

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

AIR RESOURCES DIVISION

CHAPTER Env-A 3200 NO_x BUDGET TRADING PROGRAM

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Statutory Authority: RSA 125-J:12, I

PART Env-A 3201 PURPOSE AND SCOPE

Env-A 3201.01 Purpose. The purpose of this chapter is to establish the NO_x Budget Program to supplement Env-A 1211 and Final RACT Orders ARD-97-001 and ARD-98-001, which already require reductions in emissions of nitrogen oxides. Once this program is implemented, a NO_x emission budget during each ozone season beginning in May 1999 shall be established and unused allowances may be traded in accordance with the provisions of this chapter.

Env-A 3201.02 Scope

(a) The NO_x emission budget, as established in Env-A 3203, has been determined by application of the following reduction requirements to the 1990 baseline emissions level as adopted by the Ozone Transport Commission:

(1) By May 1, 1999, the affected facilities in Hillsborough, Merrimack, Rockingham, and Strafford Counties shall reduce their combined rate of NO_x emissions by 65% from baseline level, or shall emit NO_x at a rate no greater than 0.2 pounds per million Btu, whichever is less stringent;

(2) By May 1, 2003, the affected facilities in Hillsborough, Merrimack, Rockingham, and Strafford Counties shall reduce their combined rate of NO_x emissions by 75% from baseline, or shall emit NO_x at a rate no greater than 0.15 pounds per million Btu, whichever is less stringent; and

(3) By May 1, 2003, the affected facilities in counties other than Hillsborough, Merrimack, Rockingham, and Strafford Counties shall reduce their combined rate of NO_x emissions by 55% from baseline or shall emit NO_x at a rate no greater than 0.20 pounds per million Btu, whichever is less stringent.

(b) If Hillsborough, Merrimack, Rockingham, or Strafford County is redesignated to attainment, the NO_x emission budget shall still be determined by application of

the reduction requirements in (a)(1), above. If a contiguous “marginal” area is reclassified to “moderate” classification, the NO_x emission budget for that area shall be determined by application of the reduction requirements in (a)(1), above, as well.

(c) The NO_x reduction requirement, established by the OTC MOU to begin May 1, 2003, may be modified if additional modeling and other scientific analysis show that this program, as modified (up or down), together with regulations governing volatile organic compound (VOC) emissions, will achieve attainment of the ozone National Ambient Air Quality Standard across the Ozone Transport Region, and the Ozone Transport Commission's MOU is modified to reflect those modeling results and other analysis and is signed by New Hampshire.

(d) The NO_x budget shall be implemented by allocation of allowances, as described in Env-A 3206. The NO_x budget and allocations shall be modified in accordance with Env-A 3206.05 to convert to a more environmentally efficient allocation methodology in 2003 or to include additional sources.

(e) Further, the NO_x Budget Program, as established in Env-A 3205 through Env-A 3218, establishes rules and procedures for use and trading of allowances, and establishes procedures for tracking allowance use, monitoring and reporting emissions, and certifying compliance with the NO_x Budget Program.

(f) The trading of allowances between budget sources in different states for purposes of compliance, is contingent upon the adoption and implementation by those states of comparable and consistent NO_x Budget Program regulations.

(g) Nothing in the NO_x Budget Program waives any NO_x reduction requirement otherwise in effect, including compliance with regulations implementing Reasonably Available Control Technology for NO_x pursuant to Env-A 1211, including Phase II NO_x emission limits pursuant to Env-A 1211.15, or regulations governing the construction of new sources in the Ozone Transport Region pursuant to Env-A 622, except

(1) If Env-A 622 is subsequently amended, or if federally enforceable permits are issued, allowing sources under an approved budget to forego all or any portion of the offset requirements as described in the EPA's Supplemental Notice of Proposed Rulemaking for reducing regional ozone transport, then the NO_x Budget Program may also be amended to incorporate such future EPA guidance.

PART Env-A 3202 DEFINITIONS

Env-A 3202.01 “Account number” means “account number” as defined in the

OTC's NO_x Budget Model Rule, namely, “the identification number given by the NO_x Allowance Tracking System Administrator to an account in which allowances are held in the NO_x Allowance Tracking System.”

Env-A 3202.02 “Account” means “account” as defined in the OTC's NO_x Budget Model Rule, namely, “the place in the NO_x Allowance Tracking System where allowances are recorded including both allowances held by a budget source (compliance account) or allowances held by any person (general account).”

Env-A 3202.03 “Acquiring account” means “acquiring account” as defined in the OTC's NO_x Budget Model Rule, namely, “the party in an allowance transfer who obtains allowances through purchase, trade, auction or gift.”

Env-A 3202.04 “Affected Facilities” means “affected facilities” as defined in the OTC's NO_x Budget Model Rule, namely, “fossil fuel fired boilers or indirect heat exchangers with a maximum rated heat input capacity of 250 MMBtu/Hour or more which operated at any time in calendar year 1990. The term Affected Facilities is only used to establish the NO_x Budget for the state.”

Env-A 3202.05 “Allocate or Allocation” means “allocate or allocation” as defined in the OTC's NO_x Budget Model Rule, namely, “the initial assignment of allowances to a budget source through this regulation, and recorded by the Administrator to a NO_x Allowance Tracking System facility account or general account.”

Env-A 3202.06 “Allocation Period” means “allocation period” as defined in the OTC's NO_x Budget Model Rule, namely, “any one of three time periods to which allowances are allocated including the period 1999, though 2002, the period 2003 through 2013 and the period 2014 and beyond.”

Env-A 3202.07 “Allowance” for the purposes of Env-A 3200 means “allowance” as defined in the OTC's NO_x Budget Model Rule, namely, “the limited authorization to emit one ton of NO_x during a specified control period, or any control period thereafter subject to the terms and conditions for banked allowances pursuant to Env-A 3200. All allowances shall be allocated, transferred, or used as whole allowance. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.”

Env-A 3202.08 “Allowance deduction” means “allowance deduction” as defined in the OTC's NO_x Budget Model Rule, namely “the withdrawal of allowances for permanent retirement by the Administrator from a NO_x Allowance Tracking System account.”

Env-A 3203.09 “Allowance transfer” means “allowance transfer” as defined in the OTC's NO_x Budget Model Rule, namely, “the conveyance of one or more allowances

from one account to another by whatever means, including but not limited to purchase, trade, auction, or gift in accordance with the procedures established in Env-A 3200, effected by the submission of an allowance transfer request to the NATS Administrator.”

Env-A 3203.10 “Allowance transfer deadline” means “allowance transfer deadline” as defined in the OTC’s NO_x Budget Model Rule, namely, “midnight of December 31 and is the deadline by which allowances may be submitted for recording in an budget source's compliance account for purposes of meeting the requirements of this regulation for the preceding control period.”

