COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9 VAC 5 CHAPTER 140.
REGULATION FOR EMISSIONS TRADING.

PART I.
NO_X Budget Trading Program.

ARTICLE 1.--NO_X Budget Trading Program General Provisions.

9 VAC 5-140-10.	Purpose.
9 VAC 5-140-20.	Definitions.
9 VAC 5-140-30.	Measurements, abbreviations, and acronyms.
9 VAC 5-140-31.	Federal Regulations Incorporated by Reference.
9 VAC 5-140-40.	Applicability.
9 VAC 5-140-50.	Retired unit exemption.
9 VAC 5-140-60.	Standard requirements.
9 VAC 5-140-70.	Computation of time.

ARTICLE 2.--Authorized Account Representative for NO_X Budget Sources.

9 VAC 5-140-100.	Authorization and responsibilities of the NO_X authorized account representative.
9 VAC 5-140-110.	Alternate NO_X authorized account representative.
9 VAC 5-140-120.	Changing the NO_X authorized account representative and the alternate NO_X authorized account representative; changes in the owners and operators.
9 VAC 5-140-130.	Account certificate of representation.
9 VAC 5-140-140.	Objections concerning the NO_X authorized account representative.

ARTICLE 3.--Permits.

9 VAC 5-140-200.	General NO_X Budget permit requirements.
9 VAC 5-140-210.	Submission of NO_X Budget permit applications.
9 VAC 5-140-220.	Information requirements for NO_X Budget permit applications.
9 VAC 5-140-230.	NO_X Budget permit contents.
9 VAC 5-140-240.	Effective date of initial NO_X Budget permit.
9 VAC 5-140-250.	NO_X Budget permit revisions.

ARTICLE 4.--Compliance Certification.

9 VAC 5-140-300.	Compliance certification report.
9 VAC 5-140-310.	Permitting authority's and administrator's action on compliance certifications.

ARTICLE 5.--NO_X Allowance Allocations.

9 VAC 5-140-400.	State trading program budget.
9 VAC 5-140-410.	Timing requirements for NO_X allowance allocations.
9 VAC 5-140-420.	NO_X allowance allocations.
9 VAC 5-140-430.	Compliance Supplement Pool.

ARTICLE 6.--NO_X Allowance Tracking System.

9 VAC 5-140-500.	NO_X Allowance Tracking System accounts.
9 VAC 5-140-510.	Establishment of accounts.

9 VAC 5-140-520. NO_X Allowance Tracking System responsibilities of NO_X authorized account representative.
9 VAC 5-140-530. Recordation of NO_X allowance allocations.
9 VAC 5-140-540. Compliance.
9 VAC 5-140-550. Banking.
9 VAC 5-140-560. Account error.
9 VAC 5-140-570. Closing of general accounts.

ARTICLE 7.--NO_X Allowance Transfers.

9 VAC 5-140-600. Scope and submission of NO_X allowance transfers.
9 VAC 5-140-610. EPA recordation.
9 VAC 5-140-620. Notification.

ARTICLE 8.--Monitoring and Reporting.

9 VAC 5-140-700. General requirements.
9 VAC 5-140-710. Initial certification and recertification procedures.
9 VAC 5-140-720. Out of control periods.
9 VAC 5-140-730. Notifications.
9 VAC 5-140-740. Recordkeeping and reporting.
9 VAC 5-140-750. Petitions.
9 VAC 5-140-760. Additional requirements to provide heat input data for allocation purposes.

ARTICLE 9.--Individual Unit Opt-ins.

9 VAC 5-140-800. Applicability.
9 VAC 5-140-810. General.
9 VAC 5-140-820. NO_X authorized account representative.
9 VAC 5-140-830. Applying for NO_X Budget opt-in permit.
9 VAC 5-140-840. Opt-in process.
9 VAC 5-140-850. NO_X Budget opt-in permit contents.
9 VAC 5-140-860. Withdrawal from NO_X Budget Trading Program.
9 VAC 5-140-870. Change in regulatory status.
9 VAC 5-140-880. NO_X allowance allocations to opt-in units.

ARTICLE 10.--State Trading Program Budget and Compliance Pool.

9 VAC 5-140-900. State trading program budget.
9 VAC 5-140-910. Compliance supplement pool budget.
9 VAC 5-140-920. Total electric generating unit allocations.
9 VAC 5-140-930. Total non-electric generating unit allocations.

ARTICLE 1.
NO_X Budget Trading Program General Provisions.

9 VAC 5-140-10. Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_X Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides. The board authorizes the administrator to assist the board in implementing the NO_X Budget Trading Program by carrying out the functions set forth for the administrator in this part.

9 VAC 5-140-20. Definitions.

A. As used in this part, all words or terms not defined here shall have the meaning given them in 9

VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

B. For the purpose of this part and any related use, the following words or terms shall have the following meanings unless the context clearly indicates otherwise:

"Account certificate of representation" means the completed and signed submission required by Article 2 (9 VAC 5-140-100 et seq.) 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.

"Account number" means the identification number given by the administrator to each NO_X Allowance Tracking System account.

"Acid Rain emissions limitation" means, 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 CAA.

"Adjusted trading program budget" means the total number of NO_X allowances equal to the state trading program budget set forth in 9 VAC 5-140-900, less the sum of the NO_X emission limitations (in tons) for each unit exempt under 9 VAC 5-140-40 B that is not allocated any NO_X allowances under 9 VAC 5-140-420 B or C for the control period and whose NO_X emission limitation (in tons of NO_X) is not included in the amount calculated under 9 VAC 5-140-420 D 5 b (2) for the control period.

"Administrator" means the Administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means the determination by the permitting authority or the administrator of the number of NO_X allowances to be initially credited to a NO_X Budget unit or an allocation set-aside.

"Allocation set-aside budget" means the sum of:

1. For NO_X Budget units under 9 VAC 5-140-40 A 1, the adjusted trading program budget for the control period to which the allocation set-aside applies multiplied by the set-aside percentage, rounded to the nearest whole number of NO_X allowances as appropriate.

2. For NO_X Budget units under 9 VAC 5-140-40 A 2, 1,000 tons per control period.

"Automated data acquisition and handling system or DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under Article 8 (9 VAC 5-140-700 et seq.) 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 Article 8 (9 VAC 5-140-700 et seq.) of this part.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CAA" means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

"Combined cycle system" means 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.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, 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.

"Commence commercial operation" means, 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. Except as provided in 9 VAC 5-140-50, for a unit that is a NO_X Budget unit under 9 VAC 5-140-40 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 9 VAC 5-140-50 or Article 9 (9 VAC 5-140-800 et seq.) of this part, for a unit that is not a NO_X Budget unit under 9 VAC 5-140-40 on the date the unit commences commercial operation, the date the unit becomes a NO_X Budget unit under 9 VAC 5-140-40 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in 9 VAC 5-140-50, for a unit that is a NO_X Budget unit under 9 VAC 5-140-40 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 9 VAC 5-140-50 or Article 9 (9 VAC 5-140-800 et seq.) of this part, for a unit that is not a NO_X Budget unit under 9 VAC 5-140-40 on the date of commencement of operation, the date the unit becomes a NO_X Budget unit under 9 VAC 5-140-40 shall be the unit's date of commencement of operation.

"Common stack" means a single flue through which emissions from two or more units are exhausted.

"Compliance account" means a NO_X Allowance Tracking System account, established by the administrator for a NO_X Budget unit under Article 6 (9 VAC 5-140-500 et seq.) 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.

"Compliance certification" means a submission to the permitting authority or the administrator, as appropriate, that is required under Article 4 (9 VAC 5-140-300 et seq.) 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 Article 2 (9 VAC 5-140-100 et seq.) of this part.

"Continuous emission monitoring system or CEMS" means the equipment required under Article 8 (9 VAC 5-140-700 et seq.) 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:

1. Flow monitor;

2. Nitrogen oxides pollutant concentration monitors;

3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Article 8 (9 VAC 5-140-700 et seq.) of this part;

4. A continuous moisture monitor when such monitoring is required by Article 8 (9 VAC 5-140-700 et seq.) of this part; and

5. An automated data acquisition and handling system.

"Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive, except for the calendar year 2004, the period shall begin May 31.

"Core trading program budget" means the adjusted trading program budget for the control period to which the allocation set-aside applies minus the allocation set-aside budget.

“Electricity for sale under firm contract to the grid” means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_X authorized account representative and as determined by the administrator in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

"Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

"Excess emissions" means 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.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means, with regard to a unit:

1. For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1995 or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

2. For units that commenced operation on or after January 1, 1996, and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1996; or

(3) For units that commence operation on or after January 1, 1997,

(i) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year; or

(ii) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% 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.

"General account" means a NO_X Allowance Tracking System account, established under Article 6 (9 VAC 5-140-500 et seq.) of this part, that is not a compliance account or an overdraft account.

"Generator" means a device that produces electricity.

"Heat input" means 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 Article 8 (9 VAC 5-140-700 et seq.) of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the

administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the CAA and which implements the relevant requirements of the CAA.

"Life-of-the-unit, firm power contractual arrangement" means 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:

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than 25 years or 70% 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.

"Maximum design heat input" means 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.

"Maximum potential hourly heat input" means 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 CO_2) or the minimum oxygen concentration (in percent O_2).

"Maximum potential NO_X emission rate" means 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 O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

"Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9 VAC 5-140-700 et seq.) of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

"Most stringent State or Federal NO_X emissions limitation" means the lowest NO_X emissions limitation (in lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or Federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit which provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent State or Federal NO_X emissions limitation. The primary fuel shall be the fuel designated in the permit as such or as having the greatest throughput.

"Nameplate capacity" means 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.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations

promulgated to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the CAA.

"NO_X allowance" means a limited authorization by the permitting authority or the administrator 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, except as provided under 9 VAC 5-140-550 B. No provision of the NO_x Budget Trading Program, the NO_X Budget permit application, the NO_X Budget permit, or an exemption under 9 VAC 5-140-40 B or 9 VAC 5-140-50 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, which does not constitute a property right.

"NO_X allowance deduction" or "deduct NO_X allowances" means 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 Article 8 (9 VAC 5-140-700 et seq.) of this part, or for any other allowance surrender obligation under this part.

"NO_X Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of NO_X allowances under the NO_X Budget Trading Program.

"NO_X Allowance Tracking System account" means 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.

"NO_X allowance transfer deadline" means midnight of November 30 or, if November 30 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.

"NO_X allowances held" or "hold NO_X allowances" means the NO_X allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9 VAC 5-140-500 et seq.) and Article 7 (9 VAC 5-140-600 et seq.) of this part, in a NO_X Allowance Tracking System account.

"NO_X authorized account representative" means, 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 Article 2 (9 VAC 5-140-100 et seq.) 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 Article 6 (9 VAC 5-140-500 et seq.) of this part, to transfer or otherwise dispose of NO_X allowances held in the general account.

"NO_X Budget emissions limitation" means, for a NO_X Budget unit, the tonnage equivalent of the NO_X allowances available for compliance deduction for the unit under 9 VAC 5-140-540 A, B, E and F in a control period, adjusted by any deductions of such NO_X allowances to account for actual utilization under 9 VAC 5-140-420 E for the control period or to account for excess emissions for a prior control period under 9 VAC 5-140-540 D or to account for withdrawal from the NO_X Budget Trading Program, or for a change in regulatory status, of a NO_X Budget opt-in source under 9 VAC 5-140-860 or 9 VAC 5-140-870.

"NO_X Budget opt-in permit" means a NO_X Budget permit covering a NO_X Budget opt-in source.

