

### Subpart A—NO<sub>x</sub> Budget Trading Program General Provisions

#### § 97.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the federal NO<sub>x</sub> Budget Trading Program, under section 126 of the CAA and § 52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

#### § 97.2 Definitions.

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

*Account number* means the identification number given by the Administrator to each NO<sub>x</sub> Allowance Tracking System account.

*Acid Rain emissions limitation* means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

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

*Allocate or allocation* means, with regard to NO<sub>x</sub> allowances, the determination by the Administrator of the number of NO<sub>x</sub> allowances to be initially credited to a NO<sub>x</sub> Budget unit or an allocation set-aside.

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

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

*Clean Air Act* means the Clean Air Act, 42 U.S.C. 7401 et seq.

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

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

*Commence commercial operation* means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is a NO<sub>x</sub> Budget unit under § 97.4(a) 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 § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under § 97.4(a) on the date the unit commences commercial operation, the date the unit becomes a NO<sub>x</sub> Budget unit under § 97.4(a) shall be the unit's date of commencement of commercial operation.

*Commence operation* means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 97.4(b), § 97.5, or subpart I of this part for a unit that is a NO<sub>x</sub> Budget unit under § 97.4(a) 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 § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a NO<sub>x</sub> Budget unit under § 97.4(a) on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> Budget unit under § 97.4(a) shall be the unit's date of commencement of operation.

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

*Compliance account* means a NO<sub>x</sub> Allowance Tracking System account, established by the Administrator for a NO<sub>x</sub> Budget unit under subpart F of this part, in which the NO<sub>x</sub> allowance allocations for the unit are initially recorded and in which are held NO<sub>x</sub> allowances available for use by the unit for a control period for the purpose of meeting the unit's NO<sub>x</sub> Budget emissions limitation.

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

- (1) Flow monitor;
- (2) Nitrogen oxides pollutant concentration monitors;
- (3) Diluent gas monitor (oxygen or carbon dioxide);
- (4) A continuous moisture monitor; and
- (5) An automated data acquisition and handling system.

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

*Electricity for sale under firm contract to the grid* means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

*Energy Information Administration* means the Energy Information Admin-

istration of the United States Department of Energy.

*Excess emissions* means any tonnage of nitrogen oxides emitted by a NO<sub>x</sub> Budget unit during a control period that exceeds the NO<sub>x</sub> Budget emissions limitation for the unit.

*Fossil fuel* means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

*Fossil fuel fired* means, with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(2) For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or

(3) For units that commence operation on or after January 1, 1997:

(i) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

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

*General account* means a NO<sub>x</sub> Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

*Generator* means a device that produces electricity.

*Heat input* means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by

1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the NO<sub>x</sub> authorized account representative and as determined by the Administrator in accordance with subpart H of this part. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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

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

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

*Maximum design heat input* means the ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as determined by the physical design and physical characteristics of the unit.

*Maximum potential hourly heat input* means an hourly heat input (in mmBtu/hr) used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the

maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO<sub>2</sub>) or the minimum oxygen concentration (in percent O<sub>2</sub>).

*Maximum potential NO<sub>x</sub> emission rate* means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential concentration of NO<sub>x</sub> under section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O<sub>2</sub>) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

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

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

*Most stringent State or Federal NO<sub>x</sub> emissions limitation* means, with regard to a NO<sub>x</sub> Budget opt-in unit, the lowest NO<sub>x</sub> emissions limitation (in lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

*Non-title V permit* means a federally enforceable permit administered by the permitting authority pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than

title V of the Clean Air Act and part 70 or 71 of this chapter.

*NO<sub>x</sub> allowance* means a limited authorization by the Administrator under the NO<sub>x</sub> Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under §97.54(f). No provision of the NO<sub>x</sub> Budget Trading Program, the NO<sub>x</sub> Budget permit application, the NO<sub>x</sub> Budget permit, or an exemption under §97.4(b) or §97.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except §97.41, §97.42, §97.43, or §97.88, “NO<sub>x</sub> allowance” also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State NO<sub>x</sub> Budget Trading Program established, and approved and administered by the Administrator, pursuant to §51.121 of this chapter.

*NO<sub>x</sub> allowance deduction* or *deduct NO<sub>x</sub> allowances* means the permanent withdrawal of NO<sub>x</sub> allowances by the Administrator from a NO<sub>x</sub> Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO<sub>x</sub> emissions from a NO<sub>x</sub> Budget unit for a control period, determined in accordance with subparts H and F of this part, or for any other NO<sub>x</sub> allowance withdrawal requirement under this part.

*NO<sub>x</sub> Allowance Tracking System* means the system by which the Administrator records allocations, deductions, and transfers of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Trading Program.

*NO<sub>x</sub> Allowance Tracking System account* means an account in the NO<sub>x</sub> Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO<sub>x</sub> allowances.

*NO<sub>x</sub> allowance transfer deadline* means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and

is the deadline by which NO<sub>x</sub> allowances must be submitted for recordation in a NO<sub>x</sub> Budget unit’s compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit’s NO<sub>x</sub> Budget emissions limitation for the control period immediately preceding such deadline.

*NO<sub>x</sub> allowances held* or *hold NO<sub>x</sub> allowances* means the NO<sub>x</sub> allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NO<sub>x</sub> Allowance Tracking System account.