Env-A 3202.11 “Alternative monitoring system” means “alternative monitoring system” as defined in the OTC's NO_x Budget Model Rule, namely, "a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow, as provided for in Env-A 3200."

Env-A 3202.12 “Authorize Account Representative (AAR)” means “Authorized Account Representative (AAR)” as defined in the OTC's NO_x Budget Model Rule, namely, “the responsible person who is authorized, in writing, to transfer and otherwise manage allowances as well as certify reports to the NATS and the NETS.”

Env-A 3202.13 “Banked Allowance” means “banked allowance” as defined in the OTC' s NO_x Budget Model Rule, namely, “an allowance which is not used to reconcile emissions in the designated year of allocation but which is carried forward into the next year and flagged in the compliance or general account as “banked”.”

Env-A 3202.14 “Banking” means “banking” as defined in the OTC's NO_x Budget Model Rule, namely, “the retention of unused allowances from one control period for use in a future control period.”

Env-A 3202.15 “Baseline” for the purposes of Env-A 3200 means “baseline” as defined in the OTC’s NO_x Budget Model Rule, namely, "the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NO_x Budget Program.”

Env-A 3202.16 “Budget or Emission Budget” means “budget or emission budget” as defined in the OTC's NO_x Budget Model Rule, namely, “the numerical result in tons per season of NO_x emissions which results from the application of the emission reduction requirement of the OTC MOU dated September 27, 1994, and which is the maximum amount of NO_x emissions which may be released from the budget sources collectively during a given control period.”

Env-A 3202.17 “Budget source” means “budget source” as defined in the OTC's

NOx Budget Model Rule, namely, “a fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBtu/Hour or more; and all electric generating devices with a rated output of 15 MW or more.”

Env-A 3202.18 “Compliance account” means “compliance account” as defined in the OTC's NOx Budget Model Rule, namely, “the account for each budget source in the NO_x Allowance Tracking System, in which are held current and future year allowances useable for a specific designated control period as indicated by their unique serial number.”

Env-A 3202.19 “Control period” means “control period” as defined in the OTC's NOx Budget Model Rule, namely, “the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.”

Env-A 3202.20 “Current year” mean “current year” as defined in the OTC's NOx Budget Model Rule, namely, “the calendar year in which the action takes place or for which an allocation is designated. For example, an allowance allocated for use in 1999 which goes unused and becomes a banked allowance on Jan 1, 2000 can be used in the “Current Year” 2000 subject to the conditions for banked allowance use as stated in Env-A 3200.”

Env-A 3202.21 “Early Reduction Allowance” means “early reduction credit” as defined in the OTC's NOx Budget Model Rule, namely, “credit for NO_x emission reductions achieved during the control periods of 1997 or 1998.”

Env-A 3202.22 “Electric generating device” means “electric generating facility” as defined in the OTC's NOx Budget Model Rule, namely, “any fossil fuel fired combustion device of 15 MW capacity or greater which provies elecricity for sale or use.”

Env-A 3203.23 “Excess emissions” for the purposes of Env-A 3200 means “excess emissions” as defined in the OTC's NOx Budget Model Rule, namely, “emissions of nitrogen oxides reported by a budget source during the control period, rounded to the nearest whole ton, which is greater than the equivalent number of allowances allocated to, or which are available in the budget source NO_x Allowance Tracking System compliance account by the allowance transfer deadline for that season.”

Env-A 3203.24 “Fossil fuel” means “fossil fuel” as defined in the OTC's NOx Budget Model Rule, namely, “natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material.”

Env-A 3202.25 “Fossil fuel fired” means “fossil fuel fired” as defined in the OTC's NOx Budget Model Rule, namely, “the combustion of fossil fuel or any derivative of fossil fuel alone, or, if in combination with any other fuel, fossil fuel comprises 51% or greater of the annual heat input on a BTU basis.”

Env-A 3202.26 “General Account” means “general account” as defined in the OTC's NO_x Budget Model Rule, namely, “an account in the NATS that is not a compliance account.”

Env-A 3202.27 “Heat input” means “heat input” as defined in the OTC's NO_x Budget Model Rule, namely, “heat derived from the combustion of fuel in a budget source and does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.”

Env-A 3202.28 “Indirect heat exchanger” means “indirect heat exchanger” as defined in the OTC's NO_x Budget Model Rule, namely, “combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls which includes, but is not limited to, the following: steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.”

Env-A 3202.29 “Maximum heat input capacity” means “maximum heat input capacity” as defined in the OTC's NO_x Budget Model Rule, namely, “the ability of a budget source to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the facility. Maximum heat input capacity is expressed in millions of British Thermal Units (MMBTU) per unit of time which is the product of the gross caloric value of the fuel (expressed in BTU/pound) and the fuel feed rate in the combustion device (expressed in mass of fuel/time).”

Env-A 3202.30 “NO_x Allowance Tracking System or NATS” means “NO_x Allowance Tracking System or NATS” as defined in the OTC's NO_x Budget Model Rule, namely, “the computerized system used to track the number of allowances held and used by any person. For the purposes of Env-A 3200, the official NATS is defined as that which is operated and maintained by the EPA for purposes of tracking allowance use for the Acid Rain Program, and is further defined at 40 CFR, Part 72, Subpart A, Section 72.2.”

Env-A 3202.31 “NO_x Emissions Tracking System or NETS” means “NO_x Emissions Tracking System or NETS” as defined in the OTC's NO_x Budget Model Rule, namely, “the computerized system used to track NO_x emissions from budget sources. For the purposes of Env-A 3200, the official NETS is defined as that which is operated and maintained by the EPA for purposes of tracking allowance use for the Acid Rain Program, and is further defined at 40 CFR, Part 72, Subpart A, Section 72.2.”

Env-A 3202.32 “Non-Part 75 Budget Source” means “non-Part 75 budget source” as defined in the OTC's NO_x Budget Model Rule, namely, “any budget source not subject to the requirements for emissions monitoring adopted pursuant to Section 412 of the Clean Air Act Amendments of 1990 and codified at 40 CFR, Part 75.”

Env-A 3202.33 “Opt in” means “opt in” as defined in the OTC's NO_x Budget Model Rule, namely, "to choose to voluntarily participate in the NO_x Budget Program, and comply with the terms and conditions of this regulation.”

Env-A 3202.34 “OTC MOU” means “OTC MOU” as defined in the OTC's NO_x Budget Model Rule, namely, “the Memorandum of Understanding signed by representatives of ten states and the District of Columbia as members of the Ozone Transport Commission on September 27, 1994.”

Env-A 3202.35 “OTR” means “OTR” as defined in the OTC's NO_x Budget Model Rule, namely, “the Ozone Transport Region as designated by Section 184(a) of the Clean Air Act Amendments of 1990.”

