

PART 204

NO_x BUDGET TRADING PROGRAM

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0305, 19-0311)

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Historical Note

Part filed May 20, 1964; repealed, new filed July 29, 1969, renum Part 374, Title 9, filed Sept. 1971; new (§§ 204.1-204.3) filed April 28, 1972; repealed, filed May 17, 1972; new (§§ 204.1-204.4) filed July 12, 1972; Part (*Hydrocarbon Emissions from Storage and Loading Facilities—New York City Metropolitan Area*, §§ 204.1-204.4) repealed, filed July 24, 1979; new (Subparts 204-1 — 204-9) filed Jan. 26, 2000 eff. 30 days after filing

SUBPART 204-1

NO_x BUDGET TRADING PROGRAM GENERAL PROVISIONS

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Historical Note

Subpart (§§ 204-1.1 — 204-1.7) filed Jan. 26, 2000 eff. 30 days after filing

§ 204-1.1 Purpose and authorization to the administrator.

This Part establishes the New York State component of the NO_x Budget Trading Program which is designed to mitigate the interstate transport of ozone and nitrogen oxides, an ozone precursor. The department authorizes the administrator to assist the department in implementing the NO_x Budget Trading Program by performing the functions set forth for the administrator in this Part.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing

§ 204-1.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200 of this Title apply to this Part.

(b) For the purposes of this Part, the following specific definitions apply:

(1) *Account certificate of representation*. The completed and signed submission required by Subpart 204-2 of this Part for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is

authorized to represent the owners and operators of such source or sources and of the NO_x budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

(2) *Account number.* The identification number given by the administrator to each NO_x allowance tracking system account.

(3) *Acid rain emissions limitation.* As defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the act.

(4) *Allocate or allocation.* The determination by the department of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(5) *Annual average heat rate.* A measure of an electricity generating unit's thermal efficiency, expressed in Btu's per net kilowatt-hour, computed by dividing the heat input (based on total higher heating value Btu content of the fuel burned) for electricity generation by the resulting net kilowatt-hour generation during a calendar year. For co-generation facilities, the heat input for electricity generation is calculated by the sum of the heat input for combustion turbines, steam boilers (excluding backup boilers) and supplemental firing minus the net heat input of useful thermal energy provided for purposes other than electricity generation.

(6) *Automated data acquisition and handling system or DAHS.* That component of the CEMS, or other emissions monitoring system approved for use under Subpart 204-8 of this Part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subpart 204-8 of this Part.

(7) *Boiler.* An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

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

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

(10) *Commence commercial operation.* With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a NO_x budget unit under section 204-1.4 of this Subpart on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Subpart 204-9 of this Part, for a unit that is not a NO_x budget unit under section 204-1.4 of this Subpart on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section 204-1.4 of this Subpart shall be the unit's date of commencement of commercial operation.

(11) *Commence operation.* To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a NO_x budget unit under section 204-1.4 of this Subpart on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Subpart 204-9 of this Part, for a unit that is not a NO_x budget unit under section 204-1.4 of this Subpart on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section 204-1.4 of this Subpart shall be the unit's date of commencement of operation.

(12) *Common stack.* A single flue through which emissions from two or more units are exhausted.

(13) *Compliance account.* A NO_x allowance tracking system account, established by the administrator for a NO_x budget unit under Subpart 204-6 of this Part, in which the NO_x allowance allocations for the unit are initially recorded and in which are held

NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x budget emissions limitation.

(14) *Compliance certification.* A submission to the department or the administrator, as appropriate, that is required under Subpart 204-4 of this Part, to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this Part and that is signed by the NO_x authorized account representative in accordance with Subpart 204-2 of this Part.

(15) *Continuous emission monitoring system or CEMS.* The equipment required under Subpart 204-8 of this Part, to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR part 75, in a continuous emission monitoring system.

(i) flow monitor;

(ii) nitrogen oxides pollutant concentration monitors;

(iii) diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Subpart 204-8 of this Part;

(iv) a continuous moisture monitor when such monitoring is required by Subpart 204-8 of this Part; and

(v) an automated data acquisition and handling system.