*NO<sub>x</sub> authorized account representative* means, for a NO<sub>x</sub> Budget source or NO<sub>x</sub> Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO<sub>x</sub> Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO<sub>x</sub> Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO<sub>x</sub> allowances held in the general account.

*NO<sub>x</sub> Budget emissions limitation* means, for a NO<sub>x</sub> Budget unit, the tonnage equivalent of the NO<sub>x</sub> allowances available for compliance deduction for the unit under §97.54(a), (b), (e), and (f) in a control period adjusted by deductions of such NO<sub>x</sub> allowances to account for actual heat input under §97.42(e) for the control period or to account for excess emissions for a prior control period under §97.54(d) or to account for withdrawal from the NO<sub>x</sub> Budget Trading Program, or for a change in regulatory status, of a NO<sub>x</sub> Budget opt-in unit under §97.86 or §97.87.

*NO<sub>x</sub> Budget opt-in permit* means a NO<sub>x</sub> Budget permit covering a NO<sub>x</sub> Budget opt-in unit.

*NO<sub>x</sub> Budget opt-in unit* means a unit that has been elected to become a NO<sub>x</sub> Budget unit under the NO<sub>x</sub> Budget Trading Program and whose NO<sub>x</sub> Budget opt-in permit has been issued and is in effect under subpart I of this part.

*NO<sub>x</sub> Budget permit* means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO<sub>x</sub> Budget Trading Program requirements applicable to a NO<sub>x</sub> Budget source, to each NO<sub>x</sub> Budget unit at the NO<sub>x</sub> Budget source, and to the owners and operators and the NO<sub>x</sub> authorized account representative of the NO<sub>x</sub> Budget source and each NO<sub>x</sub> Budget unit.

*NO<sub>x</sub> Budget source* means a source that includes one or more NO<sub>x</sub> Budget units.

*NO<sub>x</sub> Budget Trading Program* means a multistate nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with this part and pursuant to §52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

*NO<sub>x</sub> Budget unit* means a unit that is subject to the NO<sub>x</sub> Budget Trading Program emissions limitation under §97.4(a) or §97.80.

*Operating* means, with regard to a unit under §§97.22(d)(2) and 97.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO<sub>x</sub> Budget permit under §97.83(a). The unit's documented heat input will be determined in accordance with part 75 of this chapter if the unit was otherwise subject to the requirements of part 75 of this chapter during that 6-month period or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter during that 6-month period.

*Operator* means any person who operates, controls, or supervises a NO<sub>x</sub> Budget unit, a NO<sub>x</sub> Budget source, or a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under §97.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

*Opt-in* means to be elected to become a NO<sub>x</sub> Budget unit under the NO<sub>x</sub>

Budget Trading Program through a final, effective NO<sub>x</sub> Budget opt-in permit under subpart I of this part.

*Overdraft account* means the NO<sub>x</sub> Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO<sub>x</sub> Budget source where there are two or more NO<sub>x</sub> Budget units.

*Owner* means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NO<sub>x</sub> Budget unit or in a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under §97.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a NO<sub>x</sub> Budget unit or in a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under §97.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a NO<sub>x</sub> Budget unit or from a unit for which an application for a NO<sub>x</sub> Budget opt-in permit under §97.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO<sub>x</sub> Budget unit or the unit for which an application for a NO<sub>x</sub> Budget opt-in permit under §97.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO<sub>x</sub> allowances held in the general account and who is subject to the binding agreement for the NO<sub>x</sub> authorized account representative to represent that person's ownership interest with respect to NO<sub>x</sub> allowances.

*Percent monitor data availability* means, for purposes of §97.43 (a)(1) and §94.84(b), total unit operating hours for which quality-assured data were recorded under subpart H of this part in a control period, divided by 3,672 hours per control period, and multiplied by 100%.

*Permitting authority* means the State air pollution control agency, local

agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NO<sub>x</sub> Budget Trading Program in accordance with subpart C of this part.

*Potential electrical output capacity* means 33 percent of a unit's maximum design heat input.

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

*Recordation, record, or recorded* means, with regard to NO<sub>x</sub> allowances, the movement of NO<sub>x</sub> allowances by the Administrator from one NO<sub>x</sub> Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

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

*Serial number* means, when referring to NO<sub>x</sub> allowances, the unique identification number assigned to each NO<sub>x</sub> allowance by the Administrator, under §97.53(c).

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

*State* means one of the 48 contiguous States or a portion thereof or the District of Columbia that is specified in §52.34 of this chapter and in which are located units for which the Administrator makes an effective finding under §52.34 of this chapter.

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

(1) In person;  
(2) By United States Postal Service;  
or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

*Title V operating permit* means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

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

*Ton or tonnage* means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO<sub>x</sub> Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

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

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

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

### §97.3 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.  
CO<sub>2</sub>-carbon dioxide.  
hr-hour.  
kW-kilowatt electrical.  
kWh-kilowatt hour.  
lb-pounds.  
mmBtu-million Btu.  
MWe-megawatt electrical.  
NO<sub>x</sub>-nitrogen oxides.  
O<sub>2</sub>-oxygen.  
ton-2000 pounds.