Env-A 3202.36 “Recorded” for the purposes of Env-A 3200 with regard to an allowance transfer or deduction means “recorded” as defined in the OTC's NO_x Budget Model Rule, namely, “an account in the NATS has been updated by the Administrator with the particulars of an allowance transfer or deduction.”

Env-A 3202.37 “Submitted” for the purposes of Env-A 3200 means "submitted" as defined in the OTC's NO_x Budget Model Rule, namely, “sent to the appropriate authority under the signature of the Authorized Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or electronic time stamp, shall establish the date of submittal.”

PART Env-A 3203 NO_x EMISSION BUDGET

Env-A 3203.01 NO_x Budget. The New Hampshire NO_x Budget shall be as follows:

(a) For 1999 and each year thereafter, through and including 2002, not to exceed 5,219 ton during each control period.

(b) For 2003 and each year thereafter, not to exceed 3,739 tons during the control period of May 1 through September 30

Env-A 3203.02 Modification of the Budget. The NO_x budget, established in Env-A 3203.01, shall be modified by the state to include sources who choose to opt in to this program pursuant to Env-A 3204. Any modification of the budget shall be recorded and maintained by the department, and submitted on an annual basis, by January 1 of each year, to EPA. Modifications to the budget shall be subject to the public notice requirements of Env-A 205, which include a public notice period of at least 30 days, commencing with an announcement published in a newspaper of general circulation, and the opportunity for public comment.

PART Env-A 3204 BUDGET PROGRAM APPLICABILITY

Env-A 3204.01 General Applicability.

- (a) The NO_x Budget Program through this regulation, in its entirety, applies to any owner or operator of a budget source.
- (b) The requirements for an Authorized Account Representative and account maintenance fees apply to the owners of general accounts and to the owners of compliance accounts.

Env-A 3204.02 Opt-In. Any person who owns, operates leases or controls a stationary source in the OTR not subject to this program by definition, may choose to opt into the NO_x Budget Program subject to the following conditions:

- (a) Any person who owns, operates leases or controls a stationary source that voluntarily opts-in to the NO_x Budget Program shall be considered a budget source upon approval of the opt-in application and shall be subject to all terms and conditions of the NO_x Budget Program including requirements for allowance transfer or use, emissions monitoring, recordkeeping, reporting, and penalties.
- (b) To opt-in to the NO_x Budget Program, the owner or operator of a stationary source shall file with the state an opt-in application, including documentation of baseline control period emissions. Baseline control period emissions are a representative average of the actual emissions of two consecutive control periods within the five years preceding the opt-in application. In no event may the baseline be greater than allowable emissions for that source as established by state permit or regulation. The baseline control period emissions from the opt-in source, as may be adjusted pursuant to (c) or (f), below, shall be added to the NO_x budget for the state prior to allocation of allowances to the opt-in source.
- (c) The state shall assign an allowance allocation to any source that chooses to opt-in to the program. The allowance allocation for an opt-in source that, by size, would otherwise be considered an affected facility, shall be equivalent to the OTC MOU emission reduction applied the baseline control period emissions, or the permitted allowable NO emissions from the source, whichever is less.
- (d) The state shall assign an allowance allocation to any person that chooses to opt in to the program. The allowance allocation for an opt-in source that is not otherwise considered an affected facility, shall be equivalent to the baseline control period emissions, or the permitted allowable NO_x emissions from the source, whichever is less. The allowance allocation for an opt-in source that repowers shall be equivalent to the lesser of its total reported bubbled actual emissions from both the repowered and repowering units or its permitted

allowable emissions based on the lowest achievable emission rate for the repowering unit using the cleanest permitted fuel. In no case, shall allocation of allowances to a source which chooses to opt into the program require adjustments to the allocation of allowances to budget sources in the NO_x Budget Program.

(e) Any person who chooses to opt into the NO_x Budget Program shall be subject to a modification of their federally enforceable operating permit to include applicability of this program, authority to trade allowances, and authority to emit in accordance with allowances allocated or obtained by the allowance transfer deadline.

(f) Any person who chooses to opt into the NO_x Budget Program and who subsequently chooses to cease or curtail operations, shall be subject to an allowance adjustment which represents emissions equivalent to those reduced through the cessation or curtailment of emitting operations.

PART Env-A 3205 GENERAL PROVISIONS

Env-A 3205.01 Limited Authorization. An allowance is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this rule. On or after May 1, 1999, the owner or operator of each budget source shall, not later than December 31 of each calendar year, hold a quantity of NO_x allowances in the budget source's current year NATS account that is equal to or greater than the total NO_x emitted from that budget source during the period May 1 through September 30 of the subject year.

Env-A 3205.02 New Sources

(a) A budget source that begins operation after the initial allocation has been made shall obtain allowances in accordance with Env-A 3206 in an amount equal to the new budget source's actual emissions in order to operate during each control period.

(b) Offsets required for new or modified sources subject to New Source Review (NSR) shall be obtained in accordance with Env-A 622, and are subject to the offset requirements of Section 173 of the Clean Air Act. Offsets may be obtained in accordance with Env-A 3100, the Discrete Emissions Reductions (DERs) Trading Program, or Env-A 3000, the Emissions Reduction Credits (ERCs) Trading Program. Allowances are not considered offsets within the context of this chapter, although allowances which are used to satisfy the requirements of this chapter for actual ozone season emissions may also be used to satisfy the ozone season portion of the NSR offset requirement. In addition, allowances not used to satisfy the requirements of this chapter may be converted to DERs, and then use to satisfy a portion of the NSR offset requirement.

Env-A 3205.03 Compliance with Existing Regulations. The restrictions and requirements of state and local rules as well as state and federal law, remain applicable. Except as otherwise provided for in this regulation, allowances cannot be used to meet or exceed the limitations of a permit or regulation unrelated to this rule.

PART Env-A 3206 ALLOWANCE ALLOCATION

Env-A 3206.01 Implementation of the Budget. Implementation of the emission budget in Env-A 3203 of this rule shall be accomplished through allocation of allowances to budget sources. Allowances shall be allocated to budget sources and unused allowances may be traded in accordance with the provisions of these parts.

Env-A 3206.02 Statewide Total Allowances.

- (a) The state shall allocate 4,674 allowances to initial budget sources for the control period in each of the years 1999, 2000, 2001 and 2002;
- (b) The state shall retain 445 allowances in a multi-purpose set-aside account for the control period in each of the years 1999, 2000, 2001 and 2002, unless the state:
 - (1) Allocates some or all of those allowances to new sources;
 - (2) Auctions off some or all of the allowances;
 - (3) Retires some or all of the allowances; or
 - (4) Transfers some of the allowances in accordance with Env-A 3206.11;
- (c) The state shall retire at least 100 allowances for environmental benefit for the control period in each of the years 1999, 2000, 2001 and 2002; and
- (d) The state shall allocate not more than 3,739 allowances for the control period in each year starting in 2003 and beyond. The state may retain, auction, or retire some or all of the allowances.