(16) *Control period.* The period beginning May 1st of a year and ending on September 30th of the same year, inclusive.

(17) *CPPTE or control period potential to emit.* The maximum capacity of a NO_x budget unit to emit NO_x under its physical and operational design during a control period. Any physical or operational limitation on the capacity of a NO_x budget unit to emit NO_x, including air pollution control equipment and/or a restriction on the hours of operation, or on the type or amount of material combusted shall be treated as part of the design if the limitation is enforceable by the department and the administrator.

(i) For electricity generating units and non-electricity generating units, the CPPTE can be no greater than the number to be determined by the following:

$CPPE \leq [5/12thsABUhr \times BUER] + (3.672 = 5/12thsABUhr \times PER)] \times MRHHI$ when PER and BUER are in pounds per million Btu; or,

$CPPE \leq [5/12thsABUhr \times BUER] + (3.672 = 5/12thsABUhr \times PER) \times PER$ and BUER are in pounds

per hour,

where:

"ABUhr" is number of hours it takes annually to combust the quantity of the backup fuel allowed under the unit's permit which, if used as the only fuel for the unit, would be the number of hours in determining the emission rate potential for the unit.

"BUER" is the lowest emission rate applicable to the use of the backup fuel (in pounds per million Btu or pounds per hour based on inlet temperature of 47.5°F) allowed under the unit's permit which, if used as the only fuel for the unit, would be the emission rate in determining the emission rate potential for the unit.

"PER" is the lowest emission rate applicable to the use of the primary fuel (in pounds per million Btu or pounds per hour based on inlet temperature of 47.5°F) allowed under the unit's permit.

"MRHHI" is the maximum rated hourly heat input for the unit based upon an inlet air temperature of 47.5°F for those units without temperature control.

(ii) For portland cement kiln units, the CPPTE can be no greater than the number to be determined by the following:

$CPPE \leq 3.672 \times ER$

where:

"ER" is the lowest applicable emission rate (in pounds per hour) allowed under the unit's permit.

(18) *End use energy efficiency project.* A measure implemented at the customer level that uses a reduced amount of electricity, measured in kilowatt-hours to maintain or increase the level of energy service, including product output and comfort level. Examples of such a measure include, without limitation, installing new equipment or systems, modifying existing equipment or systems, or improving operation and maintenance procedures.

(19) *Energy Information Administration.* The Energy Information Administration of the United States Department of Energy.

(20) *Excess emissions.* Any tonnage of nitrogen oxides emitted by a NO_x budget unit during a control period that exceeds the NO_x budget emissions limitation for the unit.

(21) *Fossil fuel.* Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(22) *Fossil fuel-fired.* With regard to a unit: the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be *fossil fuel-fired* as of the date, during such year, on which the unit begins combusting fossil fuel.

(23) *General account.* A NO_x allowance tracking system account, established under Subpart 204-6 of this Part, that is not a compliance account or an overdraft account.

(24) *Generator.* A device that produces electricity.

(25) *Heat input.* The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with Subpart 204-8 of this Part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(26) *Higher heating value heat content.* Total gross calorific value of the fuel, or the total heat (in Btu/specified unit of fuel) produced when the fuel is completely combusted under standardized conditions, including the heat lost in the vaporization of water contained in the fuel.

(27) *In-plant efficiency measure.* A measure undertaken at a NO_x budget source that increases the overall energy efficiency of the facility. Examples of such a measure include, without limitation, improvements in thermal efficiency, more efficient production of electricity, or more efficient production of cement (or clinker).

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

(i) for the life of the unit;

(ii) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(iii) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(29) *Long dry kiln.* A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(30) *Long wet kiln.* A kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is slurry.

(31) *Maximum clinker production.* The ability of a portland cement kiln to produce a stated maximum amount of clinker per hour on a steady state basis, as determined by the physical design and physical characteristics of the kiln.

