

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO<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 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<sub>x</sub> Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the 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<sub>x</sub> Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

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

(1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NO<sub>x</sub> 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 allowances 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 paragraphs (b), (d), or (e) of this section.

**§ 96.55 Banking.**

(a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowance, any NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO<sub>x</sub> 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<sub>x</sub> Budget units are located, any banked NO<sub>x</sub> allowance may be deducted for compliance in accordance with § 96.54.

(3) If the total number of banked NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> Budget units are located and divided by the total number of banked NO<sub>x</sub> 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<sub>x</sub> allowances in each compliance account or overdraft account. The resulting product is the number of banked NO<sub>x</sub> allowances in the account that may be deducted for compliance in accordance with § 96.54. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with § 96.54, except that, if such NO<sub>x</sub> allowances are used to make a deduction, two such NO<sub>x</sub> allowances must be deducted for each deduction of one NO<sub>x</sub> allowance required under § 96.54.

(c) Any NO<sub>x</sub> Budget unit may reduce its NO<sub>x</sub> 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<sub>x</sub> allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NO<sub>x</sub> Budget unit for which the owner or operator requests any

early reduction credits under paragraph (c)(4) of this section shall monitor 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 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<sub>x</sub> 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<sub>x</sub> Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(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 (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<sub>x</sub> 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<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 between 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 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<sub>x</sub> 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<sub>x</sub> allowances, to NO<sub>x</sub> Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section

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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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit covered by such accepted requests according to the following formula:

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

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<sub>x</sub> allowances from the State's compliance supplement pool” is the number of NO<sub>x</sub> 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<sub>x</sub> allowances determined under paragraph (c)(5) 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances recorded under paragraph (c)(6) of this section are 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<sub>x</sub> Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO<sub>x</sub> authorized account representative for the account.

### §96.57 Closing of general accounts.

(a) The NO<sub>x</sub> 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<sub>x</sub> Allowance Tracking System and by correctly submitting for recordation under §96.60 an allowance transfer of all NO<sub>x</sub> allowances in the account to one or more other NO<sub>x</sub> 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<sub>x</sub> allowances, the Administrator may notify the NO<sub>x</sub> authorized account representative for the account that the account