allowances determined under paragraphs (g)(2) or (3) of this section, as appropriate. The Administrator will record such allocations.

(5) NOx allowances allocations recorded under paragraph (g)(4) of this section may be deducted for compliance under §204-6.5 for the control periods in 2003 or 2004. Notwithstanding §204-6.6(a), the Administrator will deduct as retired any NOx allowance that is recorded under paragraph (g)(4) of this section and is not deducted for compliance in accordance with §204-6.5 for the control period in 2003 or 2004. NOx allowances recorded under paragraph (g)(4) of this section are treated as banked NOx allowances in 2004 for the purposes of §204-6.6(a) and (b).

Subpart 204-6 NOx Allowance Tracking System

§204-6.1 NOx Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with §204-6.2(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with two or more NOx Budget units. Allocations of NOx allowances pursuant to Subpart 204-5 or §204-9.9 and deductions or transfers of NOx allowances pursuant to §204-4.2, §204-6.5, §204-6.7, Subpart 204-7, or Subpart 204-9 will be recorded in the compliance accounts or overdraft accounts in accordance with this Subpart.

(b) *Nature and function of general accounts.* Consistent with §204-6.2(b), the Administrator will establish, upon request, a general account for any person. Transfers of NOx allowances pursuant to Subpart 204-7 will be recorded in the general account in accordance with this Subpart.

§204-6.2 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under §204-2.4, 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 NOx 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 NOx 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 NOx 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 Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this 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 subparagraph (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 NOx 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 NOx 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.

§204-6.3 NOx Allowance Tracking System responsibilities of NOx authorized account representative.

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

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

§204-6.4 Recordation of NOx allowance allocations.

(a) The Administrator will record the NOx allowances for 2003 in the NOx Budget units' compliance accounts and the allocation set-asides, as allocated under Subpart 204-5. The Administrator will also record the NOx allowances allocated under §204-9.9(a)(1) for each NOx Budget opt-in unit 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 §204-6.5, the Administrator will record NOx allowances, as allocated to the unit under Subpart 204-5 or under §204-9.9(a)(2), in the compliance account for the year after the last year for which NOx allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under Subpart 204-5, in the allocation set-aside for the year after the last year for which NOx 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.

§204-6.5 Compliance.

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

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

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under §204-7.1 by the NOx allowance transfer deadline for that control period.

(b) *Deductions for compliance.*

(1) Following the recordation, in accordance with §204-7.2, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under subdivision (a) of this section to cover the unit's NOx emissions (as determined in accordance with Subpart 204-8):

(i) From the compliance account; and

(ii) Only if no more NOx allowances available under subdivision (a) of this section remain in the compliance account, from the overdraft account. In deducting NOx 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 subparagraph (b)(1)(i) of this section and then under subparagraph (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 204-8, from the unit for the control period for which compliance is being determined; or

(ii) Until no more NOx allowances available under subdivision (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 subdivision (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with §204-4.1.

(2) *First-in, first-out.* The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a

partial identification of NO_x 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 NO_x allowances that were allocated for the control period to the unit under Subpart 204-5 or 204-9;

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Subpart 204-7, in order of their date of recordation;

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under Subpart 204-5 or 204-9; and

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Subpart 204-7, in order of their date of recordation.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subdivision (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 NO_x 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 NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(3) Any NO_x allowance deduction required under subdivision (d) of this section shall not affect the liability of the owners and operators of the NO_x 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 Act 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 NO_x 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 204-8:

(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 §204-4.1.

(2) Notwithstanding subparagraph (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 204-8, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit..

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

§204-6.6 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 §204-4.2, §204-6.5, §204-6.7, Subpart 204-7, or Subpart 204-9.

(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 §204-6.5.

(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 §204-6.5.

(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 NOx allowance may be deducted for compliance in accordance with §204-6.5, 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 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 §204-6.5. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with §204-6.5, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under §204-6.5.

§204-6.7 Account error.

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

§204-6.8 Closing of general accounts.