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

(33) *Maximum potential hourly heat input.* An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR part 75 to report heat input, this value should be calculated, in accordance with 40 CFR part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

(34) *Maximum potential NO_x emission rate.* The emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR part 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(35) *Maximum rated hourly heat input.* Except as found at paragraph (17) of this subdivision, a unit-specific maximum hourly heat input (in mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(36) *Monitoring system.* Any monitoring system that meets the requirements of Subpart 204-8 of this Part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(37) *Most stringent State or Federal NO_x emissions limitation.* With regard to a NO_x budget opt-in unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

(39) *Net kilowatt-hour generation.* Gross generation minus the plant use of electricity or all electricity supplied to the electric power grid. For co-generation facilities, all electricity supplied to the electric power grid, the host site and other industrial and commercial customers, but excluding electricity used by the co-generation facility and fuel handling and processing equipment.

(40) *New York State Trading Program budget.* The total number of NO_x tons apportioned to all NO_x budget units in New York State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

(41) *NO_x allowance.* An authorization by the department under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(42) *NO_x allowance deduction or deduct NO_x allowances.* The permanent withdrawal of NO_x allowances by the administrator from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for a control period, determined in accordance with Subpart 204-8 of this Part, or for the forfeit of NO_x allowances as provided by this Part.

(43) *NO_x allowances held or hold NO_x allowances.* The NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Subparts 204-6 and 204-7 of this Part, in a NO_x allowance tracking system account.

(44) *NO_x allowance Tracking System.* The system by which the administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

(45) *NO_x allowance tracking system account.* An account in the NO_x allowance tracking system established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(46) *NO_x allowance transfer deadline.* Midnight of November 30th or, if November 30th is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the control period immediately preceding such deadline.

(47) *NO_x authorized account representative.* For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with Subpart 204-2 of this Part, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with Subpart 204-6 of this Part, to transfer or otherwise dispose of NO_x allowances held in the general account.

(48) *NO_x budget emissions limitation.* For a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit for a control period.

(49) *NO_x budget opt-in permit.* A NO_x budget permit covering a NO_x budget opt-in.

(50) *NO_x budget opt-in unit.* A unit that has been elected to become a NO_x budget unit and whose NO_x budget opt-in permit has been issued and is in effect under Subpart 204-9 of this Part.

(51) *NO_x budget permit.* The portion of the legally binding and federally enforceable written permit issued by the department pursuant to Part 201 of this Title to a NO_x budget source or NO_x budget unit which specifies the NO_x Budget Trading Program requirements applicable to a NO_x budget source, to each NO_x budget unit at the NO_x budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(52) *NO_x budget source.* A source that includes one or more NO_x budget units.

(53) *NO_x Budget Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to this Part, corresponding regulations in other states promulgated in accordance with 40 CFR 51.121, and Federal implementation plans promulgated in accordance with 40 CFR part 97 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(54) *NO_x budget unit.* A unit that is subject to NO_x Budget Trading Program requirements under section 204-1.4 of this Subpart or section 204-9.1 of this Part.

(55) *Operating.* With regard to a unit under section 204-9.1 of this Part, having documented heat input or clinker production for more than 876 hours in the 6 months immediately preceding the submission of an application for a NO_x budget permit under section 204-9.4(a) of this Part.

(56) *Operator.* Any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or unit for which an application for a NO_x budget opt-in permit under section 204-9.4 of this Part is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(57) *Opt-in.* To be elected to become a NO_x budget unit under the NO_x Budget Trading Program through a final, effective NO_x budget opt-in permit under Subpart 204-9 of this Part.

(58) *Overdraft account.* NO_x allowance tracking system account, established by the administrator under Subpart 204-6 of this Part, for each NO_x budget source where there are two or more NO_x budget units.

(59) *Owner.* Any of the following persons:

(i) any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 204-9.4 of this Part is submitted and not denied or withdrawn;

(ii) any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 204-9.4 of this Part is submitted and not denied or withdrawn;

(iii) any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 204-9.4 of this Part is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under section 204-9.4 of this Part is submitted and not denied or withdrawn; or

(iv) with respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(60) *Portland cement kiln.* A system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.

(61) *Precalciner kiln.* A kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(62) *Preheater kiln.* A kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(63) *Preheater/precincer kiln.* A pyroprocessing system comprised of three main units, a preheater followed by a precalciner followed by a kiln. The preheater dries and preheats the feed in a series of cyclone vessels. The precalciner begins the calcination of the feed in a separate vessel. The kiln completes the calcination and sintering of the feed to produce clinker.

