

allocations, in accordance with § 97.42(d), for the control period in the year of the applicable deadline under this paragraph (d).

(e) The Administrator will make available to the public each determination of NO<sub>x</sub> allowance allocations under paragraph (b), (c), or (d) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.42. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.42.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

#### § 97.42 NO<sub>x</sub> allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> Budget unit under § 97.4(a) will be:

(i) For a NO<sub>x</sub> allowance allocation under § 97.41(a):

(A) For a unit under § 97.4(a)(1), the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998; or

(B) For a unit under § 97.4(a)(2), the control period in 1995 or, if the Administrator determines that reasonably reliable data are available for control periods in 1996 through 1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998.

(ii) For a NO<sub>x</sub> allowance allocation under § 97.41(b), the unit's average heat input for the control periods in 2002 through 2004.

(iii) For a NO<sub>x</sub> allowance allocation under § 97.41(c), the unit's average heat input for the control period in the years that are 4, 5, 6, 7, and 8 years before the first year for which the allocation is being calculated.

(2) The unit's heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter. Notwithstanding the first sentence of this paragraph (a)(2):

(i) For a NO<sub>x</sub> allowance allocation under § 97.41(a), such heat input will be determined using the best available

data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the control period.

(ii) For a NO<sub>x</sub> allowance allocation under § 97.41(b) or (c) for a unit exempt under § 97.4(b), such heat input shall be treated as zero if the unit is exempt under § 97.4(b) during the control period.

(b) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all NO<sub>x</sub> Budget units in a given State under § 97.4(a)(1) that commenced operation before May 1, 1997 for allocations under § 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of NO<sub>x</sub> allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 97.4(a)(1) for each control period in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 97.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (b)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent of such portion of the State's trading program budget. This adjustment will be made by: multiplying each unit's allocation by 95 percent of such portion of the State's trading program budget; dividing by the total number of NO<sub>x</sub> allowances allocated under paragraph (b)(1) of this section for the control period; and rounding to the nearest whole

number of NO<sub>x</sub> allowances as appropriate.

(c) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all NO<sub>x</sub> Budget units in a given State under § 97.4(a)(2) that commenced operation before May 1, 1997 for allocations under § 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of NO<sub>x</sub> allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 97.4(a)(2) for each control period in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 97.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (a)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. This adjustment will be made by: multiplying each unit's allocation by 95 percent of the portion of the State's trading program budget under § 97.40 covering such units; dividing by the total number of NO<sub>x</sub> allowances allocated under paragraph (c)(1) of this section for the control period; and rounding to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(d) For each control period specified in § 97.41(d), the Administrator will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget units in a given State under § 97.4(a) (except for units exempt under § 97.4(b))

that commence operation, or are projected to commence operation, on or after: May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)). The Administrator will make the allocations under this paragraph (d) in accordance with the following procedures:

(1) The Administrator will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO<sub>x</sub> allowances equal to 5 percent of the tons of NO<sub>x</sub> emission in the State's trading program budget under § 97.40, rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit specified in this paragraph (d) may submit to the Administrator a request, in a format specified by the Administrator, to be allocated NO<sub>x</sub> allowances for the control period. The NO<sub>x</sub> allowance allocation request must be received by the Administrator on or after the date on which the State permitting authority issues a permit to construct the unit and by January 1 before the control period for which NO<sub>x</sub> allowances are requested.

(3) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit under § 97.4(a)(1) may request for the control period NO<sub>x</sub> allowances in an amount that does not exceed the lesser of:

(i) 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO<sub>x</sub> emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours

remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(4) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for a NO<sub>x</sub> Budget unit under § 97.4(a)(2) may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed the lesser of:

(i) 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO<sub>x</sub> emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(5) The Administrator will review each NO<sub>x</sub> allowance allocation request submitted in accordance with paragraph (d)(2) of this section and will allocate NO<sub>x</sub> allowances pursuant to such request as follows:

(i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the Administrator will make any necessary adjustments to the request to ensure that the requirements of paragraphs (d) introductory text, (d)(2), (d)(3), and (d)(4) are met.