"NO_X Budget opt-in source" means a unit that has applied to become a NO_X Budget unit under the NO_X Budget Trading Program and whose NO_X Budget opt-in permit has been issued and is in effect under Article 9 (9 VAC 5-140-800 et seq.) of this part.

"NO_X Budget permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying 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.

"NO_X Budget source" means a source that includes one or more NO_X Budget units.

"NO_X Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and approved and administered by the administrator pursuant to 40 CFR 51.121 or established by the administrator pursuant to 40 CFR 52.34 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

"NO_X Budget unit" means a unit that is subject to the NO_X Budget emissions limitation under 9 VAC 5-140-40 or 9 VAC 5-140-800.

"Operating" means, with regard to a unit under subdivision 4 b of 9 VAC 5-140-220 and 9 VAC 5-140-800, having documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial NO_X Budget permit under 9 VAC 5-140-830 A.

"Operator" means 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 9 VAC 5-140-830 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.

"Opt-in" means to be approved 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 Article 9 (9 VAC 5-140-800 et seq.) of this part.

"Overdraft account" means the NO_X Allowance Tracking System account, established by the administrator under Article 6 (9 VAC 5-140-500 et seq.) of this part, for each NO_X Budget source where there are two or more NO_X Budget units.

"Owner" means any of the following persons:

1. 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 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

2. 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 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

3. 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 9 VAC 5-140-830 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 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

4. 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 the NO_X allowances.

"Permitting authority" means the State Air Pollution Control Board.

"Receive" or "receipt of" means, when referring to the permitting authority 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 permitting authority or the administrator in the regular course of business.

"Recordation", "record," or "recorded" means, 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.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR Part 60.

"Serial number" means, when referring to NO_X allowances, the unique identification number assigned to each NO_X allowance by the administrator, under 9 VAC 5-140-530 F.

"Set-aside percentage" means 5.0% for each of the years 2004 through 2008 or 2.0% for the year 2009 and each year thereafter.

"Source" means 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 CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "State" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5 Chapter 80.

"State operating permit regulations" means the regulations codified in Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5 Chapter 80.

"State trading program budget" means the total number of NO_X tons set forth in 9 VAC 5-140-900 and apportioned to all NO_X Budget units in accordance with the NO_X Budget Trading Program, for use in a given control period.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. 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.

"Title V operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 se seq.) of Part II of 9 VAC 5 Chapter 80.

"Title V operating permit regulations" means the regulations codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Ton" or "tonnage" means 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 Article 8 (9 VAC 5-140-700 et seq.) 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 tons.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit load" means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

"Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year shall be determined in accordance with 40 CFR Part 75 if the NO_X Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or shall be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

9 VAC 5-140-30. Measurements, abbreviations, and acronyms.

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

Btu--British thermal unit.

hr--hour.

Kwh--kilowatt hour.

lb--pounds.

mmBtu--million Btu.

MWe--megawatt electrical.

psia--pounds per square inch absolute.

ton--2000 pounds.

CO_2--carbon dioxide.

NO_X--nitrogen oxides.

O_2--oxygen.

9 VAC 5-140-31. Federal Regulations Incorporated by Reference.

A. The U.S. Environmental Protection Agency Regulations cited in this part are, unless indicated otherwise, incorporated by reference into this part as amended by the word or phrase substitutions given in subsection B of this section. The complete text of the federal regulations incorporated herein by reference is contained in 40 CFR Part 75 and 40 CFR Part 97. The 40 CFR part and section numbers appearing throughout this part identify the specific provisions of the federal regulations incorporated by reference. The specific version of the federal regulations adopted by reference shall be that contained in the CFR (2001) in effect July 1, 2001. Reference to the various provisions of the Code of Federal Regulations are structured as in the following example: 40 CFR Part 75 means Part 75 of Title 40 of the Code of Federal Regulations; 40 CFR 75.1 means Section 75.1 in Part 75 of Title 40 of the Code of Federal Regulations.

B. In all of the federal regulations incorporated by reference substitute:

1. Board for administrator.

2. Board for U.S. Environmental Protection Agency (except in references).

9 VAC 5-140-40. 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.a. For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

b. For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

c. For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

2.a. For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

b. For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

c. For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(1) At no time serves a generator producing electricity for sale; or

(2) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit.

B.1. Notwithstanding subsection A of this section, a unit under subdivision A 1 or A 2 of this section that has a federally enforceable permit that restricts the unit to combusting only natural gas or fuel oil (as defined in 40 CFR 75.2) during a control period and includes a NO_X emission limitation restricting NO_X emissions during a control period to 25 tons or less and that includes the provisions in subdivision B 4 of this section shall be exempt from the requirements of the NO_X Budget Trading Program, except for the provisions of this subsection, 9 VAC 5-140-20, 9 VAC 5-140-30, subsection A of this section, 9 VAC 5-140-70, and Article 5 (9 VAC 5-140-400 et seq.), Article 6 (9 VAC 5-140-500 et seq.), and Article 7 (9 VAC 5-

140-600 et seq.) of this part. The NO_X emission limitation under this subdivision shall restrict NO_X emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_X mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_X emission rate otherwise applicable to the unit under 40 CFR 75.19.

2. The exemption under subdivision 1 of this subsection shall become effective as follows:

a. The exemption shall become effective on the date on which the NO_X emission limitation and the special provisions in the permit under subdivision 1 of this subsection become final; or

b. If the NO_X emission limitation and the special provisions in the permit under subdivision 1 of this subsection become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided that such NO_X emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_X emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under subdivision 1 of this subsection shall become effective on October 1 of the year during which such NO_X emission limitation and the special provisions become final.

3. The permitting authority that issues a federally enforceable permit under subdivision 1 of this subsection for a unit under subdivision A 1 or A 2 of this section will provide the administrator written notice of the issuance of such permit and, upon request, a copy of the permit.

4.a. A unit exempt under subdivision 1 of this subsection shall comply with the restriction on fuel use and unit operating hours described in subdivision 1 of this subsection during the control period in each year.

b. The permitting authority will allocate NO_X allowances to the unit under 9 VAC 5-140-410 A through C and 9 VAC 5-140-420 A through C. For each control period for which the unit is allocated NO_X allowances under 9 VAC 5-140-410 A through C and 9 VAC 5-140-420 A through C,

(1) The owners and operators of the unit shall specify a general account, in which the administrator will record the NO_X allowances, and

(2) After the administrator records a NO_X allowance allocations under 9 VAC 5-140-410 A through C and 9 VAC 5-140-420 A through C, the administrator will deduct, from the general account under subdivision 4 b (1) of this subsection, NO_X allowances that are allocated for the same or a prior control period as the NO_X allowances allocated to the unit under 9 VAC 5-140-410 A through C and 9 VAC 5-140-420 A through C and that equal the NO_X emission limitation (in tons of NO_X) on which the unit's exemption under subdivision 1 of this subsection is based. The NO_X authorized account representative shall ensure that such general account contains the NO_X allowances necessary for completion of such deduction.

c. A unit exempt under this subsection shall report hours of unit operation during the control period in each year to the permitting authority by November 1 of that year.

d. For a period of five years from the date the records are created, the owners and operators of a unit exempt under subdivision 1 of this subsection shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under subdivision 1 of this subsection were met, including the restriction on fuel use and unit operating hours. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit met the restriction on fuel use and unit operating hours.

e. The owners and operators and, to the extent applicable, the NO_X authorized account representative of a unit exempt under subdivision 1 of this subsection shall comply with the requirements of the NO_X Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

f. On the earlier of the following dates, a unit exempt under subdivision 1 of this subsection shall lose its exemption:

(1) The date on which the restriction on unit operating hours described in subdivision 1 of this subsection is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(2) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use or unit operating hours described in subdivision 1 of this subsection during any control period starting in 2004.

g. A unit that loses its exemption in accordance with subdivision 4 f of this subsection shall be subject to the requirements of this part. For the purpose of applying permitting requirements under Article 3 (9 VAC 5-140-200 et seq.) of this part, allocating allowances under Article 5 (9 VAC 5-140-400 et seq.) of this part, and applying monitoring requirements under Article 8 (9 VAC 5-140-700 et seq.) of this part, the unit shall be treated as commencing operation and, if the unit is covered by subdivision A 1 of this section, commencing commercial operation on the date the unit loses its exemption.

h. A unit that is exempt under subdivision 1 of this subsection shall not be eligible to be a NO_X Budget opt-in unit under Article 9 (9 VAC 5-140-800 et seq.) of this part.

9 VAC 5-140-50. Retired unit exemption.

A. This section applies to any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired.

B.1. Any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired shall be exempt from the NO_X Budget Trading Program, except for the provisions of this section, 9 VAC 5-140-20, 9 VAC 5-140-30, 9 VAC 5-140-40, 9 VAC 5-140-70 and Article 5 (9 VAC 5-140-400 et seq.), Article 6 (9 VAC 5-140-500 et seq.), and Article 7 (9 VAC 5-140-600 et seq.) of this part.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_X authorized account representative (authorized in accordance with Article 2 (9 VAC 5-140-100 et seq.) of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO_X Budget permit for the unit. A copy of the statement shall be submitted to the administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of subsection C of this section.

3. After receipt of the notice under subdivision 2 of this subsection, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection C of this section.

C.1. A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit shall be allocated allowances in accordance with Article 5 (9 VAC 5-140-400 et seq.) of this part. For each control period for which the unit is allocated one or more NO_X allowances, the owners and operators of the unit shall specify a general account, in which the administrator will record such NO_X allowances.

2.a. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under 9 VAC 5-140-220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.

b. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a state operating permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under 9 VAC 5-140-220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.

3. The owners and operators and, to the extent applicable, the NO_X authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_X Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. A unit that is exempt under this section is not eligible to be a NO_X Budget opt-in source under Article 9 (9 VAC 5-140-800 et seq.) of this part.

5. For a period of five years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

6.a. On the earlier of the following dates, a unit exempt under subsection B of this section shall lose its exemption:

(1) The date on which the NO_X authorized account representative submits a NO_X Budget permit application under subdivision 2 of this subsection;

(2) The date on which the NO_X authorized account representative is required under subdivision 2 of this subsection to submit a NO_X Budget permit application; or

(3) The date on which the unit resumes operation, if the unit is not required to submit a NO_X Budget permit application.

b. For the purpose of applying monitoring requirements under Article 8 (9 VAC 5-140-700 et seq.) of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

9 VAC 5-140-60. Standard requirements.

A. The following requirements concerning permits shall apply:

1. The NO_X authorized account representative of each NO_X Budget source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall:

a. Submit to the permitting authority a complete NO_X Budget permit application under 9 VAC 5-140-220 in accordance with the deadlines specified in 9 VAC 5-140-210 B and C;

b. Submit in a timely manner any supplemental information that the permitting authority 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 source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall have a NO_X Budget permit issued by the permitting authority and operate the unit in compliance with such NO_X Budget permit.

3. The owners and operators of a NO_X Budget source that is not otherwise required to have

a federally enforceable permit are not required to submit a NO_X Budget permit application, and to have a NO_X Budget permit, under Article 3 (9 VAC 5-140-200 et seq.) of this part for such NO_X Budget source.

B. The following requirements concerning monitoring shall apply:

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 Article 8 (9 VAC 5-140-700 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part shall be used to determine compliance by the unit with the NO_X Budget emissions limitation under subsection C of this section.