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

(65) *Recordation, record, or recorded.* With regard to NO_x allowances, the movement of NO_x allowances by the administrator from one NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(66) *Reference method.* Any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR part 60.

(67) *Renewable energy project.* A power generation technology that produces electricity from wind energy, solar thermal energy, photovoltaics, methane waste, or sustainably managed biomass; but not the combustion or pyrolysis of solid waste.

(68) *Serial number.* When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the administrator under section 204-6.4(c) of this Part.

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

(70) *State*. One of the 48 contiguous states and the District of Columbia, or any non-federal authority in or including such states or the District of Columbia (including local agencies, and statewide agencies) or any eligible Indian tribe in an area of such state or the District of Columbia, that establishes a corresponding regulation as part of the NO_x Budget Trading Program.

(71) *State trading program budget*. The total number of NO_x tons apportioned to all NO_x budget units in a given state, in accordance with the NO_x Budget Trading Program, for use in a given control period.

(72) *Submit or serve*. To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (i) in person;
- (ii) by United States Postal Service; or
- (iii) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(73) *Thermal efficiency*. The ratio of energy output (in Btu) to energy input (in Btu) based on the higher heating value heat content of the fuel.

(74) *Ton or tonnage*. Any short ton (*i.e.*, 2,000 pounds). For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Subpart 204-8 of this Part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero ton.

(75) *Unit*. A fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, or portland cement kiln.

(76) *Unit operating day*. A calendar day in which a unit combusts any fuel.

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

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-1.3 Measurements, abbreviations, and acronyms.

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

- (a) *Btu*-British thermal unit.
- (b) *hr*-hour.
- (c) *Kwh*-kilowatt hour.
- (d) *lb*-pounds.
- (e) *mmBtu*-million Btu.
- (f) *MWe*-megawatt electrical.
- (g) *CO₂*-carbon dioxide.
- (h) *NO_x*-nitrogen oxides.
- (i) *O₂*-oxygen.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing

§ 204-1.4 Applicability.

(a) The following units shall be NO_x budget units, and any source that includes one or more such units shall be a NO_x budget source, subject to the requirements of this Part.

(1) *Electricity generating units.* Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity equal to or greater than 15 MWe and sells any amount of electricity.

(2) *Portland cement kiln units.* Any unit that is a portland cement kiln having a maximum design heat input equal to or greater than 250 mmBtu/hr.

(3) *Non-electricity generating units.* Any unit other than an electricity generating unit or a portland cement kiln unit under paragraph (1) or (2) of this subdivision, respectively, which has a maximum design heat input equal to or greater than 250 mmBtu/hr.

(b) *Limited exemption for certain NO_x budget units.* Notwithstanding subdivision (a) of this section, a NO_x budget unit under paragraph (a)(1) or (3) of this section shall be subject only to the requirements of this subdivision if the unit has a permit that meets the requirements of paragraph (1) of this subdivision and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with subparagraphs (1)(ii) and (iii) of this subdivision that limits the unit's potential NO_x mass emissions for the control period to 25 tons or less.

(1) For each control period under this subdivision, the permit must:

(i) restrict the unit to burning only natural gas or fuel oil;

(ii) restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions;

(iii) require that the unit's potential NO_x mass emissions shall be calculated as follows:

(a) select the default NO_x emission rate in table LM-2 of 40 CFR 75.19(c)(1)(ii) that would otherwise be applicable assuming that the unit burns only the type of fuel (*i.e.*, only natural gas or only fuel oil) that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in subparagraph (i) of this paragraph; and

(b) multiply the default NO_x emission rate under clause (a) of this subparagraph by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 204-1.2 of this Subpart. The department may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently;

(iv) require that the owner or operator of the unit shall retain at the source that includes the unit, for five years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and

(v) require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the department by November 1st of each year.