(ii) The Administrator will determine the following amounts:

(A) The sum of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(5)(i) of this section) in all NO<sub>x</sub> allowance allocation requests under paragraph (d)(2) of this section for the control period; and

(B) For units exempt under § 97.4(b) in the State that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)), the sum of the NO<sub>x</sub> emission limitations (in tons of NO<sub>x</sub>) on which each unit's exemption under § 97.4(b) is based.

(iii) If the number of NO<sub>x</sub> allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is not less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO<sub>x</sub> Budget unit for which the allocation request was submitted.

(iv) If the number of NO<sub>x</sub> allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate, to the NO<sub>x</sub> Budget unit for which the allocation request was submitted, the amount of NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(5)(i) of this section) multiplied by the number of NO<sub>x</sub> allowances in the allocation set-aside for the control period less the amount determined under paragraph (d)(5)(ii)(B) of this section, divided by the amount determined under paragraph (d)(5)(ii)(A) of this section, and rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(e)(1) For a NO<sub>x</sub> Budget unit that is allocated NO<sub>x</sub> allowances under paragraph (d) of this section for a control period, the Administrator will deduct NO<sub>x</sub> allowances under § 97.54(b), (e), or (f) to account for the actual heat input of the unit during the control period. The Administrator will calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of NO<sub>x</sub> allowance as appropriate, provided that the number of

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NO<sub>x</sub> allowances to be deducted shall be zero if the number calculated is less than zero:

NO<sub>x</sub> allowances deducted for actual heat input for a unit under § 97.4(a)(1) = Unit's NO<sub>x</sub> allowances allocated for control period - (Unit's actual control period heat input × 0.15 lb/mmBtu × 2,000 lb/ton); and NO<sub>x</sub> allowances deducted for actual heat input for a unit under § 97.4(a)(2) = Unit's NO<sub>x</sub> allowances allocated for control period - (Unit's actual control period heat input × 0.17 lb/mmBtu × 2,000 lb/ton)

Where:

"Unit's NO<sub>x</sub> allowances allocated for control period" is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under paragraph (d) of this section; and

"Unit's actual control period heat input" is the heat input (in mmBtu) of the unit during the control period.

(2) The Administrator will transfer any NO<sub>x</sub> allowances deducted under paragraph (c)(1) of this section to the allocation set-aside for the control period for which they were allocated.

(f) After making the deductions for compliance under § 97.54(b), (e), or (f) for a control period, the Administrator will determine whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the control period. The Administrator will allocate any such NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget units in the State using the following formula and rounding to the nearest whole number of NO<sub>x</sub> allowances as appropriate:

Unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = Total NO<sub>x</sub> allowances remaining in allocation set-aside × (Unit's NO<sub>x</sub> allowance allocation ÷ State's trading program budget excluding allocation set-aside)

Where:

"Total NO<sub>x</sub> allowances remaining in allocation set-aside" is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period;

"Unit's NO<sub>x</sub> allowance allocation" is the number of NO<sub>x</sub> allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

"State's trading program budget excluding allocation set-aside" is the State's trading program budget under § 97.40 for the control period to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO<sub>x</sub> allowances as appropriate.