(a) The NOx authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account

from the NOx Allowance Tracking System and by correctly submitting for recordation under §204-7.1 a NOx 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 §204-7.1 or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart 204-7 NOx Allowance Transfers

§204-7.1 Submission of NOx allowance transfers.

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

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

§204-7.2 EPA recordation.

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

- (1) The transfer is correctly submitted under §204-7.1;

(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 §204-6.4(b).

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

§204-7.3 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO_x allowance transfer under §204-7.2, 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 §204-7.2(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 204-8 Monitoring and Reporting

§204-8.1 General Requirements.

The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring and reporting

requirements as provided in this Subpart and in Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in §204-1.2 and in 40 CFR §72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in 40 CFR Part 75 shall be replaced by the terms “NOx Budget unit,” “NOx authorized account representative,” and “continuous emission monitoring system” (or “CEMS”), respectively, as defined in §204-1.2.

(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 204-9:

(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 40 CFR §§75.71 and 75.72.

(2) Install all monitoring systems for monitoring heat input, if required under §204-8.7 for developing NOx allowance allocations.

(3) Successfully complete all certification tests required under §204-8.2 and meet all other provisions of this Subpart and 40 CFR Part 75 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 under §204-1.4 that commence operation before January 1, 2002, must comply with the requirements of this Subpart by May 1, 2002.

(2) NOx Budget units under §204-1.4 that commence operation on or after January 1, 2002 and that report on an annual basis under §204-8.5(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 §204-1.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(3) NOx Budget units under §204-1.4 that commence operation on or after January 1, 2002 and that report on a control season basis under §204-8.5(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 §204-1.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(ii) However, if the applicable deadline under subparagraph (b)(3)(i) of this section does not occur during a control period, May 1; immediately following the date determined in accordance with subparagraph (b)(3)(i) of this section.

(4) For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1) or (b)(2) of this section or Subpart 204-9:

(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 §204-8.5(d) and the applicable deadline under subparagraph (b)(4)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in subparagraph (b)(4)(i) of this section.

(5) 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 204-9.

(c) *Reporting data prior to initial certification.* The owner or operator of a NOx Budget unit under paragraphs (b)(2) or (b)(3) 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 40 CFR §75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(d) *Prohibitions.*

(1) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR §75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with §204-8.6.

(2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR §75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this Subpart and 40 CFR Part 75 except as provided for in 40 CFR §75.74.

(3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR §75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this Subpart and 40 CFR Part 75 except as provided for in 40 CFR §75.74.

(4) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under 40 CFR §75.72(b)(2)(ii) shall 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) 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 40 CFR Part 75, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the discontinued monitoring system; or

(ii) The NOx authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with §204-8.2(b)(2).

§204-8.2 Initial certification and recertification procedures.

(a) The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR §75.17(a) or (b) for apportioning the NOx emission rate measured in a common stack or a

petition under 40 CFR §75.66 for an alternative to a requirement in 40 CFR §75.17, the NOx authorized account representative shall resubmit the petition to the Administrator under §204-8.6(a) to determine if the approval applies under the NOx Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in 40 CFR §75.72, or for any NOx concentration CEMS used under the provisions of 40 CFR §75.71(a)(2), the owner or operator shall meet the requirements of subdivision (b) of this section.

(b) The owner or operator of a NOx Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR §75.19 shall also meet the requirements of subdivision (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall also meet the requirements of subdivision (d) of this section. The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR §75.72, or that uses a NOx concentration CEMS under 40 CFR §75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by Subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR §75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in §204-8.1(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 40 CFR §75.20 is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the requirements of 40 CFR §75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR §75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR §75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

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

(i) *Notification of certification.* The NOx authorized account representative shall submit to the Department and the EPA Region 2 Office a written notice of the dates of certification in accordance with §204-8.4.

(ii) *Certification application.* The NOx authorized account representative shall submit to the Department a certification application for each monitoring system required under Subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in Subpart H of 40 CFR Part 75.