(2) The department will notify the administrator in writing of each unit under subdivision (a) of this section whose permit contains the fuel use restriction under subparagraph (1)(i) of this subdivision and the operating hours restriction under subparagraphs (1)(ii) and (iii) of this subdivision. The department will also notify the administrator in writing of each unit under subdivision (a) of this section whose permit is revised to remove any such restriction, whose permit includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

(3) If, for any control period under this subdivision, the fuel use restriction under subparagraph (1)(i) of this subdivision or the operating hours restriction under subparagraphs (1)(ii)

and (iii) of this subdivision is removed from the unit's permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under subparagraph (1)(i) of this subdivision or the operating hours restriction under subparagraphs (1)(ii) and (iii) of this subdivision, the unit shall be subject to all applicable requirements of this Part.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-1.5 Shutdown or change in physical characteristics of a NO_x budget unit.

(a) Any NO_x budget unit that is permanently shutdown and has surrendered its permit will no longer be deemed a NO_x budget unit and shall no longer be subject to the provisions of this Part applicable to NO_x budget units on the day on which the procedures set forth in paragraph (c)(1) of this section are completed.

(b) Any NO_x budget unit, other than a NO_x budget opt-in unit, that has permanently changed its physical characteristics so that it no longer fits the physical description of a NO_x budget unit under section 204-1.4(a) of this Subpart (for example, a non-electricity generating unit completes a physical plant change which reduces its maximum design heat input to below 250 mmBtu/hr) will no longer be deemed a NO_x budget unit and shall no longer be subject to the provisions of this Part applicable to NO_x budget units on the day on which the procedures set forth in paragraph (c)(2) of this section are completed.

(c) (1) The NO_x authorized account representative submits a statement to the department (in a format prescribed by the department) attesting to the fact that the unit is permanently shutdown and that the unit's permit has been surrendered to the department. A copy of the statement must simultaneously be submitted to the administrator.

(2) The NO_x authorized account representative submits a statement to the department (in a format prescribed by the department) and the administrator attesting to the fact that the physical characteristics of the unit have been permanently changed so that it no longer fits the physical description of a NO_x budget unit under section 204-1.4(a) of this Subpart. This statement must be accompanied by adequate information which details the changes to the physical characteristics of the unit. The department, in consultation with the administrator, will then determine whether the statement is valid. Upon the department's determination that the statement is valid, the procedures of this paragraph are completed.

(d) Any NO_x budget unit which ceases to be deemed a NO_x budget unit pursuant to this section is not eligible for an allocation or distribution of NO_x allowances pursuant to Subpart 204-5 of this Part following the completion of the procedures set forth in paragraph (c)(1) or (2) of this section.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-1.6 Standard requirements.

(a) *Permit requirements.* (1) The NO_x authorized account representative of each NO_x budget unit shall:

(i) submit to the department a complete NO_x budget permit application under section 204-3.3 of this Part in accordance with the deadlines specified in section 204-3.2(b) of this Part; and

(ii) submit in a timely manner any supplemental information that the department determines is necessary in order to review a NO_x budget permit application and issue or deny a NO_x budget permit.

(2) The owners and operators of each NO_x budget unit shall have a NO_x budget permit and operate the unit in compliance with such NO_x budget permit.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the monitoring requirements of Subpart 204-8 of this Part.

(2) The emissions measurements recorded and reported in accordance with Subpart 204-8 of this Part shall be used to determine compliance by the unit with the NO_x budget emissions limitation under subdivision (c) of this section.

(c) *Nitrogen oxides requirements.* (1) The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under section 204-6.5 of this Part, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with Subpart 204-8 of this Part.

(2) Each ton of nitrogen oxides emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this Part, the act, and applicable State law.

(3) A NO_x budget unit shall be subject to the requirements under paragraph (1) of this subdivision starting on the later of May 1, 2003 or the date on which the unit commences operation.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with Subparts 204-5, 204-6, 204-7, and 204-9 of this Part.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (1) of this subdivision, for a control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated by the department under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x budget permit application, or the NO_x budget permit and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(7) A NO_x allowance allocated by the department under the NO_x Budget Trading Program does not constitute a property right.