C. The following requirements concerning nitrogen oxides shall apply:

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 9 VAC 5-140-540 A, B, E, or F, 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 Article 8 (9 VAC 5-140-700 et seq.) of this part, plus any amount necessary to account for actual utilization under 9 VAC 5-140-420 E for the control period or to account for excess emissions for a prior control period under 9 VAC 5-140-540 D or to account for withdrawal from the NO_X Budget Trading Program, or a change in regulatory status, of a NO_X Budget opt-in unit under 9 VAC 5-140-860 or 9 VAC 5-140-870.

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 CAA, and the Virginia Air Pollution Control Law.

3. A NO_X Budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of May 31, 2004, 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 Article 5 (9 VAC 5-140-400 et seq.), Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), and Article 9 (9 VAC 5-140-800 et seq.) of this part.

5. A NO_X allowance shall not be deducted, in order to comply with the requirements under subdivision 1 of this subsection, 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 permitting authority or the administrator 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, the NO_X Budget permit, or an exemption under 9 VAC 5-140-50 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 permitting authority or the administrator under the NO_X Budget Trading Program does not constitute a property right.

8. Upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_X allowance to or from a NO_X Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_X Budget permit of the NO_X Budget unit by operation of law without any further review.

D. The owners and operators of a NO_X Budget unit that has excess emissions in any control period shall:

1. Surrender the NO_X allowances required for deduction under 9 VAC 5-140-540 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9 VAC 5-140-540 D 3.

E. The following requirements concerning recordkeeping and reporting shall apply:

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 permitting authority or the administrator.

a. 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 9 VAC 5-140-130; 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.

b. All emissions monitoring information, in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part; provided that to the extent that Article 8 (9 VAC 5-140-700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_X Budget Trading Program.

d. 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 Article 4 (9 VAC 5-140-300 et seq.), Article 8 (9 VAC 5-140-700 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part.

F. The following requirements concerning liability shall apply:

1. Any person who knowingly violates any requirement or prohibition of the NO_X Budget Trading Program, a NO_X Budget permit, or an exemption under 9 VAC 5-140-50 shall be subject to enforcement pursuant to the Air Pollution Control Law of Virginia or applicable federal law.

2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_X Budget Trading Program shall be subject to criminal enforcement pursuant to the Air Pollution Control Law of Virginia or applicable federal law.

3. 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.

4. Each NO_X Budget source and each NO_X Budget unit shall meet the requirements of the NO_X Budget Trading Program.

5. 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.

6. 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 Article 8 (9 VAC 5-140-700 et seq.) 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. No provision of the NO_X Budget Trading Program, a NO_X Budget permit application, a NO_X Budget permit, or an exemption under 9 VAC 5-140-50 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 provision of the applicable implementation plan, a federally enforceable permit, or the CAA.

9 VAC 5-140-70. 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.

ARTICLE 2.
NO_X Authorized Account Representative for NO_X Budget Sources.

9 VAC 5-140-100. Authorization and responsibilities of the NO_X authorized account representative.

A. Except as provided under 9 VAC 5-140-110, 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 9 VAC 5-140-130, 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 permitting authority, 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 9 VAC 5-140-130 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 permitting authority and the administrator will accept or act on a submission made on behalf of owner 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 subdivision 1 of this subsection.

9 VAC 5-140-110. 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 9 VAC 5-140-130, 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 9 VAC 5-140-100 A, 9 VAC 5-140-120, 9 VAC 5-140-130, and 9 VAC 5-140-510, 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.

9 VAC 5-140-120 Changing the NO_X authorized account representative and the alternate NO_X authorized account representative; changes in the owners and operators.

A. 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 9 VAC 5-140-130. 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. 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 9 VAC 5-140-130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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.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 permitting authority 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.

9 VAC 5-140-130. 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 permitting authority, the administrator, or a court regarding the source or unit."

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 permitting authority or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9 VAC 5-140-140. Objections concerning the NO_X authorized account representative.

A. Once a complete account certificate of representation under 9 VAC 5-140-130 has been submitted and received, the permitting authority and the administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under 9 VAC 5-140-130 is received by the administrator.

B. Except as provided in 9 VAC 5-140-120 A or B, no objection or other communication submitted to the permitting authority 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 permitting authority or the administrator under the NO_X Budget Trading Program.

C. Neither the permitting authority 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.

ARTICLE 3.
Permits.

9 VAC 5-140-200. General NO_X Budget trading program permit requirements.

A. For each NO_X Budget source required to have a federally enforceable permit, such permit shall include a NO_X Budget permit administered by the permitting authority.

1. For NO_X Budget sources required to have a title V operating permit, the NO_X Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations, except as provided otherwise by this article or Article 9 (9 VAC 5-140-800 et seq.) of this part.

2. For NO_X Budget sources required to have a state operating permit, the NO_X Budget portion of the state operating permit shall be administered in accordance with the permitting authority's regulations promulgated to administer state operating permits, except as provided otherwise by this article or Article 9 (9 VAC 5-140-800 et seq.) of this part.

B. Each NO_X Budget permit (including a draft or proposed NO_X Budget permit, if applicable) shall contain all applicable NO_X Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection A of this section.

9 VAC 5-140-210. Submission of NO_X Budget permit applications.

A. The NO_X authorized account representative of any NO_X Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NO_X Budget permit application under 9 VAC 5-140-220 by the applicable deadline in subsection B of this section.

B.1. The following requirements shall apply to NO_X Budget sources required to have a Title V operating permit:

a. For any source with one or more NO_X Budget units under 9 VAC 5-140-40 that commenced operation before January 1, 2001, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

b. For any source with any NO_X Budget unit under 9 VAC 5-140-40 that commences operation on or after January 1, 2001, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004, or the date on which the NO_X Budget unit commences operation.

2. The following requirements shall apply to NO_X Budget sources required to have a state operating permit:

a. For any source with one or more NO_X Budget units under 9 VAC 5-140-40 that commenced operation before January 1, 2001, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

b. For any source with any NO_X Budget unit under 9 VAC 5-140-40 that commences operation on or after January 1, 2001, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004, or the date on which the NO_X Budget unit commences operation.

C. For a NO_X Budget source required to have a Title V operating permit, the NO_X authorized account

representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 for the NO_X Budget source covering the NO_X Budget units at the source in accordance with the permitting authority's Title V operating permits regulations addressing operating permit renewal.

9 VAC 5-140-220. Information requirements for NO_X Budget permit applications.

A complete NO_X Budget permit application shall include the following elements concerning the NO_X Budget source for which the application is submitted, in a format prescribed by the permitting authority:

1. Identification of the NO_X Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

2. Identification of each NO_X Budget unit at the NO_X Budget source and whether it is a NO_X Budget unit under 9 VAC 5-140-40 or under Article 9 (9 VAC 5-140-800 et seq.) of this part;

3. The standard requirements under 9 VAC 5-140-60; and

4. For each NO_X Budget opt-in unit at the NO_X Budget source, the following certification statements by the NO_X authorized account representative:

a. "I certify that each unit for which this permit application is submitted under Article 9 (9 VAC 5-140-800 et seq.) of 9 VAC 5 Chapter 140 is not a NO_X Budget unit under 9 VAC 5-140-40 and is not covered by an exemption under 9 VAC 5-140-40 B or 9 VAC 5-140-50 that is in effect."

b. If the application is for an initial NO_X Budget opt-in permit, "I certify that each unit for which this permit application is submitted under Article 9 (9 VAC 5-140-800 et seq.) of 9 VAC 5 Chapter 140 is currently operating, as that term is defined under 9 VAC 5-140-20."

9 VAC 5-140-230. NO_X Budget permit contents.

A. Each NO_X Budget permit (including any draft or proposed NO_X Budget permit, if applicable) will contain all elements required for a complete NO_X Budget permit application under 9 VAC 5-140-220.

B. Each NO_X Budget permit is deemed to incorporate automatically the definitions of terms under 9 VAC 5-140-20 and, upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_X allowance to or from the compliance accounts of the NO_X Budget units covered by the permit or the overdraft account of the NO_X Budget source covered by the permit.

9 VAC 5-140-240. Effective date of initial NO_X Budget permit.

The initial NO_X Budget permit covering a NO_X Budget unit for which a complete NO_X Budget permit application is timely submitted under 9 VAC 5-140-210 B shall become effective by the later of:

1. May 31, 2004;

2. May 1 of the year in which the NO_X Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

3. The date on which the NO_X Budget unit commences operation, if the unit commences operation during a control period; or

4. May 1 of the year following the year in which the NO_X Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

9 VAC 5-140-250. NO_X Budget permit revisions.

A. For a NO_X Budget source with a Title V operating permit, except as provided in 9 VAC 5-140-230 B, the permitting authority will revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's Title V operating permit regulations addressing permit revisions.

B. For a NO_X Budget source with a state operating permit, except as provided in 9 VAC 5-140-230 B, the permitting authority will revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's state operating permit regulations addressing permit revisions.

ARTICLE 4.
Compliance Certification.

9 VAC 5-140-300. Compliance certification report.

A. For each control period in which one or more NO_X Budget units at a source are subject to the NO_X Budget emissions limitation, the NO_X authorized account representative of the source shall submit to the permitting authority and the administrator by November 30 of that year, a compliance certification report for each source covering all such units.

B. The NO_X authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO_X Budget emissions limitation for the control period covered by the report:

1. Identification of each NO_X Budget unit;

2. At the NO_x authorized account representative's option, the serial numbers of the NO_X allowances that are to be deducted from each unit's compliance account under 9 VAC 5-140-540 for the control period;

3. At the NO_x authorized account representative's option, for units sharing a common stack and having NO_X emissions that are not monitored separately or apportioned in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, the percentage of allowances that is to be deducted from each unit's compliance account under 9 VAC 5-140-540 E; and

4. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the NO_X authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_X Budget units at the source in compliance with the NO_X Budget Trading Program, whether each NO_X Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_X Budget Trading Program applicable to the unit, including:

1. Whether the unit was operated in compliance with the NO_X Budget emissions limitation;

2. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_X emissions to the unit, in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part;

3. Whether all the NO_X emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

4. Whether the facts that form the basis for certification under Article 8 (9 VAC 5-140-700 et seq.) of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9 VAC 5-140-700 et seq.) of this part, if any, has changed; and

5. If a change is required to be reported under subdivision C 4 of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9 VAC 5-140-310. Permitting authority's and administrator's action on compliance certifications.

A. The permitting authority or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_X Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The administrator may deduct NO_X allowances from or transfer NO_X allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

ARTICLE 5.
NO_X Allowance Allocations.

9 VAC 5-140-400. State trading program budget.

In accordance with 9 VAC 5-140-410 and 9 VAC 5-140-420, the permitting authority will allocate to the NO_X Budget units under 9 VAC 5-140-40 A, for each control period specified in 9 VAC 5-140-410, a total number of NO_X allowances equal to the trading program budget covering such units.

9 VAC 5-140-410. Timing requirements for NO_X allowance allocations.

A. By July 1, 2002, the permitting authority will submit to administrator the NO_X allowance allocations, determined in accordance with 9 VAC 5-140-420 A through C, for the control periods in 2004 through 2008.

B. By April 1, 2006, the permitting authority will submit to administrator the NO_X allowance allocations, determined in accordance with 9 VAC 5-140-420 A through C, for the control periods in 2009 through 2013. If the permitting authority fails to submit to the administrator the NO_X allowance allocations in accordance with this subsection, the administrator will allocate, for the applicable control period, the same number of NO_X allowances as were allocated for the preceding control period.

C. By April 1, 2011, by April 1 of 2016, and thereafter by April 1 of the year that is five years after the last year for which NO_X allowances allocations are determined, the permitting authority will submit to the administrator the NO_X allowance allocations, determined in accordance with 9 VAC 5-140-420 A through C, for the control periods in the years that are three, four, five, six, and seven years after the applicable deadline under this subsection. If the permitting authority fails to submit to the administrator the NO_X allowance allocations in accordance with this subsection, the administrator will allocate, for the applicable control period, the same number of NO_X allowances as were allocated for the preceding control period.

D. By April 1, 2004, and April 1 of each year thereafter, the permitting authority will submit to the administrator the NO_X allowance allocations, in accordance with 9 VAC 5-140-420 D, for the control period in the year of the applicable deadline under this subsection.

9 VAC 5-140-420. NO_X allowance allocations.

A.1. The heat input (in mmBtu) used for calculating NO_X allowance allocations for each NO_X Budget unit under 9 VAC 5-140-40 A shall be:

a. For a NO_X allowance allocation under 9 VAC 5-140-410 A:

(1) For a unit under 9 VAC 5-140-40 A 1, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1999; or

(2) For a unit under 9 VAC 5-140-40 A 2, the control period in 1995 or, if the permitting authority determines that reasonably reliable data are available for control periods in 1996 through 1999, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1999.

b. For a NO_X allowance allocation under 9 VAC 5-140-410 B, the average of the two highest amounts of the unit's heat input for the control periods in 2001 through 2005. If the unit is under 9 VAC 5-140-40 A and has less than two control periods of heat input, it shall not be required to average a zero balance to determine the average under this subdivision.

c. For a NO_X allowance allocation under 9 VAC 5-140-410 C, the average of the two highest amounts of the unit's heat input for the control period in the years that are four, five, six, seven, and eight years before the first year for which the allocation is being calculated. If the unit is under 9 VAC 5-140-40 A and has less than two control periods of heat input, it shall not be required to average a zero balance to determine the average under this subdivision.

2. The unit's heat input for the control period in each year specified under subdivision A 1 of this section shall be determined in accordance with 40 CFR part 75. Notwithstanding the first sentence of this subdivision:

a. For a NO_X allowance allocation under 9 VAC 5-140-410 A, such heat input shall be determined using the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the control period.

b. For a NO_X allowance allocation under 9 VAC 5-140-410 B or C for a unit exempt under 9 VAC 5-140-40 B, such heat input shall be treated as zero if the unit is exempt under 9 VAC 5-140-40 B during the control period.

B. For each group of five control periods specified in 9 VAC 5-140-410 A through C, the permitting authority will allocate to all NO_X Budget units under 9 VAC 5-140-40 A 1 that commenced operation before May 1, 1998, for allocations under 9 VAC 5-140-410 A; May 1, 2004, for allocations under 9 VAC 5-140-410 B; and May 1 of the year five years before the first year for which the allocation under 9 VAC 5-140-410 C is being calculated, a total number of NO_X allowances equal to the core trading program budget covering such units. The permitting authority will allocate in accordance with the following procedures:

1. The permitting authority will allocate NO_X allowances to each NO_X Budget unit under 9 VAC 5-140-40 A 1 for each control period in the following amounts:

a. For NO_X Budget units that commenced operation before May 1, 1998, an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate.

b. For NO_X Budget units that commenced operation on or after May 1, 1998, an amount equaling the lesser of:

(1) 0.15 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate; or

(2) The unit's most stringent state or federal NO_X emission limitation multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and

rounded to the nearest whole number of NO_X allowances as appropriate.

2. If the initial total number of NO_X allowances allocated to all NO_X Budget units under 9 VAC 5-140-40 A 1 for a control period under subdivision 1 of this subsection does not equal the core trading program budget covering such units, the permitting authority will adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_X allowances allocated equals the core trading program budget. This adjustment shall be made by: multiplying each unit's allocation by the core trading program budget covering such units; dividing by the total number of NO_X allowances allocated under subdivision 1 of this subsection for the control period; and rounding to the nearest whole number of NO_X allowances as appropriate.

C. For each group of five control periods specified in 9 VAC 5-140-410 A through C, the permitting authority will allocate to all NO_X Budget units under 9 VAC 5-140-40 A 2 that commenced operation before May 1, 1998, for allocations under 9 VAC 5-140-410 A; May 1, 2004, for allocations under 9 VAC 5-140-410 B; and May 1 of the year five years before the first year for which the allocation under 9 VAC 5-140-410 C is being calculated, a total number of NO_X allowances equal to the core trading program budget covering such units. The permitting authority will allocate in accordance with the following procedures:

1. The permitting authority will allocate NO_X allowances to each NO_X Budget unit under 9 VAC 5-140-40 A 2 for each control period in the following amounts:

a. For NO_X Budget units that commenced operation before May 1, 1998, an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate.

b. For NO_X Budget units that commenced operation on or after May 1, 1998, an amount equaling the lesser of:

(1) 0.17 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate; or

(2) The unit's most stringent state or federal NO_X emission limitation multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate.

2. If the initial total number of NO_X allowances allocated to all NO_X Budget units under 9 VAC 5-140-40 A 2 for a control period under subdivision 1 of this subsection does not equal the core trading program budget covering such units, the permitting authority will adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_X allowances allocated equals the core trading program budget covering such units. This adjustment shall be made by: multiplying each unit's allocation by the core trading program budget covering such units; dividing by the total number of NO_X allowances allocated under subdivision 1 of this subsection for the control period; and rounding to the nearest whole number of NO_X allowances as appropriate.

D. For each control period specified in 9 VAC 5-140-410 D, the permitting authority will allocate NO_X allowances to NO_X Budget units under 9 VAC 5-140-40 A (except for units exempt under 9 VAC 5-140-40 B) that commence operation, or are projected to commence operation, on or after: May 1, 1998 (for control periods under 9 VAC 5-140-410 A); May 1, 2004 (for control periods under 9 VAC 5-140-410 B); and May 1 of the year five years before the beginning of the group of five years that includes the control period (for control periods under 9 VAC 5-140-410 C). The permitting authority will make the allocations under this subsection in accordance with the following procedures:

1. The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside shall be allocated NO_X allowances equal to the allocation set-aside budget.

2. The NO_X authorized account representative of a NO_X Budget unit specified in this subsection may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated NO_X allowances for the control period. The NO_X allowance allocation request must be received by the permitting authority on or after the date on which the permitting authority issues a new source review program permit for the unit and by January 1 before the control period for which NO_X allowances are requested.

3. In a NO_X allowance allocation request under subdivision 2 of this subsection, the NO_X authorized account representative for a NO_X Budget unit under 9 VAC 5-140-40 A 1 may request for the control period NO_X allowances in an amount that does not exceed the lesser of:

a. 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate; or

b. The unit's most stringent state or federal NO_X emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate.

4. In a NO_X allowance allocation request under subdivision 2 of this subsection, the NO_X authorized account representative for a NO_X Budget unit under 9 VAC 5-140-40 A 2 may request for the control period NO_X allowances in an amount that does not exceed the lesser of:

a. 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate; or

b. The unit's most stringent state or federal NO_X emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_X allowances as appropriate.

5. The permitting authority will review each NO_X allowance allocation request submitted in accordance with subdivision 2 of this subsection and will allocate NO_X allowances pursuant to such request as follows:

a. Upon receipt of the NO_X allowance allocation request, the permitting authority will make any necessary adjustments to the request to ensure that the requirements of this section and subdivisions 2, 3, and 4 of this subsection are met.

b. The permitting authority will determine the following amounts:

(1) The sum of the NO_X allowances requested (as adjusted under subdivision 5 a of this subsection) in all NO_X allowance allocation requests under subdivision 2 of this subsection for the control period; and

(2) For units exempt under 9 VAC 5-140-40 B that commenced operation, or are projected to commence operation, on or after May 1, 1998 (for control periods under 9 VAC 5-140-410 A); May 1, 2004 (for control periods under 9 VAC 5-140-410 B); and May 1 of the year five years before beginning of the group of five years that includes the control period (for control periods under 9 VAC 5-140-410 C), the sum of the NO_X emission limitations (in tons of NO_X) on which each unit's exemption under 9 VAC 5-140-40 B is based.

c. If the number of NO_X allowances in the allocation set-aside for the control period less the amount under subdivision 5 b (2) of this subsection is not less than the amount determined under subdivision 5 b (1) of this subsection, the permitting authority will allocate the amount of the NO_X allowances requested (as adjusted under subdivision 5 a of this subsection) to the NO_X Budget unit for which the allocation request was submitted.

d. If the number of NO_X allowances in the allocation set-aside for the control period less the amount under subdivision 5 b (2) of this subsection is less than the amount determined under subdivision 5 b (1) of this subsection, the permitting authority will allocate, to the NO_X Budget unit for which the allocation request was submitted, the amount of NO_X allowances requested (as adjusted under subdivision 5 a of this subsection) multiplied by the number of NO_X allowances in the allocation set-aside for the control period less the amount determined under subdivision 5 b (2) of this subsection, divided by the amount determined under subdivision 5 b (1) of this subsection, and rounded to the nearest whole number of NO_X allowances as appropriate.

E.1. For a NO_X Budget unit that is allocated NO_X allowances under subsection D of this section for a control period, the administrator will deduct NO_X allowances under 9 VAC 5-140-540 B, E, or F to account for the actual utilization of the unit during the control period. The administrator will calculate the number of NO_X allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole number of NO_X allowance as appropriate, provided that the number of NO_X allowances to be deducted shall be zero if the number calculated is less than zero:

NO_X allowances deducted for actual utilization for a unit under 9 VAC 5-140-40 A 1 = Unit's NO_X allowances allocated for control period - (Unit's actual control period utilization x the lesser of 0.15 lb/mmBtu or the unit's most stringent state or federal NO_X emission limitation x 2,000 lb/ton); and

NO_X allowances deducted for actual utilization for a unit under 9 VAC 5-140-40 A 2 = Unit's NO_X allowances allocated for control period - (Unit's actual control period utilization x the lesser of 0.17 lb/mmBtu or the unit's most stringent state or federal NO_X emission limitation x 2,000 lb/ton)

Where:

"Unit's NO_X allowances allocated for control period" is the number of NO_X allowances allocated to the unit for the control period under subdivision D of this section; and,

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

2. The administrator will transfer any NO_X allowances deducted under subdivision 1 of this subsection to the allocation set-aside for the control period for which they were allocated.

F. After making the deductions for compliance under 9 VAC 5-140-540 B, E, or F for a control period, the administrator will notify the permitting authority whether any NO_X allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NO_X allowances to the NO_X Budget units using the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's share of NO_X allowances remaining in allocation set-aside = Total NO_X allowances remaining in allocation set-aside x (Unit's NO_X allowance allocation) / (core trading program budget)

Where:

"Total NO_X allowances remaining in allocation set-aside" is the total number of NO_X allowances remaining in the allocation set-aside for the control period;

"Unit's NO_X allowance allocation" is the number of NO_X allowances allocated under subsection B or

C of this section to the unit for the control period to which the allocation set-aside applies; and

"Core trading program budget" is the adjusted trading program budget for the control period to which the allocation set-aside applies minus the allocation set-aside budget.

G. If the administrator determines that NO_X allowances were allocated under subsection B, C, or D of this section for a control period and the recipient of the allocation is not actually a NO_X Budget unit under 9 VAC 5-140-40 A, the administrator will notify the permitting authority and NO_X authorized account representative and then will act in accordance with the following procedures:

1.a. The administrator will not record such NO_X allowances for the control period in an account under 9 VAC 5-140-530;

b. If the administrator already recorded such NO_X allowances for the control period in an account under 9 VAC 5-140-530 and if the administrator makes such determination before making all deductions pursuant to 9 VAC 5-140-540 (except deductions pursuant to 9 VAC 5-140-540 D 2) for the control period, then the administrator will deduct from the account NO_X allowances equal in number to and allocated for the same or a prior control period as the NO_X allowances allocated to such recipient for the control period. The NO_X authorized account representative shall ensure that the account contains the NO_X allowances necessary for completion of such deduction. If account does not contain the necessary NO_X allowances, the administrator will deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in the account; or

c. If the administrator already recorded such NO_X allowances for the control period in an account under 9 VAC 5-140-530 and if the administrator makes such determination after making all deductions pursuant to 9 VAC 5-140-540 (except deductions pursuant to 9 VAC 5-140-540 D 2) for the control period, then the administrator will apply subdivision 1 b of this subsection to any subsequent control period for which NO_X allowances were allocated to such recipient.

2. The administrator will transfer the NO_X allowances that are not recorded, or that are deducted, pursuant to subdivision 1 of this subsection to an allocation set-aside.

9 VAC 5-140-430. Compliance supplement pool.

A. Sources required to implement NO_X emission control measures by May 31, 2004, to demonstrate compliance with this part in the 2004 and 2005 ozone seasons may use NO_X allowances from the compliance supplement pool, as set forth in 9 VAC 5-140-910, issued in accordance with this section.

B. A source may not use NO_X allowances from the compliance supplement pool to demonstrate compliance after the 2005 control period.

C. For any NO_X Budget unit that intends to reduce its NO_X emission rate in the 2002 or 2003 control period, the owners and operators may request that early reduction credits (ERCs) be reserved in accordance with the following requirements:

1. Each NO_X Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_X emissions in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_X emission control requirements during 2001 through 2003.

2. NO_X emission rate and heat input under subdivision 3 of this subsection shall be determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

3. Each NO_X Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_X emission rate, for each control period for which ERCs

are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_X emission rate in the 2001 control period. ERCs shall not be earned for reductions made to satisfy any requirement of the CAA.

4. The NO_X authorized account representative of a NO_X Budget unit that intends to meet the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request to reserve ERCs for the unit based on NO_X emission rate reductions anticipated to be made by the unit in the control period for 2002 or 2003.

a. The NO_X authorized account representative may request that ERCs be reserved for the control period in an amount equal to the unit's anticipated heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's anticipated NO_X emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_X authorized account representative shall submit the ERC reserve request, in a format acceptable to the permitting authority, by July 1, 2002.

D. The permitting authority will review each ERC reserve request submitted in accordance with subsection C of this section and will reserve NO_X allowances for the NO_X Budget units covered by the request as follows:

1. Upon receipt of each ERC reserve request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection C of this section.

2. If 80% of the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances equal to or greater than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will reserve for each NO_X Budget unit covered by the requests one NO_X allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If 80% of the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances less than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will reserve NO_X allowances for each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for ERCs = Unit's adjusted ERCs x (Compliance supplement pool) / (Total adjusted ERCs for all units)

Where:

"Unit's allocation for ERCs" is the number of NO_X allowances reserved for the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is 80% of the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

4. The permitting authority will complete the ERC reserve issuance process by no later than September 1, 2002.

5. The NO_X authorized account representative shall submit verification that the NO_X Budget

unit has met the requirements of subdivisions C 1 and 3 of this section, in a format acceptable to the permitting authority, by February 1, 2004.

6. If the permitting authority finds that the NO_X Budget unit has met the requirements of subdivisions C 1 and 3 of this section, it will allocate the ERCs to the unit no later than April 1, 2004.

7. If the number of ERCs allocated under subdivision D 6 of this section is less than the number of ERCs reserved, the excess ERCs will be returned to the compliance supplement pool for distribution under subsection F of this section.

E. For any NO_X Budget unit that reduces its NO_X emission rate in the 2002 or 2003 control period, the owners and operators may request early reduction credits (ERCs) in accordance with the following requirements:

1. Each NO_X Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_X emissions in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_X emission control requirements during 2001 through 2003.

2. NO_X emission rate and heat input under subdivisions 3 and 4 of this subsection shall be determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

3. Each NO_X Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_X emission rate, for each control period for which ERCs are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_X emission rate in the 2001 control period. ERCs shall not be earned for reductions made to satisfy any requirements of the CAA.

4. The NO_X authorized account representative of a NO_X Budget unit that meets the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request for ERCs for the unit based on NO_X emission rate reductions made by the unit in the control period for 2002 or 2003.

a. The NO_X authorized account representative may request ERCs for the control period in an amount equal to the unit's heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's NO_X emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_X authorized account representative shall submit the ERC request and verification that the NO_x Budget unit has met the requirements of subdivisions 1 and 3 of this subsection, in a format acceptable to the permitting authority, by February 1, 2004.

F. The permitting authority will review each ERC request submitted in accordance with subsection E of this section and will allocate NO_X allowances to NO_X Budget units covered by the request as follows:

1. Upon receipt of each ERC request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection E of this section.

2. If the compliance supplement pool set forth in 9 VAC 5-140-910 (minus any allowances issued under subsection D of this section) has a number of NO_X allowances equal to or greater than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate to each NO_X Budget unit covered by the requests one NO_X allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9 VAC 5-140-910 (minus any allowances issued under subsection D of this section) has a number of NO_X allowances less than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate NO_X allowances to each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for ERCs = Unit's adjusted ERCs x (Compliance supplement pool) / (Total adjusted ERCs for all units)

Where:

"Unit's allocation for ERCs" is the number of NO_X allowances allocated to the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910 minus any allowances issued under subsection D of this section.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

4. If the permitting authority finds that the NO_X Budget unit has met the requirements of subdivisions E 1 and 3 of this section, it will allocate the ERCs to the unit no later than April 1, 2004.

G. For any NO_X Budget unit that demonstrates a need for an extension of the May 31, 2004, compliance deadline, the owners and operators may request direct distribution credits (DDCs) in accordance with the following requirements:

1. The NO_X authorized account representative of a NO_X Budget unit may submit to the permitting authority a request for DDCs for the unit which contains a demonstration of the following:

a. For a source used to generate electricity, compliance with this part by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration shall include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this part.

b. For a source not used to generate electricity, compliance with this part by May 31, 2004, would create undue risk for the source or its associated industry. This demonstration shall include a showing that operation of the unit would be disrupted resulting in loss of services to the public or severely hampering operation of the facility and endangering future potential operation.

c. For a source subject to this part, it was not possible for the source to comply with this part by generating ERCs or acquiring ERCs from other sources.

d. For a source subject to this part, it was not possible to comply with this part by acquiring sufficient NO_X allowances from other sources or persons subject to the emissions trading program.

2. The NO_X authorized account representative shall submit the DDC request, in a format acceptable to the permitting authority, by February 1, 2004.

H. The permitting authority will review each DDC request submitted in accordance with subsection G of this section and will allocate NO_X allowances to NO_X Budget units covered by the request as follows:

1. Upon receipt of each DDC request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the DDCs requested meets the requirements of

subsection G of this section.

2. If the compliance supplement pool set forth in 9 VAC 5-140-910 (minus any allowances issued under subsections D and F of this section) has a number of NO_X allowances equal to or greater than the amount of DDCs in all DDC requests under subsection G of this section (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate to each NO_X Budget unit covered by the requests one NO_X allowance for each DDC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9 VAC 5-140-910 (minus any allowances issued under subsections D and F of this section) has a number of NO_X allowances less than the amount of DDCs in all DDC requests under subsection G of this section (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate NO_X allowances to each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for DDCs = Unit's adjusted DDCs x (Compliance supplement pool) / (Total adjusted DDCs for all units)

Where:

"Unit's allocation for DDCs" is the number of NO_X allowances allocated to the unit for DDCs.

"Unit's adjusted DDCs" is the amount of DDCs requested for the unit in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910 minus any allowances issued under subsections D and F of this section.

"Total adjusted DDCs for all units" is the amount of DDCs requested for all units in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

4. For a DDC request made under subsection G of this section, the permitting authority will conduct a public comment period of at least 30 days to receive comment on the appropriateness of allocating DDCs to a source under subsection G of this section. At the end of the public comment period, a public hearing shall be held. The permitting authority will notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 4 a of this subsection. The notification will be published at least 30 days prior to the day of the public hearing.

a. Information on the DDC request, as well as the preliminary review and analysis and preliminary decision of the permitting authority, will be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice will be sent to all local air pollution control agencies having implementation plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

5. If the permitting authority finds that the NO_X Budget unit has met the requirements of subsection G of this section, it will allocate the DDCs to the unit no later than May 31, 2004.

I. By May 31, 2004, the permitting authority will submit to the administrator the allocations of NO_X allowances determined under subsections D, F and H of this section. The administrator will record the allocations to the extent that they are consistent with the requirements of subsections C through H of this section.

J. NO_X allowances recorded under subsection I of this section may be deducted for compliance

under 9 VAC 5-140-540 for the control periods in 2004 or 2005. Notwithstanding 9 VAC 5-140-550 A, the administrator will deduct as retired any NO_X allowance that is recorded under subsection I of this section and is not deducted for compliance in accordance with 9 VAC 5-140-540 for the control period in 2004 or 2005.

K. NO_X allowances recorded under subsection I of this section are treated as banked NO_X allowances in 2005 for the purposes of 9 VAC 5-140-550 A and B.

ARTICLE 6.
NO_X Allowance Tracking System.

9 VAC 5-140-500. NO_X Allowance Tracking System accounts.

A. Consistent with 9 VAC 5-140-510 A, the administrator will establish one compliance account for each NO_X Budget unit and one overdraft account for each source with two or more NO_X Budget units. Allocations of NO_X allowances pursuant to Article 5 (9 VAC 5-140-400 et seq.) of this part or 9 VAC 5-140-880 and deductions or transfers of NO_X allowances pursuant to 9 VAC 5-140-310, 9 VAC 5-140-540, 9 VAC 5-140-560, Article 7 (9 VAC 5-140-600 et seq.) of this part, or Article 9 (9 VAC 5-140-800 et seq.) of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this article.

B. Consistent with 9 VAC 5-140-510 B, the administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part will be recorded in the general account in accordance with this article.

9 VAC 5-140-510. Establishment of accounts.

A. Upon receipt of a complete account certificate of representation under 9 VAC 5-140-130, the administrator will establish:

1. A compliance account for each NO_X Budget unit for which the account certificate of representation was submitted; and

2. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_X Budget units.

B.1. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

a. Name, mailing 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;

b. Organization name and type of organization;

c. A list of all persons subject to a binding agreement for the NO_X authorized account representative or any alternate NO_X authorized account representative to represent their ownership interest with respect to the NO_x allowances held in the general account;

d. 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 the NO_X alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_X allowances held in the general account. 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 such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account."

e. The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

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

2. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

a. The administrator will establish a general account for the person or persons for whom the application is submitted.

b. The NO_X authorized account representative and any alternate NO_X authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_X allowances held in the general account in all matters pertaining to the NO_X Budget Trading Program, notwithstanding any agreement between the NO_X authorized account representative or any alternate NO_X authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_X authorized account representative or any alternate NO_X authorized account representative by the administrator or a court regarding the general account.

c. Each submission concerning the general account shall be submitted, signed, and certified by the NO_X authorized account representative or any alternate NO_X authorized account representative for the persons having an ownership interest with respect to NO_X allowances held in the general account. Each such submission shall include the following certification statement by the NO_X authorized account representative or any alternate NO_X authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_X allowances held in the general account. 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."

d. The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 c of this subsection.

3.a. An application for a general account may designate one and only one NO_X authorized account representative and 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 application for a general account under subdivision 1 of this subsection, any representation, action, inaction, or submission by any alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_X authorized account representative.

4.a. The NO_X authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. 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 application for a general account shall be binding on the new NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

b. The alternate NO_X authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

c.(1) In the event a new person having an ownership interest with respect to NO_X allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, 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 administrator, as if the new person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to NO_X allowances in the general account, including the addition of persons, the NO_X authorized account representative or any alternate NO_X authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_X allowances in the general account to include the change.

5.a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 4 of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative or the finality of any decision or order by the administrator under the NO_X Budget Trading Program.

c. The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_X allowance transfers.

C. The administrator will assign a unique identifying number to each account established under subsection A or B of this section.

9 VAC 5-140-520. NO_X Allowance Tracking System responsibilities of NO_X authorized account representative.

A. Following the establishment of a NO_X Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_X allowances in the account, shall be made only by the NO_X authorized account representative for the account.

B. The administrator will assign a unique identifying number to each NO_X authorized account representative.

9 VAC 5-140-530. Recordation of NO_X allowance allocations.

A. The administrator will record the NO_X allowances for 2004 for a NO_x Budget unit allocated under Article 5 (9 VAC 5-140-400 et seq.) of this part in the unit's compliance account, except for NO_x allowances under 9 VAC 5-140-40 B 4 b or 9 VAC 5-140-50 C 1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will also record the NO_X allowances allocated under 9 VAC 5-140-880 A 1 for each NO_X Budget opt-in source in its compliance account.

B. By August 1, 2002, the administrator will record the NO_X allowances for 2005 for a NO_X Budget unit allocated under Article 5 (9 VAC 5-140-400 et seq.) of this part in the unit's compliance account, except for NO_X allowances under 9 VAC 5-140-40 B 4 b or 9 VAC 5-140-50 C 1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_X allowances for 2005 for a NO_X Budget opt-in unit in the unit's compliance account as allocated under 9 VAC 5-140-880 A.

C. By May 1, 2003, the administrator will record the NO_X allowances for 2006 for a NO_X Budget unit allocated under Article 5 (9 VAC 5-140-400 et seq.) of this part in the unit's compliance account, except for NO_X allowances under 9 VAC 5-140-40 B 4 b or 9 VAC 5-140-50 C 1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_X allowances for 2006 for a NO_X Budget opt-in unit in the unit's compliance account as allocated under 9 VAC 5-140-880 A.

D. By May 1, 2004, the administrator will record the NO_X allowances for 2007 for a NO_X Budget unit allocated under Article 5 (9 VAC 5-140-400 et seq.) of this part in the unit's compliance account, except for NO_X allowances under 9 VAC 5-140-40 B 4 b or 9 VAC 5-140-50 C 1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_X allowances for 2007 for a NO_X Budget opt-in unit in the unit's compliance account as allocated under 9 VAC 5-140-880 A.

E. Each year starting with 2005, after the administrator has made all deductions from a NO_X Budget unit's compliance account and the overdraft account pursuant to 9 VAC 5-140-540 (except deductions pursuant to 9 VAC 5-140-540 D 2), the administrator will record:

1. NO_X allowances, in the compliance account, as allocated to the unit under Article 5 (9 VAC 5-140-400 et seq.) of this part for the third year after the year of the control period for which such deductions were or could have been made;

2. NO_X allowances, in the general account specified by the owners and operators of the unit, as allocated under 9 VAC 5-140-40 B 4 b or 9 VAC 5-140-50 C 1 for the third year after the year of the control period for which such deductions are or could have been made; and

3. NO_X allowances, in the compliance account, as allocated to the unit under 9 VAC 5-140-880 A.

F. When allocating NO_X allowances to and recording them in an account, the administrator will assign each NO_X allowance a unique identification number that will include digits identifying the year for which the NO_X allowance is allocated.

9 VAC 5-140-540. Compliance.

A. The NO_X allowances are available to be deducted for compliance with a unit's NO_X Budget emissions limitation for a control period in a given year only if the NO_X allowances:

1. Were allocated for a control period in a prior year or the same year; and

2. Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_X allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_X allowance transfer correctly submitted for recordation under 9 VAC 5-140-600 by the NO_X allowance transfer deadline for that control period.

B.1. Following the recordation, in accordance with 9 VAC 5-140-610, of NO_X allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_X allowance transfer deadline for a control period, the administrator will deduct NO_X allowances available under subsection A of this section to cover the unit's NO_X emissions (as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part) or to account for actual utilization under 9 VAC 5-140-420 E, for the control period:

a. From the compliance account; and

b. Only if no more NO_X allowances available under subsection A of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_X Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_X Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

2. The administrator will deduct NO_X allowances first under subdivision 1 a of this subsection and then under subdivision 1 b of this subsection:

a. Until the number of NO_X allowances deducted for the control period equals the number of tons of NO_X emissions, determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under 9 VAC 5-140-420 E for the control period; or

b. Until no more NO_X allowances available under subsection A of this section remain in the respective account.

C.1. The NO_X authorized account representative for each compliance account may identify by serial number the NO_X allowances to be deducted from the unit's compliance account under subsection B, D, or E of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9 VAC 5-140-300.

2. The administrator will deduct NO_X allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_X allowances by serial number under subdivision 1 of this subsection, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

a. Those NO_X allowances that were allocated for the control period to the unit under Article 5 (9 VAC 5-140-400 et seq.) or Article 9 (9 VAC 5-140-800 et seq.) of this part;

b. Those NO_X allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part, in order of their date of recordation;

c. Those NO_X allowances that were allocated for a prior control period to the unit under Article 5 (9 VAC 5-140-400 et seq.) or Article 9 (9 VAC 5-140-800 et seq.) of this part; and

d. Those NO_X allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part, in order of their date of recordation.

D.1. After making the deductions for compliance under subsection 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_X allowances, allocated for a control period after the control period in which

the unit has excess emissions, equal to three times the number of the unit's excess emissions.

2. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator will deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

3. Any allowance deduction required under this subsection shall not affect the liability of the owners and operators of the NO_X 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 the Virginia Air Pollution Control Law. The following guidelines shall be followed in assessing fines, penalties or other obligations:

a. For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

E. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part:

1. The NO_X authorized account representative of the units may identify the percentage of NO_X allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_X emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with 9 VAC 5-140-300.

2. Notwithstanding subdivision B 2 a of this section, the administrator will deduct NO_X allowances for each such unit until the number of NO_X allowances deducted equals the unit's identified percentage (under subdivision 1 of this subsection) of the number of tons of NO_X emissions, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) 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 9 VAC 5-140-420 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 subsections B, D, or E of this section.

9 VAC 5-140-550. Banking.

A. NO_X 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_X allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_X allowance is deducted or transferred under 9 VAC 5-140- 310, 9 VAC 5-140-540, 9 VAC 5-140-560, Article 7 (9 VAC 5-140-600 et seq.) of this part, or Article 9 (9 VAC 5-140-800 et seq.) of this part.

2. The administrator will designate, as a "banked" NO_X allowance, any NO_X allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to 9 VAC 5-140-540 (except deductions pursuant to 9 VAC 5-140-540 D 2), and that was allocated for that control period or a control period in a prior year.

B. Each year starting in 2005, after the administrator has completed the designation of banked NO_X allowances under subdivision A 2 of this section and before May 1 of the year, the administrator will determine the extent to which banked NO_X allowances may be used for compliance in the control period for the current year, as follows:

1. The administrator will determine the total number of banked NO_X allowances held in compliance accounts, overdraft accounts, or general accounts.

2. If the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located, any banked NO_X allowance may be deducted for compliance in accordance with 9 VAC 5-140-540.

3. If the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located, any banked allowance may be deducted for compliance in accordance with 9 VAC 5-140-540, except as follows:

a. The administrator will determine the following ratio: 0.10 multiplied by the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located and divided by the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts.

b. The administrator will multiply the number of banked NO_X allowances in each compliance account or overdraft account by the ratio determined in subdivision 3 a of this subsection. The resulting product is the number of banked NO_X allowances in the account that may be deducted for compliance in accordance with 9 VAC 5-140-540. Any banked NO_X allowances in excess of the resulting product may be deducted for compliance in accordance with 9 VAC 5-140-540, except that, if such NO_X allowances are used to make a deduction, two such NO_X allowances shall be deducted for each deduction of one NO_X allowance required under 9 VAC 5-140-540.

9 VAC 5-140-560. Account error.

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

9 VAC 5-140-570. Closing of general accounts.

A. The NO_X authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_X Allowance Tracking System and by correctly submitting for recordation under 9 VAC 5-140-600 an allowance transfer of all NO_X allowances in the account to one or more other NO_X Allowance Tracking System accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NO_X allowances, the administrator may notify the NO_X authorized account representative for the account that the account will be closed and deleted from the NO_X Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the administrator receives a correctly submitted transfer of NO_X allowances into the account under 9 VAC 5-140-600 or a statement submitted by the NO_X authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

ARTICLE 7.
NO_X Allowance Transfers.

9 VAC 5-140-600. Submission of NO_X allowance transfers.

The NO_X authorized account representatives seeking recordation of a NO_X allowance transfer shall

submit the transfer to the administrator. To be considered correctly submitted, the NO_X allowance transfer shall include the following elements in a format specified by the administrator:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each NO_X allowance to be transferred; and

3. The printed name and signature of the NO_X authorized account representative of the transferor account and the date signed.

9 VAC 5-140-610. EPA recordation.

A. Within 5 business days of receiving a NO_X allowance transfer, except as provided in subsection B of this section, the administrator will record a NO_X allowance transfer by moving each NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9 VAC 5-140-600;

2. The transferor account includes each NO_X allowance identified by serial number in the transfer; and

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

B. A NO_X allowance transfer that is submitted for recordation following the NO_X allowance transfer deadline and that includes any NO_X allowances allocated for a control period prior to or the same as the control period to which the NO_X allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_X allowance allocations in 9 VAC 5-140-530 B.

C. Where a NO_X allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator will not record such transfer.

9 VAC 5-140-620. Notification.

A. Within 5 business days of recordation of a NO_X allowance transfer under 9 VAC 5-140-610, the administrator will notify each party to the transfer. Notice will be given to the NO_X authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a NO_X allowance transfer that fails to meet the requirements of 9 VAC 5-140-610 A, the administrator will notify the NO_X authorized account representatives of both accounts subject to the transfer of:

1. A decision not to record the transfer, and

2. The reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a NO_X allowance transfer for recordation following notification of nonrecordation.

ARTICLE 8.
Monitoring and Reporting.

9 VAC 5-140-700. General requirements.

A. The owners and operators, and to the extent applicable, the NO_X authorized account representative of a NO_X Budget unit, shall comply with the monitoring and reporting requirements as provided in this article and in Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9 VAC 5-140-20 and in 40 CFR 72.2 shall apply, and the terms "affected unit", "designated

representative", and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NO_X Budget unit", "NO_X authorized account representative", and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in 9 VAC 5-140-20.

B. The owner or operator of each NO_X Budget unit shall meet the following requirements. These provisions also apply to a unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, as provided in Article 9 (9 VAC 5-140-800 et seq.) of this part:

1. Install all monitoring systems required under this article for monitoring NO_X mass. This includes all systems required to monitor NO_X emission rate, NO_X concentration, heat input, and flow, in accordance with 40 CFR 75.71 and 40 CFR 75.72.

2. Install all monitoring systems for monitoring heat input, if required under 9 VAC 5-140-760 for developing NO_X allowance allocations.

3. Successfully complete all certification tests required under 9 VAC 5-140-710 and meet all other provisions of this article and 40 CFR Part 75 applicable to the monitoring systems under subdivisions 1 and 2 of this subsection.

4. Record, and report data from the monitoring systems under subdivisions 1 and 2 of this subsection.

C. The owner or operator shall meet the requirements of subdivisions B 1 through B 3 of this section on or before the following dates and shall record and report data on and after the following dates:

1. NO_X Budget units for which the owner or operator intends to apply for early reduction credits under 9 VAC 5-140-430 shall have complied with the requirements of this article by May 1, 2001.

2. Except for NO_X Budget units under subdivision 1 of this subsection, NO_X Budget units under 9 VAC 5-140-40 that commence operation before January 1, 2003, shall comply with the requirements of this article by May 1, 2003.

3. NO_X Budget units under 9 VAC 5-140-40 that commence operation on or after January 1, 2003, and that report on an annual basis under 9 VAC 5-140-740 D shall comply with the requirements of this article by the later of the following dates:

a. May 1, 2003; or

b. The earlier of:

(1) 180 days after the date on which the unit commences operation or,

(2) For units under 9 VAC 5-140-40 A 1, 90 days after the date on which the unit commences commercial operation.

4. NO_X Budget units under 9 VAC 5-140-40 that commence operation on or after January 1, 2003, and that report on a control period basis under 9 VAC 5-140-740 D shall comply with the requirements of this article by the later of the following dates:

a. The earlier of:

(1) 180 days after the date on which the unit commences operation or,

(2) For units under 9 VAC 5-140-40 A 1, 90 days after the date on which the unit commences commercial operation.

b. However, if the applicable deadline under subdivision 4 a of this subsection does

not occur during a control period, May 1; immediately following the date determined in accordance with subdivision 4 a of this subsection.

5. For a NO_X Budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision 1, 2, or 3 of this subsection or Article 9 (9 VAC 5-140-800 et seq.) of this part:

a. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

b. However, if the unit reports on a control period basis under 9 VAC 5-140-740 D and the applicable deadline under subdivision 5 a of this subsection does not occur during the control period, May 1 immediately following the applicable deadline in subdivision 5 a of this subsection.

6. For a unit for which an application for a NO_X Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under Article 9 (9 VAC 5-140-800 et seq.) of this part.

D. The owner or operator of a NO_X Budget unit under subdivision C 3, C 4, C 5, or C 6 of this section shall determine, record and report NO_X mass emissions, heat input rate, and any other values required to determine NO_X mass emissions (e.g., NO_X emission rate and heat input rate, or NO_X concentration and stack flow rate) in accordance with 40 CFR 75.70(g), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under appendix D or E of 40 CFR part 75, or excepted monitoring methodology under 40 CFR 75.19 is provisionally certified.

E.1. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with 9 VAC 5-140-750.

2. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

3. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

4. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by a retired unit exemption under 9 VAC 5-140-50 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The NO_X authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9 VAC 5-140-710 B 2.

9 VAC 5-140-710. Initial certification and recertification procedures

A. The owner or operator of a NO_X Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:

1. If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_X authorized account representative shall resubmit the petition to the administrator under 9 VAC 5-140-750 A to determine if the approval applies under the NO_X Budget Trading Program.

2. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO_X concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of subsection B of this section.

B. The owner or operator of a NO_X Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of subsection C of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall also meet the requirements of subsection D of this section. The owner or operator of a NO_X Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO_X concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

1. The owner or operator shall ensure that each emission monitoring system required by Subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in 9 VAC 5-140-700 C. In addition, whenever the owner or operator installs an emission monitoring system in order to meet the requirements of this part in a location where no such emission monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in a certified emission monitoring system that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the emission monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

3.a. The NO_X authorized account representative shall submit to the permitting authority, the EPA Region III Office and the administrator a written notice of the dates of certification in accordance with 9 VAC 5-140-730.

b. The NO_X authorized account representative shall submit to the permitting authority a certification application for each emission monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75.

c. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_X Budget Trading Program

for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

d. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NO_X Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(2) A certification application will be considered complete when all of the applicable information required to be submitted under subdivision 3 b of this subsection has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NO_X authorized account representative shall submit the additional information required to complete the certification application. If the NO_X authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under subdivision 3 d (3) of this subsection.

(3) If the certification application shows that any monitoring system does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system which is disapproved for initial certification.

(4) The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with 9 VAC 5-140-720 B.

e. If the permitting authority issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (4) of this subsection, then:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.20(b)(5), 40 CFR 75.20(h)(4), or 40 CFR 75.21(e) and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i):

(a) For units using or intending to monitor for NO_X emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_X emission rate and the maximum potential hourly heat input of the unit.

(b) For units intending to monitor for NO_X mass emissions using a NO_X pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_X and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR Part 75;

(2) The NO_X authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

C. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of 40 CFR 75.10 and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of subsection B of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_X Budget Trading Program as of the date on which the certification application is received by the administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the administrator or, if such notice is not provided, at the end of the administrator's 120 day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the NO_X Budget Trading Program prior to the applicable commencement date specified in 40 CFR 75.19(a)(1)(ii).

D. The NO_X authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the administrator and, if applicable, the permitting authority under Subpart E of 40 CFR Part 75 shall apply for certification to the permitting authority prior to use of the system under the NO_X Trading Program. The NO_X authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection B of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subdivision B 3 of this section and 40 CFR 75.20(f).

9 VAC 5-140-720. Out of control periods.

A. Whenever any emission monitoring system fails to meet the quality assurance requirements of Appendix B of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D, Subpart H, Appendix D, or Appendix E of 40 CFR Part 75.

B. Whenever both an audit of an emission monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9 VAC 5-140-710 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system. For the purposes of this subsection an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in 9 VAC 5-140-710 for each disapproved system.

9 VAC 5-140-730. Notifications.

The NO_X authorized account representative for a NO_X Budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

9 VAC 5-140-740. Recordkeeping and reporting.

A.1. The NO_X authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the recordkeeping and reporting requirements under 40 CFR 75.73, and with the requirements of 9 VAC 5-140-100 E1.

2. If the NO_X authorized account representative for a NO_X Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under Subpart F or G of 40 CFR Part 75 and which includes data and information required under this article or Subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission shall also be signed by the designated representative or the alternative designated representative.

B.1. The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by Subpart H of 40 CFR Part 75.

2. The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by Subpart H of 40 CFR Part 75.

C. The NO_X authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9 VAC 5-140-710 including the information required under Subpart H of 40 CFR Part 75.

D. The NO_X authorized account representative shall submit quarterly reports, as follows:

1. If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_X budget unit chooses to meet the annual reporting requirements of this article, the NO_X authorized account representative shall submit a quarterly report, documenting the NO_X mass emissions from the unit, for each calendar quarter beginning with:

a. For a unit for which the owner or operator intends to apply or applies for the early reduction credits under 9 VAC 5-140-430, the calendar quarter that covers May 1, 2001, through June 30, 2001. NO_X mass emission data shall be recorded and reported from the first hour on May 1, 2001; or

b. For a unit that commences operation before January 1, 2003, and that is not subject to subdivision 1 a of this subsection, the calendar quarter covering May 1, 2003, through June 30, 2003. NO_X mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

c. For a unit that commences operation on or after January 1, 2003:

(1) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. NO_X mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(2) The calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation, if the unit does not commence operation during a control period. NO_X mass emission data shall be recorded and reported from the first hour on May 1 of that control period.

2. If a NO_X budget unit is not subject to an Acid Rain emission limitation, then the NO_X authorized account representative shall either:

a. Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO_X mass emissions during the entire year and meet the reporting deadlines specified in subdivision 1 of this subsection; or

b. Submit quarterly reports, documenting NO_X mass emissions from the unit, only for the period from May 1 through September 30 of each year and including the data described in 40 CFR 75.74 (c)(6). The NO_X authorized account representative shall submit such quarterly reports, beginning with:

(1) For a unit for which the owner or operator intends to apply or applies for early reduction credits under 9 VAC 5-140-430, the calendar quarter covering May 1, 2001, through June 30, 2001. NO_X mass emission data shall be recorded and reported from first hour on May 1, 2001; or

(2) For a unit that commences operation before January 1, 2003, and that is not subject to subdivision 2 b (1) of this subsection, the calendar quarter covering May 1 through June 30, 2003. NO_X mass emission data shall be recorded and reported from the first hour of May 1, 2003; or

(3) For a unit that commences operation on or after January 1, 2003, and during a control period, the calendar quarter in which the unit commences operation. NO_X mass emission data shall be reported from the date and hour corresponding to when the unit commences operation; or

(4) For a unit that commences operation on or after January 1, 2003, and not during a control period, the calendar quarter which includes May 1 through June 30 of the first control period after the unit commences operation. NO_X mass emission data shall be recorded and reported from the first hour on May 1 of the first control period after the unit commences operation.

3. The NO_X authorized account representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64.

a. For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in Subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack) as well as information required in Subpart G of 40 CFR Part 75.

b. For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in Subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack).

4. The NO_X authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications; and

b. For a unit with add-on NO_X emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_X emissions; and

c. For a unit that is reporting on a control period basis under this subsection the NO_X emission rate and NO_X concentration values substituted for missing data under Subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

9 VAC 5-140-750. Petitions.

A. The NO_X authorized account representative of a NO_X Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of this article.

1. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved by the administrator, in consultation with the permitting authority.

2. Notwithstanding subdivision 1 of this subsection, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by subsection B of this section.

B. The NO_X authorized account representative of a NO_X Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to any requirement of this article.

1. The NO_X authorized account representative of a NO_X Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO_X concentration CEMS used under 40 CFR 75.71(a)(2).

2. Application of an alternative to any requirement of this article is in accordance with this article only to the extent the petition under subsection B of this section is approved by both the permitting authority and the administrator.

9 VAC 5-140-760. Additional requirements to provide heat input data for allocations purposes.

A. The owner or operator of a unit that elects to monitor and report NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75.

B. The owner or operator of a unit that monitor and report NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75 for any source that is applying for early reduction credits under 9 VAC 5-140-430.

ARTICLE 9.
Individual Unit Opt-ins.

9 VAC 5-140-800. Applicability.

A unit that is not a NO_X Budget unit under 9 VAC 5-140-40 A, is not a unit exempt under 9 VAC 5-140-40 B, vents all of its emissions to a stack, and is operating may qualify under this article to become a NO_X Budget opt-in source. A unit that is a NO_X Budget unit under 9 VAC 5-140-40 A, is covered by an exemption under 9 VAC 5-140-40 B or 9 VAC 5-140-50 that is in effect, or is not operating is not eligible to become a NO_X Budget opt-in source.

9 VAC 5-140-810. General.

Except otherwise as provided in this part, a NO_X Budget opt-in source shall be treated as a NO_X Budget unit for purposes of applying Articles 1 (9 VAC 5-140-10 et seq.) through 8 (9 VAC 5-140-700 et seq.) of this part.

9 VAC 5-140-820. NO_X authorized account representative.

A unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, or a NO_X Budget opt-in source, located at the same source as one or more NO_X Budget units, shall have the same NO_X authorized account representative as such NO_X Budget units.

9 VAC 5-140-830. Applying for NO_X Budget opt-in permit.

A. In order to apply for an initial NO_X Budget opt-in permit, the NO_X authorized account representative of a unit qualified under 9 VAC 5-140-800 may submit to the permitting authority at any time, except as provided under 9 VAC 5-140-860 G:

1. A complete NO_X Budget permit application under 9 VAC 5-140-220;

2. A monitoring plan submitted in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part; and

3. A complete account certificate of representation under 9 VAC 5-140-130, if no NO_X authorized account representative has been previously designated for the unit.

B. The NO_X authorized account representative of a NO_X Budget opt-in source shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 to renew the NO_X Budget opt-in permit in accordance with 9 VAC 5-140-210 C and, if applicable, an updated monitoring plan in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

9 VAC 5-140-840. Opt-in process.

The permitting authority will issue or deny a NO_X Budget opt-in permit for a unit for which an initial application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted, in accordance with 9 VAC 5-140-200 and the following:

1. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_X Budget opt-in permit under 9 VAC 5-140-830. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit are monitored and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

2. If the permitting authority determines that the unit's monitoring plan is sufficient under subdivision 1 of this section and after completion of monitoring system certification under Article 8 (9 VAC 5-140-700 et seq.) of this part, the NO_X emissions rate and the heat input of the unit shall be monitored and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part for one full control period during which monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_X Budget unit" prior to issuance of a NO_X Budget opt-in permit covering the unit.

3. Based on the information monitored and reported under subdivision 2 of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_X emissions rate shall be calculated as the unit's total NO_X emissions (in lb) for the control period divided by the unit's baseline heat rate.

4. After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under subdivision 3 of this section, the permitting authority will serve a draft NO_X Budget opt-in permit on the NO_X authorized account representative of the unit.

5. Within 20 days after the issuance of the draft NO_X Budget opt-in permit, the NO_X authorized account representative of the unit shall submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_X Budget opt-in permit under 9 VAC 5-140-830. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NO_X Budget opt-in permit application.

6. If the NO_X authorized account representative confirms the intention to opt-in the unit under

subdivision 5 of this section, the permitting authority will issue the draft NO_X Budget opt-in permit in accordance with 9 VAC 5-140-200.

7. Notwithstanding subdivisions 1 through 6 of this section, if at any time before issuance of a draft NO_X Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO_X Budget opt-in source under 9 VAC 5-140-800, the permitting authority will issue a draft denial of a NO_X Budget opt-in permit for the unit in accordance with 9 VAC 5-140-200.

8. A NO_X authorized account representative of a unit may withdraw its application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 at any time prior to the issuance of the final NO_X Budget opt-in permit. Once the application for a NO_X Budget opt-in permit is withdrawn, a NO_X authorized account representative wanting to reapply shall submit a new application for a NO_X Budget permit under 9 VAC 5-140-830.

9. The effective date of the initial NO_X Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_X Budget opt-in permit by the permitting authority. The unit shall be a NO_X Budget opt-in source and a NO_X Budget unit as of the effective date of the initial NO_X Budget opt-in permit.

9 VAC 5-140-850. NO_X Budget opt-in permit contents.

A. Each NO_X Budget opt-in permit (including any draft or proposed NO_X Budget opt-in permit, if applicable) will contain all elements required for a complete NO_X Budget opt-in permit application under 9 VAC 5-140-220.

B. Each NO_X Budget opt-in permit is deemed to incorporate automatically the definitions of terms under 9 VAC 5-140-20 and, upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of NO_X allowances to or from the compliance accounts of each NO_X Budget opt-in source covered by the NO_X Budget opt-in permit or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located.

9 VAC 5-140-860. Withdrawal from NO_X Budget Trading Program.

A. To withdraw from the NO_X Budget Trading Program, the NO_X authorized account representative of a NO_X Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

B. Before a NO_X Budget opt-in source covered by a request under subsection A of this section may withdraw from the NO_X Budget Trading Program and the NO_X Budget opt-in permit may be terminated under subsection E of this section, the following conditions shall be met:

1. For the control period immediately before the withdrawal is to be effective, the NO_X authorized account representative shall submit or shall have submitted to the permitting authority an annual compliance certification report in accordance with 9 VAC 5-140-300.

2. If the NO_X Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the administrator will deduct or has deducted from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, the full amount required under 9 VAC 5-140-540 D for the control period.

3. After the requirements for withdrawal under subdivisions 1 and 2 of this subsection are met, the administrator will deduct from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and allocated for the same or a prior control period as any NO_X allowances allocated to that source under 9 VAC 5-140-880 for any control period for which the withdrawal is to be effective. The administrator will close the NO_X Budget opt-in source's compliance account and will establish, and transfer

any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X Budget opt-in source shall become the NO_X authorized account representative for the general account.

C. A NO_X Budget opt-in source that withdraws from the NO_X Budget Trading Program shall comply with all requirements under the NO_X Budget Trading Program concerning all years for which such NO_X Budget opt-in source was a NO_X Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

D.1. After the requirements for withdrawal under subsections A and B of this section are met (including deduction of the full amount of NO_X allowances required), the permitting authority will issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source of the acceptance of the withdrawal of the NO_X Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

2. If the requirements for withdrawal under subsections A and B of this section are not met, the permitting authority will issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source that the NO_X Budget opt-in source's request to withdraw is denied. If the NO_X Budget opt-in source's request to withdraw is denied, the NO_X Budget opt-in source shall remain subject to the requirements for a NO_X Budget opt-in source.

E. After the permitting authority issues a notification under subdivision D 1 of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO_X Budget permit covering the NO_X Budget opt-in source to terminate the NO_X Budget opt-in permit as of the effective date specified under subdivision D 1 of this section. A NO_X Budget opt-in source shall continue to be a NO_X Budget opt-in source until the effective date of the termination.

F. If the permitting authority denies the NO_X Budget opt-in source's request to withdraw, the NO_X authorized account representative may submit another request to withdraw in accordance with subsections A and B of this section.

G. Once a NO_X Budget opt-in source withdraws from the NO_X Budget Trading Program and its NO_X Budget opt-in permit is terminated under this section, the NO_X authority account representative may not submit another application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 for the unit prior to the date that is four years after the date on which the terminated NO_X Budget opt-in permit became effective.

9 VAC 5-140-870. Change in regulatory status.

A. When a NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40, the NO_X authorized account representative shall notify in writing the permitting authority and the administrator of such change in the NO_X Budget opt-in source's regulatory status, within 30 days of such change.

B. Upon notification under subsection A of this section, the permitting authority and administrator will take the following actions:

1.a. When the NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40, the permitting authority will revise the NO_X Budget opt-in source's NO_X Budget opt-in permit to meet the requirements of a NO_X Budget permit under 9 VAC 5-140-230 as of an effective date that is the date on which such NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40.

b.(1) The administrator will deduct from the compliance account for the NO_X Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_X Budget source where the unit is located, NO_X allowances equal in number to and allocated for the same or a prior control period as:

(a) Any NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under 9 VAC 5-140-880 for any control period after the last control period during which the unit's NO_X Budget opt-in permit was effective; and

(b) If the effective date of the NO_X Budget permit revision under subdivision 1 a of this subsection is during a control period, the NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under 9 VAC 5-140-880 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision 1 a of this subsection, divided by the total number of days in the control period.

(2) The NO_X authorized account representative shall ensure that the compliance account of the NO_X Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_X Budget source where the unit is located, includes the NO_X allowances necessary for completion of the deduction under subdivision 1 b (1) of this subsection. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator will deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

c.(1) For every control period during which the NO_X Budget permit revised under subdivision B 1 a of this section is effective, the NO_X Budget unit under subdivision 1 a of this subsection will be treated, solely for purposes of NO_X allowance allocations under 9 VAC 5-140-420, as a unit that commenced operation on the effective date of the NO_X Budget permit revision under subdivision 1 a of this subsection and will be allocated NO_X allowances under 9 VAC 5-140-420.

(2) Notwithstanding subdivision 1 c (1) of this subsection, if the effective date of the NO_X Budget permit revision under subdivision 1 a of this subsection is during a control period, the following number of NO_X allowances will be allocated to the NO_X Budget unit under subdivision 1 a of this subsection under 9 VAC 5-140-420 for the control period: the number of NO_X allowances otherwise allocated to the NO_X Budget unit under 9 VAC 5-140-420 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision 1 a of this subsection, divided by the total number of days in the control period.

2.a. When the NO_X authorized account representative of a NO_X Budget opt-in source does not renew its NO_X Budget opt-in permit under 9 VAC 5-140-830 B, the administrator will deduct from the NO_X Budget opt-in unit's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and allocated for the same or a prior control period as any NO_X allowances allocated to the NO_X Budget opt-in source under 9 VAC 5-140-880 for any control period after the last control period for which the NO_X Budget opt-in permit is effective. The NO_X authorized account representative shall ensure that the NO_X Budget opt-in source's compliance account or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located includes the NO_X allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator will deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

b. After the deduction under subdivision 2 a of this subsection is completed, the administrator will close the NO_X Budget opt-in source's compliance account. If any NO_X allowances remain in the compliance account after completion of such deduction and any deduction under 9 VAC 5-140-540, the administrator will close the NO_X Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X Budget opt-in source shall become the NO_X authorized account representative for the general account.

9 VAC 5-140-880. NO_X allowance allocations to opt-in units.

A.1. By December 31 immediately before the first control period for which the NO_X Budget opt-in permit is effective, the permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source and submit to the administrator the allocation for the control period in accordance with subsection B of this section.

2. By no later than December 31, after the first control period for which the NO_X Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source, and submit to the administrator allocations for the next control period, in accordance with subsection B of this section.

B. For each control period for which the NO_X Budget opt-in source has an approved NO_X Budget opt-in permit, the NO_X Budget opt-in source will be allocated NO_X allowances in accordance with the following procedures:

1. The heat input (in mmBtu) used for calculating NO_X allowance allocations shall be the lesser of:

a. The NO_X Budget opt-in source's baseline heat input determined pursuant to subdivision 3 of 9 VAC 5-140-840; or

b. The NO_X Budget opt-in source's heat input, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, for the control period in the year prior to the year of the control period for which the NO_X allocations are being calculated.

2. The permitting authority will allocate NO_X allowances to the NO_X Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under subdivision B 1 of this section multiplied by the lesser of:

a. The NO_X Budget opt-in source's baseline NO_X emissions rate (in lb/mmBtu) determined pursuant to subdivision 3 of 9 VAC 5-140-840; or

b. The most stringent State or Federal NO_X emissions limitation applicable to the NO_X Budget opt-in source during the control period.

3. The permitting authority will not allocate to any NO_X Budget opt-in source any NO_X allowances from the state trading program budget set forth in 9 VAC 5-140-900.

ARTICLE 10.
State Trading Program Budget and Compliance Supplement Pool.

9 VAC 5-140-900. State trading program budget.

For use in each control period for the year 2004 and each year thereafter, the total number of NO_X tons apportioned to all NO_X Budget units is the sum of the NO_X tons apportioned under 9 VAC 5-140-920 and 9 VAC 5-140-930.

9 VAC 5-140-910. Compliance supplement pool budget for years 2004 and 2005.

For use in each control period for the years 2004 and 2005, the total number of NO_X tons apportioned to all NO_X Budget units for use as a compliance supplement pool is the number of NO_x tons specified for the Commonwealth of Virginia in Appendix D to 40 CFR Part 97.

9 VAC 5-140-920. Total electric generating unit allocations.

A. For use in each control period for the years 2004 –2008, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 1 is the number of NO_x tons specified for EGUs in the Commonwealth of Virginia in Appendix C to 40 CFR Part 97.

B. For use in each control period for the year 2009 and each year thereafter, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 1 is 17,091.

9 VAC 5-140-930. Total non-electric generating unit allocations.

A. For use in each control period for the years 2004 –2008, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 2 is 4,104.

B. For use in each control period for the year 2009 and each year thereafter, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 2 is 4,104.

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