Env-A 3206.03 Initial Allocation.

- (a) The amount of allowances allocated to each individual initial budget source between January 1 and April 30 of each year for that year's ozone season shall be as listed in the following Table 3206-1:

Table 3206-1	
Initial Allowance Allocation by Budget Source (in allowances for each control period)	
Budget Source*	Allocation Period 1999 - 2002
PSNH-MK1	2,051
PSNH-MK2	581
PSNH-MK3	2
PSNH-MK4	2
PSNH-SR3	3
PSNH-SR4	314
PSNH-SR5	328
PSNH-SR6	322
PSNH-NT1	1,066
PSNH-WL1	2
PSNH-LN1	3

- * PSNH = Public Service of New Hampshire
 MK = Merrimack Station
 SR = Schiller Station
 NT = Newington Station
 WL = White Lake
 LN = Lost Nation

Env-A 3206.04 Modification of Initial Allocation. The list of budget sources allocated allowances Table 3206-1 shall be modified by the state to include sources which choose to opt-into this program pursuant to Env-A 3204 of is rule. Any modification of Table 3206-1 after adoption of the initial allocation shall be recorded and maintained by the state, and submitted on an annual basis, by January 1 of each year, to EPA after providing notice and the opportunity for public comment.

Env-A 3206.05 Future Conversion of the Allowance Allocation Methodology. No later than December 31, 2002, allowances shall be allocated to budget sources in more

environmentally efficient manner than the initial allocation methodology under Env-A 3206.03. The new allocation methodology may be based in whole or in part, on generation output, auctions, energy efficiency, and/or alternative approaches. The new allocation methodology will be defined in a future rulemaking proceeding. Consistent with Env-A 3206.02(d) the state may retain or retire some or all of the allowances.

Env-A 3206.06 Offsets. A budget source that converts unused allowances to discrete emissions reductions (DERs) in accordance with the procedures for DER generation in Part Env-A 3103, and then uses or transfers those DERs, shall surrender those converted allowances as if they had been used for actual emissions. This requirement shall not apply to sources receiving offsets from budget sources that voluntarily opt-in to the NO_x Budget Program prior to the date when construction approval is granted.

Env-A 3206.07 Shutdowns. Budget sources which cease to operate after the date of adoption of this rule shall continue to receive allowances each control period in the allocation period prior to 2003, unless a request to reallocate allowances has been filed pursuant to Env-A 3208.08 of this rule.

Env-A 3206.08 No Property Rights. Neither an allowance nor any future allocations, which are subject to modification by the state pursuant to Env-A 3206.09, shall constitute a security or other form of property. Allowances shall not be used prior to the season for which such allowances are allocated.

Env-A 3206.09 State Authority. Nothing in the state's rules, except for the hearings and appeals processes in accordance with Env-A 200, shall be construed to limit the authority of the state to condition, limit, suspend or terminate any allowances, any authorization to emit which said allowance represents, or any future allocations.

Env-A 3206.10 New Budget Sources. Pursuant to Env-A 3213, all, including new, budget sources shall report their control period emissions to the NETS Administrator by October 30 of each year. No later than October 30, new budget sources shall submit a request to the department to transfer allowances from the department's set-aside account to the new budget sources' compliance accounts up to the lesser of its total emissions reported or its permitted allowable emissions based on actual fuel use and the lowest achievable emission rate using the cleanest permitted fuel. By November 30 the department shall transfer the requested allowances in the order that preliminary determinations to grant permits to construct were made by the department in accordance with Env-A 622.07(c)(1), subject to the availability of allowances in the set-aside account. If an adequate supply of allowances is unavailable, any remaining allowances in the set-aside account shall be transferred, and remaining new sources shall acquire additional allowances by trading.

Env-A 3206.11 Post-Season Retirement of Allowances by the State. By

November 30 in each of the years 2000, 2001 and 2002, after accounting for the request in Env-A 3206.10 and if those requested allowances total less than 400, the department shall calculate the difference between the total requested allowances and 400, divide that difference by 2, and transfer that quotient number of allowances from the department's set-aside account to the initial budget sources' compliance accounts. Each initial budget source's share of the allowances transferred shall equal its fraction of the total initial allocations multiplied by the total number of allowances transferred. However, each initial budget source shall transfer to the state one DER for each allowance transferred, prior to the transfer of the allowances.

Env-A 3206.12 Return of Unused Allowances by New Budget Sources. Within 15 days of a final compliance determination, all new budget sources shall transfer any unused allowances remaining in their compliance accounts to the department's set-aside account. This provision in no way affects the amount of allowances that a new budget may request for subsequent seasons in accordance with Env-A 3206.10.

PART Env-A 3207 PERMITS

Env-A 3207.01 Permit Application Deadline. Emission reductions which must be achieved to meet the requirements of this program shall be subject to state permit requirements pursuant to Env-A 600, including but not limited to the permit reopening procedures under Env-A 609.18, the State Permit to Operate permit amendment procedures under Env-A 612.03 and permit notice and hearing procedures under Env-A 205 for non-Title V budget sources, and the Title V Operating Permit amendment, modification, and revision procedures under the remainder of Env-A 612 and permit notice and hearing procedures under Env-A 206 for Title V budget sources. All determinations made under 3211.05(b)(3)(c) shall be made pursuant to permit issuance, renewal, or significant permit modification procedures under Env-A 612. The owner or operator of a budget source shall apply for permits for all equipment and control apparatus necessary for compliance with the program by no later than 30 days from the effective date of this rule.

Env-A 3207.02 Operating Permits

(a) The operating permit or each budget source shall contain provisions for implementation of this program. Specifically, said permit shall contain language which prohibits the budget source from emitting NO_x during each control period, in excess of the amount of allowances held in the budget source's compliance account for the control period as of the allowance transfer deadline. Furthermore, the permit shall contain language that authorizes the trading of allowances for purposes of compliance with this program. The permit shall also contain reference to the NATS compliance account for the budget source and the Authorized Account Representative.

(b) No revision of an operating permit shall be necessary or required for increases (or decreases) in emissions that are authorized by allowances acquired or transferred in compliance with this chapter by the allowance transfer deadline, are in compliance with the authorization for trading contained in the permit, and do not contravene the BACT or RACT limit, as applicable, for the budget source.

(c) No revision of an operating permit shall be necessary or required for increases (or decreases) in allowances held by the budget source and which are acquire or transferred in compliance with this regulation and in compliance with the authorization for trading contained in the permit.

Env-A 3208 ALLOWANCE TRANSFER AND USE

Env-A 3208.01 Marketable Emission Authorizations. Allowances are marketable emissions authorizations that may be bought, sold or traded at any tme (i.e., during any year, not just the current year).

Env-A 3208.02 Limited Authorizations. Allowances may only be used for compliance with this program in a designated compliance year by being in a compliance account as of the allowance transfer deadline, or by being transferred into the compliance account by an allowance transfer submitted by the allowance transfer deadline.

Env-A 3208.03 Transfer Procedures. The following procedures shall be employed to enact an allowance transfer:

(a) The transfer request shall be documented on a form, or electronic media, as directed by the NAS Administrator. The following information, at a minimum, shall be provided:

- (1) The account number identifying both the originating account and the acquiring account
- (2) The name and address associated with the owners of the originating account and the acquiring account; and,
- (3) Identification of the serial number for each allowance being transferred.

(b) The transfer request shall be authorized and certified by the Authorized Account Representative for the originating account. To be considered correctly submitted, the request for transfer shall include the following statement of certification (verbatim): “I am authorized to make this submission on behalf of the owners and operators of the budget source and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the

information contained in this document, and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.” The Authorized Account Representative for the originating account shall, further provide a copy of the transfer request to each owner or operator of the budget source.

Env-A 3208.04 Transfer Processing. Transfer requests shall be processed by the NATS in order of receipt.

Env-A 3208.05 Transfer Completion. The transfer is complete when the following has been verified by the NATS Administrator:

- (a) Each allowance listed in the transfer request is held by the originating account at the time the transfer was recorded;
- (b) The acquiring party has an account in the NATS; and
- (c) The transfer request has been filed by the person named as Authorized Account Representative for the originating account.

Env-A 3208.06 Transfer Validation. Allowance transfers determined to be valid, through verification by the NATS Administrator, shall be recorded in the NATS by deducting the specified allowances from the originating account and adding it to the acquiring account.

Env-A 3208.07 Transfer Notification. Notification of an allowance transfer shall be provided by the NATS Administrator including notice to the Authorized Account Representatives for each of the originating account and the acquiring account and to designated state officials where the acquiring account or originating account are located. Notification may be made on paper or in electronic form and shall, a minimum, include:

- (a) The effective date of the transfer;
- (b) Identification of the originating account and the acquiring account by name as well as by account number; and
- (c) The number of allowances transferred and their serial numbers.

Env-A 3208.08 Periodic Transfers. Should a budget source determine that some or all allocated allowances should be transferred to another budget source for the remainder of the current allocation period, the Authorized Account Representative of the originating account shall submit a request for transfer that states this intent to the NATS

Administrator. A request for transfer of allowances for the remainder of the allocation period shall conform to the specifications of Env-A 3208.03. In addition, said request shall be submit to the state with a letter requesting that future allowance allocation be made directly to the acquiring account.

Env-A 3208.09 Price Disclosure. The budget source shall make available to the state in which it is located, information regarding transaction cost and allowance price, should the state request such information. The budget source may make a claim of confidentiality in accordance with Env-A 103.

Env-A 3208.10 Use of Funds. Provided that the Public Utilities Commission (PUC) maintains regulatory authority for utilities, the PUC shall determine, by a process similar to the process for sulfur dioxide allowances under the Federal Acid Rain Program, the percentage (if any) of the funds from the sale of allowances that shall be used by PSNH for the reduction of New Hampshire ratepayers' utility costs. This provision may be modified upon deregulation of the utility industry.

Env-A 3208.11 Use of Allowances by Utilities. The use of allowances by a utility as defined in RSA 362:2 shall be subject to such additional conditions as ordered pursuant to applicable law by the public utilities commission.

Env-A 3209 ALLOWANCE BANKING

Env-A 3209.01 Retention of Unused Allowances. The banking of allowances shall be permitted to allow the retention of unused allowances from one year to a future year in either a compliance account or a general account.

Env-A 3209.02 Account Designation. Unless otherwise permitted pursuant to Env-A 3209.04, unused allowances as of the end of the allowance transfer deadline, shall be retained in the compliance or general account and designated as "banked" allowances.

Env-A 3209.03 Requirements for Use. Banked allowances may be used in accordance with the following requirements:

(a) By March 1 of each year, the total number of banked allowances in the OTR shall be determined and used to calculate the number of banked allowances which can be used in the current year as follows:

(1) If the total number of banked allowances in the OTR is less than or equal to 10% of the NO_x budget for the current year control period, all banked allowances can be used in the current year on a 1-for-1 basis; and

(2) If the total number of banked allowances in the region exceeds 10% of the regional NO_x budget for the current year control period, budget

sources shall be notified of the allowance rate which shall be applied to banked allowances in each compliance and general account to determine the number of allowances available for use in the current year control period on a 1-for-1 basis, and the number of allowances available for use in the current year control period on a 2-for-1 basis.

(b) Where a finding has been made that banked allowances exceed 10% of the regional NO_x budget, each NATS compliance and general account of banked allowances shall be subject to the following banked allowance use protocol:

(1) A ratio shall be established according to the following formula:

$$\frac{0.10 \times \text{the regional NO}_x \text{ Budget}}{\text{the total number of banked allowances in the region}}$$

(2) The ratio calculated in (1), shall be applied to the banked allowances in each account. The resulting number is the number of banked allowances in the account which can be used in the current year control period on a 1-for-1 basis. Allowances in excess of this number, if used, shall be used on a 2-for-1 basis.

Env-A 3209.04 Early Reduction Allowances. Any budget source may create NO_x emission reduction in 1997 or 1998, have said reductions certified as early reduction allowances, and converted by the state to bankable allowances in 1999, subject to the following requirements:

(a) Certification of early reduction allowances shall require a finding by the state, in accordance with the public notice and hearing procedures under Env-A 205 or Env-A 206, that the reductions are real, quantifiable, and surplus, in accordance with Env-A 3100 and the following procedures;

(b) In order for early reduction allowances to be approved as surplus, the reductions shall result from control of a budget source's NO_x emission rate below the most stringent of:

(1) The 1999 level of control required by the OTC MOU;

(2) The permitted allowable emissions for the source, unless the source is a replacement source for repowering whereupon the level of control required by the OTC MOU would supersede the permitted allowable emissions for purposes of establishing early reduction allowances;

(3) The actual emissions for the 1990 control period; or

(4) Actual emissions for the average of two representative year control periods within the first five years of operation if the budget source did not commence operation until after 1990.

(c) The amount of early reduction allowances shall presume a capacity utilization (in MMBtu) equal to the average capacity utilization of the budget source for two consecutive calendar years immediately preceding the application adjusted for any reduced capacity utilization which has resulted from shut down or curtailment of the budget source.

(d) The department shall allow use of a different two consecutive year period within the 5 years immediately preceding the early reduction allowances application should the budget source demonstrate, to the satisfaction of the state, that an alternative two consecutive year period is more representative of normal operations.

(e) Repowering of a budget source is eligible for early reduction allowances provided that the permit for construction of the replacement source is issued after the effective date of this regulation, and the budget source being replaced ceases operation in 1997 or 1998.

(f) Early reduction allowances shall be eligible for a one-time conversion to allowances in 1999. Emission reductions which are certified as early reduction allowances, cannot be used as Emission Reduction Credits (ERCs) or Discrete Emission Reductions (DERs) .

(g) Early reduction allowances shall be calculated by multiplying a budget sources' NO_x emission rate pursuant to (b), above, by its capacity utilization pursuant to (c), above.

Env-A 3210 NO_x ALLOWANCE TRACKING SYSTEM (NATS)

Env-A 3210.01 Database. The NO_x Allowance Tracking System (NATS) is an electronic record keeping and reporting system which shall be the official database for all allowance use and transfer within this program. The NATS shall track:

- (a) The allowances allocated each budget source;
- (b) The allowances held in each account;
- (c) The allowances used by each budget source during each control period;
- (d) Accounts established for each budget source to determine compliance for the source;

(e) Accounts opened by individuals or entities, upon request, which are not used to determine compliance;

(f) Allowance transfers, as submitted voluntarily by the source; and

(g) Deductions of allowances for compliance purposes.

Env-A 3210.02 Compliance Accounts. The NATS shall provide a compliance account for each budget source which shall hold current compliance year and future year allowances. The NATS shall label each account with an account number and provide the following information, at minimum, be associated with each account: name of account owner, mailing address of account owner, name of Authorized Account Representative, mailing address of Authorized Account Representative, phone number of Authorized Account Representative, street address of associated budget source, and state in which the budget source is located.

Env-A 3210.03 General Accounts. The NATS shall allow for the establishments of general accounts. Any person or group may open a general account. An Authorized Account Representative shall be designated for a general account and said representative shall have obligations similar to an Authorized Account Representative designated by a budget source.

Env-A 3210.04 Authorized Account Representative. Only the Authorized Account Representative shall request transfers of allowances in a NATS account. For each account, one Authorized Account Representative and one alternate shall be identified to represent the owner or operator of the budget source, or owner of a general account. The Authorized Account Representative shall be responsible for all transactions and reports submitted to the NATS. The Alternate Authorized Account Representative shall have the same authority as the “primary” representative however, all correspondence from the NATS Administrator shall be directed to the primary Authorized Account Representative.

Env-A 3210.05 Account Certificate of Representative. The Authorized Account Representative shall be officially designated upon receipt by the NATS Administrator of a form entitled “*Account Certificate of Representation*” that constitutes an agreement of representation and which contains, at minimum, the following information: identification of the budget source by plant name, state and boiler number for which the certification of representation is submitted, the name, address, telephone and facsimile number of the Authorized Account Representative and any alternate, and a list of owners and operators of the budget source. The certificate of representation shall be signed by the Authorized Account Representative for the budget source and shall contain the following statement (verbatim)

“I certify that I, ___(name)___ was selected as the Authorized Account Representative as applicable by an agreement binding on the owners and operators of the budget source legally designated as ___(name of facility)___”.

Designation of an Authorized Account Representative for each budget source shall be completed no later than 10 days after the effective date of this rule. After such date, an Authorized Account Representative can be replaced with the submittal of a revised “*Account Certificate of Representation*” which, in addition to the information listed above, indicates the name of the Authorized Account Representative who is being replaced. The NATS Administrator shall confirm the change of Authorized Account Representative once the change is recorded in the NATS.

Env-A 3210.06 Serial Numbers. Each facility account shall have a unique identification number and each allowance shall be assigned a unique serial number. Each allowance serial number shall also indicate the year of allocation.

Env-A 3211 EMISSIONS MONITORING

Env-A 3211.01 Emissions Tracking System. The owner or operator of each budget source subject to this rule shall comply with the following requirements, as applicable:

(a) NO_x emissions from each budget source shall be monitored as specified by this section.

(b) No later than 10 days from the effective date of this rule, the owner or operator of each budget sources shall submit to the state a monitoring plan. At minimum, the monitoring plan shall describe the monitoring approach to be used at the budget source. The monitoring plan should include all of the information specified in the document, *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(c) Emission monitoring systems as required and specified by this section, shall be installed, operational and shall have met all of the certification testing requirements by no later than April 30, 1999.

(d) All monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in the document, *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(e) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this regulation, missing or invalid data shall be replaced with representative default data in accordance with

the provisions of 40 CFR, , Part 75 and the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(f) NO_x emissions data shall be reported to a NO_x Emissions Tracking System (NETS) in accordance with provisions of Env-A 3213.

(g) Each budget source which operates, or commences operation, prior to January 1, 1998 shall begin reporting data upon adoption of this chapter.

(h) Budget sources that commence operation after January 1, 1998 shall begin recording data in the first hour that said budget source is operating during an ozone season.

Env-A 3211.02 Part 75 CEM. The owner or operator of each budget source subject to 40 CFR Part 75, shall demonstrate compliance with the NO_x Budget Program with a certified Part 75 monitoring system, as follows:

(a) If the budget source has a flow monitor certified under Part 75, NO_x emissions (in pounds per hour) shall be determined using a NO_x CEM and the flow monitor. NO_x in pounds per million Btu shall be determined by using the procedure in Section 3 of Appendix F of 40 CFR, Part 75. The hourly heat input shall be determined by using the procedure in Section 5 of Appendix F of 40 CFR, Part 75.

(b) If the budget source does not have a certified flow monitor, but does have a certified NO_x CEM, NO_x emissions (in pounds per hour) shall be determined by using the NO_x CEM to determine NO_x emission rate (in pounds per million Btu) and the heat input shall be determined by using the procedures in Appendix D of 40 CFR, Part 75. NO_x in pounds per hour shall be determined by multiplying the results of the above values together.

(c) If the owner or operator of a budget source uses the procedures in Appendix E of 40 CFR, Part 75 to estimate the NO_x emission rate, NO_x emissions (in pounds per hour) should be determined by multiplying the NO_x emission rate, determined by using Appendix E procedures, by the heat input determined by using the procedures in Appendix D of 40 CFR, Part 75.

(d) If the owner or operator of a budget source uses the procedures in Subpart E of 40 CFR, Part 75 to determine the NO_x emission rate, NO_x emissions (in pounds per hour) shall be determined using the alternative monitoring method approved pursuant to Subpart E of 40 CFR, Part 7 and the procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(e) In addition to meeting the requirements of Part 75, the owner or operator of a Part 75 source subject to this program shall meet the following requirements:

(1) The owner or operator shall meet the additional monitoring plan and reporting requirements in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997 necessary to report NO_x emissions on a mass basis.

(2) If the source emits to a common or multiple stacks, the owner or operator shall monitor emissions according to the procedures contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

Env-A 3211.03 Non-Part 75 CEM. The owner or operator of a budget source which is not subject to 40 CFR, Part 75 shall meet the monitoring requirements of this rule by:

(a) Preparing and obtaining approval of a monitoring plan as specified in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997;

(b) Using a methodology specified in Env-A 3211.04 and Env-A 3211.05, respectively, to determine:

(1) NO_x emission rate and heat input; or

(2) NO_x concentration and flow; and

(c) Calculating the NO_x emissions in pounds per hour using the procedure described in Env-A 3211.06.