(iii) Except for units using the low mass emission excepted methodology under 40 CFR §75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR §75.20(a)(3). A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under subparagraph (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 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

(iv) *Certification application formal approval process.* The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subparagraph (b)(3)(ii) of this section. In the event the Department does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the 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 40 CFR Part 75, then the Department 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 subparagraph (b)(3)(ii) of this section has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the 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 Department may issue a notice of disapproval under clause (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 clause (b)(3)(iv)(b) of this section has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subparagraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

(d) *Audit decertification.* The Department may issue a notice of disapproval of the certification status of a monitor in accordance with §204-8.3(b).

(v) *Procedures for loss of certification.* If the Department issues a notice of disapproval of a certification application under clause (b)(3)(iv)(c) of this section or a notice of disapproval of certification status under clause (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 40 CFR §75.20(a)(5)(i):

(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 40 CFR §75.19, 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 40 CFR Part 75;

(b) The NO_x authorized account representative shall submit to the Department a notification of certification retest dates and a new certification application in accordance with subparagraphs (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 Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(c) *Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR §75.19.* The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR §75.19 shall meet the applicable general operating requirements of 40 CFR §75.10, the applicable requirements of 40 CFR §75.19, and the applicable certification requirements of §204-8.2, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program, as of the following dates:

(1) For units that are reporting on an annual basis under §204-8.5(d)

(i) For a unit that has commences operation before its compliance deadline under §204-8.2(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR §75.19 until the completion of the period for the Department review; or

(ii) For a unit that commences operation after its compliance deadline under §204-8.2(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR §75.19 until the completion of the period for Department review, or

(2) For units that are reporting on a control period basis under §204-8.5(b)(3)(ii):

(i) For a unit that commenced operation before its compliance deadline under §204-8.2(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR §75.19 until the completion of the period for the Department review; or

(ii) For a unit that commenced operation before its compliance deadline under §204-8.2(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR §75.19 until the completion of the period for the Department review; or

(iii) For a unit that commences operation after its compliance deadline under §204-8.2(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the Department's review.

(iv) For a unit that has not operated after its compliance deadline under §204-8.2(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR §75.19 until the completion of the period for the

Department's review.

(d) *Certification/recertification procedures for alternative monitoring systems.* The 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 Department under Subpart E of 40 CFR Part 75 shall apply for certification to the Department 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 subdivision (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 40 CFR §75.20(f).

§204-8.3 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D, appendix D, or appendix E of 40 CFR Part 75.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §204-8.2 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subdivision, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in §204-8.2 for each disapproved system.

§204-8.4 Notifications.

The NOx authorized account representative for a NOx Budget unit shall submit written notice to the Department and the EPA Region 2 Office in accordance with 40 CFR §75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only

required to be sent to the Department.

§204-8.5 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 §204-2.1(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 40 CFR Part 75 and which includes data and information required under this Subpart or Subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission must also be signed by the designated representative or the alternative designated representative.

(b) *Monitoring plans.*

(1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR §75.62, except that the monitoring plan shall also include all of the information required by Subpart H of 40 CFR Part 75.

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

(c) *Certification Applications.* The NOx authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under §204-8.2 including the information required under Subpart H of 40 CFR Part 75.

(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 204-8, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For units commencing operation prior to May 1, 2002 that are not

required to certify monitors by May 1, 2000 under §204-8.1(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under §204-8.2(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

(ii) 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 40 CFR 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 40 CFR §75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR §75.74(b). The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(a) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under §204-8.1(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under §204-8.2(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

(b) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or

(c) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under §204-8.2(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.

(d) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under §204-8.2(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 NO_x authorized account representative shall submit each quarterly report to the Department and the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR §75.64.

(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 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack) as well as information required in Subpart G of 40 CFR Part 75.

(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 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack).

(4) *Compliance certification.* The NO_x authorized account representative shall submit to the Department and 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 40 CFR Part 75, including the quality assurance procedures and specifications; and

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR §75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and

(iii) For a unit that is reporting on a control period basis under §204-8.5(d) the NO_x emission rate and NO_x concentration values substituted for missing data under Subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§204-8.6 Petitions for alternatives.

(a) The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Administrator requesting approval to apply an alternative to any requirement of this 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 Department.

(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 40 CFR §75.72, the petition is governed by subdivision (b) of this section.

(b) The NO_x authorized account representative of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Department and the Administrator requesting approval to apply an alternative to any requirement of this Subpart.

(1) The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Department and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR §75.72 or a NO_x concentration CEMS used under 40 CFR §75.71(a)(2).

(2) Application of an alternative to any requirement of this Subpart is in accordance with this Subpart only to the extent the petition under subdivision (b) of this section is approved by both the Department and the Administrator.

§204-8.7 Additional requirements to provide heat input data for allocations purposes.

The owner or operator of a unit that elects to monitor and report NO_x Mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75.

Subpart 204-9 Individual Opt-ins

§204-9.1 Applicability.

A unit that is not a NOx Budget unit under §204-1.4, vents all of its emissions to a stack, and is operating, may qualify, under this Subpart, to become a NOx Budget opt-in unit.

§204-9.2 General.

Except otherwise as provided in this Part, a NOx Budget opt-in unit shall be treated as a NOx Budget unit for purposes of applying Subparts 204-1 through 204-8.

§204-9.3 NOx authorized account representative.

A unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, or a NOx Budget opt-in unit, 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.

§204-9.4 Applying for NOx Budget opt-in permit.

Applying for NOx Budget opt-in permit. In order to apply for a NOx Budget opt-in permit, the NOx authorized account representative of a unit qualified under §204-9.1 may submit to the Department at any time, except as provided under §204-9.7(g):

- (a) A complete NOx Budget permit application under §204-3.3;
- (b) A monitoring plan submitted in accordance with Subpart 204-8; and
- (c) A complete account certificate of representation under §204-2.4, if no NOx authorized account representative has been previously designated for the unit.

§204-9.5 Opt-in process.

The Department will issue or deny a NOx Budget opt-in permit for a unit for which an initial application for a NOx Budget opt-in permit under §204-9.4 is submitted, in accordance with §204-3.1 and the following:

(a) *Interim review of monitoring plan.* The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the application for a NOx Budget opt-in permit under §204-9.4. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input of the unit are monitored and reported in accordance with Subpart 204-8. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the Department determines that the unit's monitoring plan is sufficient under subdivision (a) of this section and after completion of monitoring system certification under Subpart 204-8, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with Subpart 204-8 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 subdivision (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx mass emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under subdivision (c) of this section, the Department will serve a NOx Budget opt-in permit on the NOx authorized account representative of the unit.

(e) *Issuance of NOx Budget opt-in permit.* The Department will issue the NOx Budget opt-in permit in accordance with §204-3.1.

(f) *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 §204-9.4 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under §204-9.4.

(g) *Effective date.* The effective date of the NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the Department. The unit shall be a NOx Budget opt-in unit and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

§204-9.6 NOx Budget opt-in permit contents.

Each NOx Budget opt-in permit will contain all elements required for a complete NOx Budget opt-in permit application under §204-3.3 as approved or adjusted by the Department.

§204-9.7 Withdrawal from NOx Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the NOx Budget Trading Program, the NOx authorized account representative of a NOx Budget opt-in unit shall submit to the Department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NOx Budget opt-in unit covered by a request under subdivision (a) of this section may withdraw from the NOx Budget Trading Program and the NOx Budget opt-in permit may be terminated under subdivision (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 Department an annual compliance certification report in accordance with §204-4.1.

(2) If the NOx Budget opt-in unit 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 unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in unit is located, the full amount required under §204-6.5(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 unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in unit 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 §204-9.9 for any control period for which the withdrawal is to be effective. The Administrator will close the NOx Budget opt-in unit's compliance account and will establish, and transfer any remaining NOx allowances to, a new general account for the owners and operators of the NOx Budget opt-in unit. The NOx authorized account representative for the NOx Budget opt-in unit shall become the NOx authorized account representative for the general account.

(c) A NOx Budget opt-in unit 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 unit was a NOx Budget opt-in unit, even if such requirements

arise or must be complied with after the withdrawal takes effect.

(d) *Notification.*

(1) After the requirements for withdrawal under subdivisions (a) and (b) of this section are met (including deduction of the full amount of NOx allowances required), the Department will issue a notification to the NOx authorized account representative of the NOx Budget opt-in unit of the acceptance of the withdrawal of the NOx Budget opt-in unit 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 subdivisions (a) and (b) of this section are not met, the Department will issue a notification to the NOx authorized account representative of the NOx Budget opt-in unit that the NOx Budget opt-in unit's request to withdraw is denied. If the NOx Budget opt-in unit's request to withdraw is denied, the NOx Budget opt-in unit shall remain subject to the requirements for a NOx Budget opt-in unit.

(e) *Permit revision.* After the Department issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the Department will revise the permit issued pursuant to Part 201 covering the NOx Budget opt-in unit 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 unit shall continue to be a NOx Budget opt-in unit until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the Department denies the NOx Budget opt-in unit's request to withdraw, the NOx authorized account representative may submit another request to withdraw in accordance with subdivisions (a) and (b) of this section.

(g) *Ability to return to the NOx Budget Trading Program.* Once a NOx Budget opt-in unit 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 §204-9.4 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.

§204-9.8 Change in regulatory status.

(a) *Notification.* When a NOx Budget opt-in unit becomes a NOx Budget unit under §204-1.4, the NOx authorized account representative shall notify in writing the Department and the Administrator of such change in the NOx Budget opt-in unit's regulatory status, within 30 days of such change.

(b) *Department's and Administrator's action.*

(1) (i) When the NOx Budget opt-in unit becomes a NOx Budget unit under §204-1.4, the Department will revise the NOx Budget opt-in unit's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under §204-3.4 as of an effective date that is the date on which such NOx Budget opt-in unit becomes a NOx Budget unit under §204-1.4.

(ii) (a) The Administrator will deduct from the compliance account for the NOx Budget unit under subparagraph (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 unit) under §204-9.9 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 subparagraph (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 unit) under §204-9.9 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subparagraph (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 subparagraph (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 clause (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 subparagraph (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 §204-5.3, as a unit that commenced operation on the effective date of the NOx Budget permit revision under subparagraph (b)(1)(i) of this section and will be allocated NOx allowances under §204-5.3.

(b) Notwithstanding clause (b)(1)(iii)(A) of this section, if the effective date of the NOx Budget permit revision under subparagraph (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 subparagraph (b)(1)(i) of this section under §204-5.3 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under §204-5.3 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 subparagraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(2) (i) If the NOx Budget opt-in permit of a NOx Budget opt-in unit is revoked by the Department or is allowed to expire by the source, 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 unit 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 unit under §204-9.9 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 unit's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in unit 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 subparagraph (b)(2)(i) of this section is completed, the Administrator will close the NOx Budget opt-in unit's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under §204-6.5, the Administrator will close the NOx Budget opt-in unit's compliance account and will establish, and transfer any remaining NOx allowances to, a new general account for the owners and operators of the NOx Budget opt-in unit. The NOx authorized account representative for the NOx Budget opt-in unit shall become the NOx authorized account representative for the general account.

§204-9.9 NOx allowance allocations to opt-in units.

(a) *NOx allowance allocation.*

(1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the Department will allocate NOx allowances to the NOx Budget opt-in unit and submit to the Administrator the allocation for the control period in accordance with subdivision (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 Department will allocate NOx allowances to the NOx Budget opt-in unit, and submit to the Administrator allocations for the next control period, in accordance with subdivision (b) of this section.

(b) For each control period for which the NOx Budget opt-in unit has an approved NOx Budget opt-in permit, the NOx Budget opt-in unit 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 unit's baseline heat input determined pursuant to §204-9.5(c); or

(ii) The NOx Budget opt-in unit's heat input, as determined in accordance with Subpart 204-8, for the control period in the year prior to the year of the control period for which the NOx allocations are being calculated.

(2) The Department will allocate NOx allowances to the NOx Budget opt-in unit 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 unit's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to §204-9.5(c); or

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

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