

(2) *First-in, first-out.* The Administrator will deduct NO_x 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 E or I of this part;

(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 G of this part, in order of their date of rec- ordation;

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under subpart E or I of this part; 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 G of this part, in order of their date of rec- ordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for com- pliance under paragraph (b) of this sec- tion, 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 over- draft account does not contain suffi- cient NO_x allowances, the Adminis- trator will deduct the required number of NO_x allowances, regardless of the control period for which they were al- located, whenever NO_x allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO_x Bud- get unit for any fine, penalty, or assess- ment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following

guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a 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 opera- tors of the unit demonstrate that a lesser number of days should be consid- ered.

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

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

(1) The NO_x authorized account rep- resentative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's com- pliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identi- fication shall be made in the com- pliance certification report submitted in accordance with §96.30.

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

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

§96.55 Banking.

(a) NO_x allowances may be banked for future use or transfer in a compli- ance account, an overdraft account, or a general account, as follows:

Environmental Protection Agency

§ 96.55

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

(2) The Administrator will designate, as a “banked” NO_x allowance, any NO_x 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 § 96.54.

(b) Each year starting in 2004, after the Administrator has completed the designation of banked NO_x allowances under paragraph (a)(2) of this section and before May 1 of the year, the Administrator will determine the extent to which banked NO_x 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 NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x 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 NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with § 96.54.

(3) If the total number of banked NO_x 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 NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with § 96.54, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are

located and divided by the total number of banked NO_x allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

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

(c) Any NO_x Budget unit may reduce its NO_x emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NO_x allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NO_x Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NO_x emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit’s monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) NO_x emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.

(3) Each NO_x Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NO_x 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_x emission rate in the 2000 control period.

(4) The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of paragraphs (c)(1) and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(5) The permitting authority will allocate NO_x allowances, to NO_x Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.

(ii) If the State's compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted

under paragraph (c)(5)(i) of this section).

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

$$\text{Unit's allocated early reduction credits} = \frac{[(\text{Unit's adjusted early reduction credits}) / (\text{Total adjusted early reduction credits requested by all units})] \times (\text{Available NO}_x \text{ allowances from the State's compliance supplement pool})}{1}$$

where:

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

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

“Available NO_x allowances from the State's compliance supplement pool” is the number of NO_x allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NO_x allowances determined under paragraph (c)(3) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.

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

(8) NO_x allowances recorded under paragraph (c)(6) of this section are

Environmental Protection Agency

§ 96.62

treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

§ 96.56 Account error.

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

§ 96.57 Closing of general accounts.

(a) The NO_x 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 NO_x Allowance Tracking System and by correctly submitting for recordation under § 96.60 an allowance transfer of all NO_x allowances in the account to one or more other NO_x 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 NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x 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 NO_x allowances into the account under § 96.60 or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G—NO_x Allowance Transfers

§ 96.60 Submission of NO_x allowance transfers.

The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include

the following elements in a format specified by the Administrator:

(a) The numbers identifying both the transferor and transferee accounts;

(b) A specification by serial number of each NO_x allowance to be transferred; and

(c) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

§ 96.61 EPA recordation.

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

(1) The transfer is correctly submitted under § 96.60;

(2) The transferor account includes each NO_x allowance identified by serial number in the transfer; and

(3) The transfer meets all other requirements of this part.

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

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

§ 96.62 Notification.

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

(b) *Notification of non-recordation.* Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of § 96.61(a), the