Env-A 3211.04 NO_x Emission Rate or NO_x Concentration. The owner or operator of a budget source which is not subject to Part 75, and who chooses to implement an alternative emission rate monitoring method, shall determine NO_x emission rate in pounds per million Btu or NO_x concentration in ppm using one of the following methods:

(a) The owner or operator of any budget source which meets the following shall use a non-Part 75 NO_x CEMS to meet the requirements of this rule:

(1) The budget source has a maximum rated heat input capacity of 250 million Btu/hr or greater; and

(2) The budget source is not a peaking unit as defined in 40 CFR, Part

72.2; or

(3) The budget source combusts any solid fuel; or

(4) The budget source is required to install, or has installed, a NO_x CEMS to meet the requirements of 40 CFR, Part 60 or to meet any other state or federal requirements or permits.

(b) If the owner or operator of the unit monitors flow according to the provisions of Env-A 3211.05, the owner or operator may use the NO_x CEMS to measure NO_x concentration in ppm. Otherwise, the NO_x CEMS shall be used to measure NO_x emission rate in pounds per million Btu.

(c) The owner or operator shall install, certify, operate and maintain any non-Part 75 monitor in accordance with all the requirements of the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997. In addition, the NO_x CEMS shall meet the initial certification testing requirements contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(d) Any time a NO_x CEMS cannot be used to report data for this program because it does not meet the requirements of the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997, missing data shall be substituted using the procedure in that document.

(e) The owner or operator of a budget source that is not required to have a NO_x CEMS, may request approval from the state to use any of the following appropriate methodologies to determine NO_x emission rate:

(1) Boilers or turbines may use the procedures contained in 40 CFR, Part 75, Appendix E to measure NO_x emission rate in pounds/MMBtu, consistent with the provisions in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(2) Persons owning or operating combustion turbines that are subject to this rule may also meet the monitoring requirements of this rule by using default emission factors to determine NO_x emissions in pounds per hour as follows:

a. For gas-fired turbines, the default emission factor shall be 0.7 pounds NO_x per MMBtu.

b. For oil-fired turbines, the default factor shall be 1.2 pounds NO_x per MMBtu.

c. Persons owning or operating gas turbines or oil-fired turbines may perform testing, with the provisions in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997, to determine unit specific maximum potential NO_x emission rates.

(3) Persons owning or operating boilers that are subject to this rule may meet the monitoring requirements of this rule by using a default emission factor of 2.0 pounds per MMBtu to determine NO_x emissions in pounds per hour, or may perform testing consistent with the provision in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997, to determine a unit specific maximum potential emission rate.

Env-A 3211.05 Heat Input Rate or Flow. The owner or operator of a budget source which is not subject to Part 75, shall determine heat input in MMBtu or flow in standard cubic feet per hour using one of the following methods as appropriate:

(a) The owner or operator of a budget source may install and operate a flow monitor according to the provisions of 40 CFR, Part 75.

(1) The owner or operator may either use the flow CEMS to monitor stack flow in standard cubic feet per hour and a NO_x CEMS to monitor NO_x concentration in ppm; or

(2) The owner or operator may use the flow CEMS and a diluent CEMS to determine heat input in MMBtu and a NO_x CEMS to monitor NO_x emission rate in pounds/MMBtu.

(b) The owner or operator of a budget source that does not have a flow CEM may request approval from the state to use any of the following methodologies to determine their heat input rate.

(1) The owner or operator of a budget source that combusts only oil or natural gas may determine heat input using a fuel flow monitor meeting the requirements of Appendix D of 40 CFR, Part 75 and the procedures of Section 5 of Appendix F of 40 CFR, Part 75.

(2) The owner or operator of a budget source that combusts only oil or natural gas which uses a unit specific or general default NO_x emission rate, may determine heat input by measuring the fuel usage for a specified

frequency longer than hourly. This fuel usage shall then be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly fuel usage} = \frac{\text{Hourly electrical load}}{\text{Total electrical load}} \times \text{total fuel usage}$$

(3) The owner or operator of a budget source that combusts any fuel other than oil or natural gas, may request permission from the state to use an alternative method of determining heat input. Alternative methods include:

- a. Conducting fuel sampling and analysis and monitoring fuel usage.
- b. Using boiler efficiency curves and other monitored information such as boiler steam output.
- c. Any other methods approved by the state and EPA which meet the requirements contained in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

(4) Alternative methods for determining heat input are subject to both initial and periodic relative accuracy, and quality assurance testing as proscribed by the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997.

Env-A 3211.06 Conversion to Pounds per Hour.

(a) If the owner or operator determines the NO_x emission rate in pounds per million Btu in accordance with Env-A 3211.04 and heat input rate in MMBtu per hour in accordance with the requirements of Env-A 3211.05, the two values shall be multiplied to result in NO_x emissions in pounds per hour and reported to the NETS in accordance with Env-A 3213.

(b) If the owner or operator determines the NO_x concentration in ppm in accordance with Env-A 3211.04 and flow in standard cubic feet per hour in accordance with the requirements of Env-A 3211.05, the owner or operator shall use the procedures in the *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* dated January 28, 1997 to determine NO_x emissions in pounds per hour and this value shall be reported to the NETS in accordance with Env-A 3213.

Env-A 3212 RECORDKEEPING

Env-A 3212.01 General Recordkeeping. The owner or operator of any budget source shall maintain for each budget source and for five years, or any other period consistent with the terms of the budget source's operating permit, a file of all measurements, data, reports and other information required by this rule, or state specified record keeping, whichever is applicable.

Env-A 3213 REPORTING

Env-A 3213.01 Electronic Format. The Authorized Account Representative for each budget source shall submit, in electronic format which meets the requirements of the U.S. EPA's Electronic Data Reporting (EDR) convention, emissions and operations information. This data shall be submitted within 30 days of the end of any quarter in which the owner or operator is required to report.

Env-A 3213.02 Pounds per Hour and Pounds per Season. In addition, the owner or operator of a budget source shall provide the NETS Administrator, in the same quarterly reports, and in a format consistent with the EDR as specified by the NETS Administrator, NO_x emissions in pounds per hour for every hour during the control period and cumulative quarterly and seasonal NO_x emission data in pounds.

Env-A 3213.03 Quarterly Reporting. Budget sources subject to 40 CFR, Part 75 shall submit this data to EPA as part of the quarterly reports submitted to EPA for the purpose of compliance with 40 CFR, Part 75. Budget sources not subject to 40 CFR, Part 75 shall submit said quarterly reports within 30 days from the end of each of the second and third calendar quarters.