(d) *Excess emissions requirements.* The owners and operators of a NO_x budget unit that has excess emissions in any control period shall:

(1) forfeit the NO_x allowances required for deduction under section 204-6.5(d)(1) of this Part; and

(2) pay any fine, penalty, or assessment or comply with any other remedy imposed under section 204-6.5(d)(3) of this Part.

(c) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the department or the administrator.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 204-2.4 of this Part; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with Subpart 204-8 of this Part, provided that to the extent that Subpart 204-8 of this Part provides for a three-year period for recordkeeping, the three-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.

(iv) Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.

(2) The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under Subpart 204-4, 204-8, or 204-9 of this Part.

(f) *Liability.* (1) No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

(2) Any provision of the NO_x Budget Trading Program that applies to a NO_x budget source (including a provision applicable to the NO_x authorized account representative of a NO_x budget source) shall also apply to the owners and operators of such source and of the NO_x budget units at the source.

(3) Any provision of the NO_x Budget Trading Program that applies to a NO_x budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under Subpart 204-8 of this Part, the owners and operators and the NO_x authorized account representative of one NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) *Effect on other authorities.* No provision of the NO_x Budget Trading Program, a NO_x budget permit application, or a NO_x budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x budget source or NO_x budget unit from compliance with any other provisions of applicable State and Federal laws and regulations.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-1.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

SUBPART 204-2

NO_x AUTHORIZED ACCOUNT REPRESENTATIVE FOR NO_x BUDGET SOURCES

Sec.

- 204-2.1 Authorization and responsibilities of the NO_x authorized account representative
- 204-2.2 Alternate NO_x authorized account representative
- 204-2.3 Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators
- 204-2.4 Account certificate of representation
- 204-2.5 Objections concerning the NO_x authorized account representative

Historical Note

Subpart (§§ 204-2.1 — 204-2.5) filed Jan. 26, 2000 eff. 30 days after filing

§ 204-2.1 Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under section 204-2.2 of this Subpart, each NO_x budget source, including all NO_x budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x budget unit at the source.

(b) The NO_x authorized account representative of the NO_x budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x budget units at the source.

(c) Upon receipt by the administrator of a complete account certificate of representation under section 204-2.4 of this Subpart, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the department, the administrator, or a court regarding the source or unit.

(d) No NO_x budget permit shall be issued, and no NO_x allowance tracking system account shall be established for a NO_x budget unit at a source, until the administrator has received a complete account certificate of representation under section 204-2.4 of this Subpart for a NO_x authorized account representative of the source and the NO_x budget units at the source.

(e) (1) Each submission under the NO_x Budget Trading Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The department and the administrator will accept or act on a submission made on behalf of owners or operators of a NO_x budget source or a NO_x budget unit only if the

submission has been made, signed, and certified in accordance with paragraph (1) of this subdivision.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-2.2 Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the administrator of a complete account certificate of representation under section 204-2.4 of this Subpart, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this section and sections 204-2.1(a), 204-2.3 and 204-2.4 of this Subpart and section 204-6.2 of this Part, whenever the term *NO_x authorized account representative* is used in this Part, the term shall be construed to include the alternate NO_x authorized account representative.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-2.3 Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators.

(a) *Changing the NO_x authorized account representative.* The NO_x authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under section 204-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(b) *Changing the alternate NO_x authorized account representative.* The alternate NO_x authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under section 204-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

(c) *Changes in the owners and operators.* (1) In the event a new owner or operator of a NO_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the department or the administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NO_x budget source or a NO_x budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-2.4 Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the administrator:

(1) identification of the NO_x budget source and each NO_x budget unit at the source for which the account certificate of representation is submitted;

(2) the name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(3) a list of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source;

(4) the following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the administrator, or a court regarding the source or unit"; and

(5) the signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the department or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or the administrator. Neither the department nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-2.5 Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under section 204-2.4 of this Subpart has been submitted and received, the department and the administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under section 204-2.4 of this Subpart is received by the administrator.

(b) Except as provided in section 204-2.3(a) or (b) of this Subpart, no objection or other communication submitted to the department or the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the department or the administrator under the NO_x Budget Trading Program.

(c) Neither the department nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Historical Note

Sec. filed Jan. 26, 2000 eff. 30 days after filing.