(g) If the Administrator determines that NO<sub>x</sub> allowances were allocated under paragraph (b), (c), or (d) of this section for a control period and the recipient of the allocation is not actually a NO<sub>x</sub> Budget unit under § 97.4(a), the Administrator will notify the NO<sub>x</sub> authorized account representative and then will act in accordance with the following procedures:

(1)(i) The Administrator will not record such NO<sub>x</sub> allowances for the control period in an account under § 97.53;

(ii) If the Administrator already recorded such NO<sub>x</sub> allowances for the control period in an account under § 97.53 and if the Administrator makes such determination before making all deductions pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)) for the control period, then the Administrator will deduct from the account NO<sub>x</sub> allowances equal in number to and allocated for the same or a prior control period as the NO<sub>x</sub> allowances allocated to such recipient for the control period. The NO<sub>x</sub> authorized account representative shall ensure that the account contains the NO<sub>x</sub> allowances necessary for completion of such deduction. If account does not contain the necessary NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in the account; or

(iii) If the Administrator already recorded such NO<sub>x</sub> allowances for the control period in an account under § 97.53 and if the Administrator makes such determination after making all deductions pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)) for the control period, then the Administrator will apply paragraph (g)(1)(ii) of this section to any subsequent control period for which NO<sub>x</sub> allowances were allocated to such recipient.

(2) The Administrator will transfer the NO<sub>x</sub> allowances that are not recorded, or that are deducted, pursuant

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to paragraph (g)(1) of this section to an allocation set-aside for the State in which such source is located.

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### § 97.43 Compliance Supplement Pool.

(a) For any NO<sub>x</sub> Budget unit that reduces its NO<sub>x</sub> emission rate in the 2001 through 2003 control period, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) Each NO<sub>x</sub> Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with paragraph (a)(4) of this section shall monitor and report NO<sub>x</sub> emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's percent monitor data availability shall not be less than 90 percent during the 2000 control period, and the unit must be in full compliance with any applicable State or Federal NO<sub>x</sub> emission control requirements during 2000 through 2002.

(2) NO<sub>x</sub> emission rate and heat input under paragraphs (a)(3) and (4) of this section shall be determined in accordance with subpart H of this part.

(3) Each NO<sub>x</sub> Budget unit for which the owners and operators intend to request, or request, any early reduction credits under paragraph (a)(4) of this section shall reduce its NO<sub>x</sub> emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO<sub>x</sub> emission rate in the 2000 control period.

(4) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit that meets the requirements of paragraphs (a) (1) and (3) of this section may submit to the Administrator a request for early reduction credits for the unit based on NO<sub>x</sub> emission rate reductions made by the unit in the control period for 2001 through 2003.

(i) In the early reduction credit request, the NO<sub>x</sub> authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference be-

tween 0.25 lb/mmBtu and the unit's NO<sub>x</sub> emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

(ii) The early reduction credit request must be submitted, in a format specified by the Administrator, by February 1, 2004.

(b) For any NO<sub>x</sub> Budget unit that is subject to the Ozone Transport Commission NO<sub>x</sub> Budget Program under title I of the Clean Air Act, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) The NO<sub>x</sub> authorized account representative of the unit may submit to the Administrator a request for early reduction credits in an amount equal to the amount of banked allowances under the Ozone Transport Commission NO<sub>x</sub> Budget Program that were allocated for the control period in 2001 through 2003 and are held by the unit, in accordance with the Ozone Transport Commission NO<sub>x</sub> Budget Program, as of the date of submission of the request. During the entire control period in 2001 through 2003 for which the allowances were allocated, the unit must have monitored and reported NO<sub>x</sub> emissions in accordance with part 75 (except for subpart H) of this chapter and the Guidance for Implementation of Emission Monitoring Requirements for the NO<sub>x</sub> Budget Program (January 28, 1997).

(2) The early reduction credit request under paragraph (b)(1) must be submitted, in a format specified by the Administrator, by February 1, 2004.

(3) The NO<sub>x</sub> authorized account representative of the unit shall not submit a request for early reduction credits under paragraph (b)(1) of this section for banked allowances under the Ozone Transport Commission NO<sub>x</sub> Budget Program that were allocated for any control period during which the unit made NO<sub>x</sub> emission reductions for which he or she submits a request for early reduction credits under paragraph (a) of this section for the unit.

(c) The Administrator will review each early reduction credit request submitted in accordance with paragraph (a) or (b) of this section and will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget