

## Environmental Protection Agency

## §97.54

pursuant to §97.54(d)(2)), the Administrator will record:

(1) NO<sub>x</sub> allowances, in the compliance account, as allocated to the unit under subpart E 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<sub>x</sub> allowances, in the general account specified by the owners and operators of the unit, as allocated under §97.4(b)(4)(ii) or §97.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

(3) NO<sub>x</sub> allowances, in the compliance account, as allocated to the unit under §97.88(a).

(f) *Serial numbers for allocated NO<sub>x</sub> allowances.* When allocating NO<sub>x</sub> allowances to a NO<sub>x</sub> Budget unit and recording them in an account, the Administrator will assign each NO<sub>x</sub> allowance a unique identification number that will include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

### §97.54 Compliance.

(a) NO<sub>x</sub> allowance transfer deadline. The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> Budget emissions limitation for a control period in a given year only if the NO<sub>x</sub> 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<sub>x</sub> allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under §97.60 by the NO<sub>x</sub> allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with §97.61, of NO<sub>x</sub> 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<sub>x</sub> allowance transfer deadline for a control period, the Administrator will deduct NO<sub>x</sub> allowances available under paragraph (a) of this section to cover the unit's NO<sub>x</sub> emis-

sions (as determined in accordance with subpart H of this part), or to account for actual heat input under §97.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO<sub>x</sub> allowances available under paragraph (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 account number and end with the unit having the compliance account with the highest 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<sub>x</sub> allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO<sub>x</sub> allowances deducted for the control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NO<sub>x</sub> allowances required for deduction to account for actual heat input under §97.42(e) for the control period; or

(ii) Until no more NO<sub>x</sub> allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO<sub>x</sub> allowances by serial number.* The NO<sub>x</sub> authorized account representative for each compliance account may identify by serial number the NO<sub>x</sub> allowances to be deducted from the unit's compliance account under paragraph (b), (d), (e), or (f) of this section. Such identification shall be made in the compliance certification report submitted in accordance with §97.30.

(2) *First-in, first-out.* The Administrator will deduct NO<sub>x</sub> 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<sub>x</sub> allowances by serial number under paragraph (c)(1) of this

section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under subpart E or I of this part;

(ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of rec- ordation;

(iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and

(iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of rec- ordation.

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

(2) If the compliance account or over- draft account does not contain suffi- cient NO<sub>x</sub> allowances, the Adminis- trator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were al- located, whenever NO<sub>x</sub> allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO<sub>x</sub> Bud- get unit for any fine, penalty, or assess- ment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obli- gations:

(i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in

violation unless the owners and opera- tors of the unit demonstrate that a lesser number of days should be consid- ered.

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

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

(1) The NO<sub>x</sub> authorized account rep- resentative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compli- ance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identi- fication shall be made in the compli- ance certification report submitted in accordance with § 97.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Adminis- trator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage under paragraph (e)(1) of this section or, if no percent- age is identified, an equal percentage for each unit multiplied by the number of tons of NO<sub>x</sub> emissions, as deter- mined in accordance with subpart H of this part, from the common stack for the control period for which compli- ance is being determined. In addition to the deductions under the first sen- tence of this paragraph (e)(1), the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the number of NO<sub>x</sub> allowances required to account for actual heat input under § 97.42(e) for the unit for the control pe- riod.

(f) *Deduction of banked allowances.* Each year starting in 2005, after the Administrator has completed the des- ignation of banked NO<sub>x</sub> allowances under § 97.55(b) and before May 1 of the year, the Administrator will determine the extent to which banked NO<sub>x</sub> allow- ances otherwise available under para- graph (a) of this section are available for compliance in the control period for the current year, as follows:

(1) The Administrator will determine the total number of banked NO<sub>x</sub> allow- ances held in compliance accounts,

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overdraft accounts, or general accounts.

(2) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10 percent of the sum of the trading program budgets under §97.40 for all States for the control period, any banked NO<sub>x</sub> allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section.

(3) If the total number of banked NO<sub>x</sub> allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the trading program budgets under §97.40 for all States for the control period, any banked allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets under §97.40 for all States for the control period and divided by the total number of banked NO<sub>x</sub> allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NO<sub>x</sub> allowances in each compliance account or overdraft account by the ratio determined under paragraph (f)(3)(i) of this section. The resulting product is the number of banked NO<sub>x</sub> allowances in the account that may be deducted for compliance in accordance with paragraphs (a) through (e) of this section. Any banked NO<sub>x</sub> allowances in excess of the resulting product may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except that, if such NO<sub>x</sub> allowances are used to make a deduction under paragraph (b) or (e) of this section, two (rather than one) such NO<sub>x</sub> allowances shall authorize up to one ton of NO<sub>x</sub> emissions during the control period and must be deducted for each deduction of one NO<sub>x</sub> allowance required under paragraph (b) or (e) of this section.

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

### §97.55 Banking.

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

(a) Any NO<sub>x</sub> allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO<sub>x</sub> allowance is deducted or transferred under §97.31, §97.54, §97.56, or subpart G or I of this part.

(b) The Administrator will designate, as a “banked” NO<sub>x</sub> allowance, any NO<sub>x</sub> allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) and that was allocated for that control period or a control period in a prior year.

### §97.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO<sub>x</sub> Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO<sub>x</sub> authorized account representative for the account.

### §97.57 Closing of general accounts.

(a) The NO<sub>x</sub> authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NO<sub>x</sub> Allowance Tracking System and by correctly submitting for recordation under §97.60 an allowance transfer of all NO<sub>x</sub> allowances in the account to one or more other NO<sub>x</sub> Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO<sub>x</sub> allowances, the Administrator may notify