Env-A 3213.04 Request for Retirement Exemption. Should a budget source be permanently retired, a exemption from the requirements of this section, Env-A 3211, and Env-A 3212 may be obtained from the state. To obtain an exemption, the Authorized Account Representative for the budget source shall file a request for retirement exemption with the state, said request to include identification of the budget source being retired, and the date of retirement. State approval of the request for retirement exemption shall be sent to the authorized account representative, and the NETS Administrator and may contain conditions as deemed necessary by the state. State approval shall be in the form of a federally enforceable document, as defined in Env-A 101, and shall contain conditions of the retirement, including;

- (a) The retirement date;
- (b) A statement revoking the current air quality permits or approvals;
- (c) A requirement to inform the department of any change in the status of the unit;

and

(d) A requirement that the unit meet new source review and permit requirements at any time in the future prior to re-operation of the unit.

Env-A 3214 END-OF-SEASON RECONCILIATION

Env-A 3214.01 Determination of Compliance. Monitored emissions data as reported by the budget source to the NETS Administrator, and as adjusted by the Administrator to be in accordance with Env-A 3211, combined with allowance allocations and transfers recorded in the NAT, shall provide the basis for determination of compliance with this rule.

Env-A 3214.02 Request for Deduction of Allowances. Each year during the period November 1 through December 31, inclusive, the Authorized Account Representative shall request the NATS Administrator to deduct current year allowances from the compliance account equivalent to the nitrogen oxides emissions from the budget source in the current control period. This request shall be submitted by the Authorized Account Representative to the NATS Administrator by no later than the allowance transfer deadline (December 31) and shall identify the compliance account from which the deductions should be made, and if desired by the source, the serial numbers of the allowances to be deducted. Otherwise, allowances usable for that compliance year shall be deducted in the order of their arrival into the unit's account, with allocated allowances being deducted first, followed by the deduction of transferred allowances.

Env-A 3214.03 Deduction of Allowance. Regardless of the request for deductions submitted pursuant to Env-A 3214.02, the Administrator shall deduct a number of allowances equal to the current control period NO_x emissions from the budget source's compliance account, and determine whether sufficient allowances are in the account equivalent to the emissions.

Env-A 3214.04 Procurement of Additional Allowances. Should the emissions of the budget source in the current control period exceed the allowances in the budget source's compliance account, the budget source is responsible for obtaining additional allowances by the allowance transfer deadline so the total number of allowances in the budget source's compliance account, including allowance transfers properly submitted to the NATS Administrator by the allowance transfer deadline, equals the control period emissions of NO_x rounded to the nearest whole ton.

Env-A 3214.05 Noncompliance. Failure to obtain and hold in its compliance account for any control period as of the allowance transfer deadline sufficient allowances equal to or exceeding emissions for the control period, shall result in enforcement action and penalties pursuant to Env-A 3216.

Env-A 3215 COMPLIANCE CERTIFICATION

Env-A 3215.01 Submittal. For each control period, the Authorized Account Representative for the budget source shall submit to the state in which the budget source is located, an annual compliance certification.

Env-A 3215.02 Deadline. The compliance certification shall be submitted no later than the allowance transfer deadline (December 31) of each year.

Env-A 3215.03 Content. The certification shall contain, at a minimum:

- (a) Identification of the budget source, including name, address, name of Authorized Account Representative and NATS account number;
- (b) A statement whether emissions data has been submitted to the NETS in accordance with the procedures established in Env-A 3213 and in conformance with the requirements of the NETS Administrator;
- (c) A statement whether the budget source operated in compliance with the allowances allocated for the control period, including those obtained through transfer by the allowance transfer deadline, and holds sufficient allowances in its compliance account for the control period, as of the allowance transfer deadline, to equal or exceed the recorded emissions for the control period;
- (d) A statement of certification whether the monitoring plan which governs the budget source was maintained to reflect actual operation of the budget source;
- (e) A statement of certification that all emissions from the budget source were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures; and
- (f) A statement to indicate whether there were any changes in the method of operation of the budget source or the method of monitoring the budget source during the current year.

Env-A 3215.04 Compliance Verification. The state reserves the right to verify compliance by whatever means necessary including but not limited to:

- (a) Inspection of facility operating records;
- (b) Obtaining information on allowance deduction and transfers from the NATS;
- (c) Obtaining information on emissions from the NETS;

(d) Testing emission monitoring devices; and

(e) Requiring the budget source to conduct emissions testing under the supervision of the state.

Env-A 3216 PENALTIES

Env-A 3216.01 Automatic Deduction. If emissions from a budget source exceed allowances held in the budget source's compliance account for the control period as of the allowance transfer deadline, the NATS Administrator shall automatically deduct allowances from the budget source's compliance account for the next control period at a rate of 3 allowances for every 1 ton of excess emissions.

Env-A 3216.02 Additional Penalties. In addition to the penalty provisions of this rule, the state shall enforce the provisions of this rule pursuant to applicable law and regulations, including those providing for civil and criminal penalties pursuant to RSA 125-J, and following the guidelines established herein as follows:

(a) For purposes of determining the number of days of violation, any excess emissions for the control period shall presume that each day in the control period constitutes a day in violation (153 days) unless the budget source can demonstrate, to the satisfaction of the state, that a lesser number of days should be considered.

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

Env-A 3216.03 Hearings and Appeals. State and federal administrative procedures are applicable, including those pertaining to hearings and appeals of enforcement actions.

Env-A 3217 FEES

Env-A 3217.01 Fees. The state reserves the authority to charge appropriate administrative fees in the future.

Env-A 3218 PROGRAM AUDITS

Env-A 3218.01 Early Reductions Report. On or before May 1, 1999, the state shall make available a report which documents the number of early reduction allowances converted to allowances for use in 1999.

Env-A 3218.02 State Audits. The state shall conduct an audit of the NO_x Budget Program beginning in 2002 and every 3 years thereafter to ensure that the program is providing expected performance in regards to emissions monitoring and allowance use. Such audits shall include, as appropriate, confirmation of emissions reporting accuracy through validation of CEMS and data acquisition systems at the budget source, as well as

review of allowance transfer and use by the budget source (geographically and temporally). Each periodic audit shall examine the extent to which banked allowances have, or have not, contributed to emissions in excess of the budget for each year preceding the audit. The periodic audit shall further provide an assessment that the program is consistent with the requirements for reasonable further progress and the attainment demonstration.

Env-A 3218.03 Third Party Audits. In addition to the state audit, the state reserves the right to request a third party audit of the program. Such third party audit may be implemented on a state by state basis or may be performed on a region-wide basis under the supervision of the Ozone Transport Commission.

Env-A 3218.04 Audit Results. Should an audit result in recommendations for program revisions at a state level, the state shall consider, in consultation with the OTC, the audit recommendations, and if found necessary, propose the appropriate program revisions as changes to current procedures or modifications to this regulation.