Regulations of Connecticut State Agencies (R.C.S.A.) Section 22a-174-22a — The Nitrogen Oxides (NO_x) Budget Program

SUMMARY OF REGULATION

Section 22a-174-22a of the Regulations of Connecticut State Agencies (R.C.S.A.) establishes the NO_x Budget Program in Connecticut. The NO_x Budget Program is a regional, market-based, cap-and-trade program to reduce emissions of nitrogen oxides (NO_x) from large sources of NO_x throughout the Ozone Transport Region (OTR).[1]

Through the Clean Air Act (CAA) Amendments of 1990, Congress established the Ozone Transport Commission (OTC) to address the regional transport of ozone within the OTR, with the states of the OTR as its members. Within several years of the passage of the 1990 CAA amendments, the OTC member states recognized that overwhelming transport of air pollution throughout the OTR would preclude the OTC members states from meeting the federal national health-based standards for ozone, thus justifying a call for additional regional NO_x controls beyond those mandated by the CAA. On September 24, 1994, the representatives of the OTC member states, except Virginia, adopted a memorandum of understanding (MOU) committing themselves to the development and proposal of regulations that would reduce NO_x emission across the OTR beginning in 1999. The OTC developed a model rule for the NO_x Budget Program to implement the NO_x emission reductions agreed to in the MOU.

The NO_x Budget program reduces emissions annually from May through September by setting a budget of OTR NO_x emissions from budget sources. Budget sources are fossil-fuel-fired boilers and indirect heat exchangers of 250 million Btu (MMBTU) or greater, and electric generating units of 15 megawatts or greater. This category includes industrial, cogeneration, and utility units. In addition, other sources may voluntarily participate.

The OTR budget is in units called "allowances," which are the currency of the NO_x Budget Program. Each allowance represents one ton of NO_x. The OTR budget is divided among the OTC member states based on the historic NO_x emissions of the budget sources within each state. Although each state has a NO_x budget, statewide NO_x emissions are not capped. The critical element of the NO_x Budget Program is the transfer of allowances between sources throughout the OTR. The OTR NO_x budget beginning in 1999 is 219,055 tons. Connecticut's NO_x Budget for the years 1999 through 2002 is 5,866 tons, a reduction of 5,337 tons from 1990, and 1,732 tons from 1995.

By May 1 of each year, the NO_x Budget Program allocates the state NO_x budget to each of the budget sources within a state. Each source complies with the NO_x Budget Program by holding a number of allowances at least equal to the number of tons of NO_x it emits from May through September. If the number of allowances allocated by the state is insufficient, a budget source may buy allowances from other budget sources. Regardless of the number of allowances a budget source holds, the budget source cannot emit NO_x at levels that would violate other federal or state limits.

Section 22a-174-22a — The NO_x Budget Program

Subsection (a), Definitions — defines the relevant terms used in the body of the regulation.

Subsection (b), Applicability

Subdivision (1) states that the regulation will apply to the owner or operator of a budget source on and after May 1, 1999.

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[1] The OTR is comprised of Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and five northern counties of Virginia.

Subdivision (2) outlines the procedure for the voluntary participation of non-budget sources in the NO_x Budget Program

Subdivision (3) provides that the NO_x Budget program shall remain in effect in an area of Connecticut redesignated as attainment for the National Ambient Air Quality Standard for ozone.

Subsection (c), The NO_x Emission Budget

Subdivision (1) establishes the NO_x emission budget for Connecticut as 5,866 tons from May through September for each year of the years 1999, 2000, 2001, and 2002.

Subdivision (2) provides that the commissioner shall increase the NO_x emission budget to accommodate non-budget sources that voluntarily participate in the NO_x Budget Program, pursuant to Subdivision (b)(2).

Subdivision (3) provides that the commissioner shall implement the NO_x emission budget through the allocation of allowances pursuant to subsection (d).

Subdivision (4) affirms that this regulation does not waive or make less stringent the requirement to install and operate Reasonably Available Control Technology, as codified in R.C.S.A. Section 22a-174-22.

Subsection (d), Annual Allowance Allocation

Subdivision (1) provides that the commissioner shall reserve or allocate allowances by May 1 annually pursuant to the provisions of the following subdivisions.

Subdivision (2) provides that the commissioner shall allocate up to 5,866 allowances for each of the years 1999, 2000, 2001, and 2002.

Subdivision (3) provides that the commissioner shall establish the Connecticut State Account to hold the Connecticut NO_x emission budget and the Connecticut Retirement Account to hold retired allowances with the U.S. Environmental Protection Agency.

Subdivision (4) provides that the commissioner shall, by May 1, reserve allowances in the Connecticut State Account for industrial, cogeneration, new, and new utility units, and allocate to baseline utility units a number of allowances equal to the product of the applicable formula.

Subdivision (5) provides that the commissioner shall, after September 30 and before December 31 each year, allocate allowances to industrial, cogeneration, new, new utility, and baseline utility units a number of allowances equal to the product of the applicable formula.

Subdivision (6) provides that budget sources that begin operation after the reservation and allocation of allowances before May 1 must obtain allowances from other budget sources to comply with the requirements of this regulation.

Subdivision (7) states that a budget source that ceases to operate after the initial reservation and allocation of allowances shall receive allowances for each control period from 1999 through 2002, unless such sources submits a request to the commissioner to reallocate such allowances.

Subsection (e), Early Emission Reduction Credit

Subdivision (1) provides that the owner or operator of a budget source may earn early reduction credits by reducing NO_x emissions from May 1 through September 30 in the years 1997 and 1998, and that such owner or operator may request that the commissioner convert such early reduction credit to allowances for use beginning in 1999.

Subdivision (2) establishes that in order for early reduction credit to be converted to allowances, the emission reductions must be real, quantifiable, surplus, enforceable, and the product of an emission rate lower than the most stringent of four listed emission rates.

Subdivision (3) provides that the calculation of early reduction credit shall presume a capacity utilization equal to the lower if the budget source's heat input in 1990, or the average capacity utilization for two consecutive years preceding the application for the conversion of early reduction credit to allowances.

Subdivision (4) provides that owner or operator of a budget source may suggest an alternative consecutive two-year period, subject to approval by the commissioner.

Subdivision (5) outlines the requirements for early reduction credit for a budget source that repowers.

Subdivision (6) provides that early reduction credit may be converted to allowances in 1999, and deposited in the compliance account of the budget source that generated the early reduction credit.

Subsection (f), Allowance Use and Transfer

Subdivision (1) provides that an allowance does not constitute any form of property, and its reservation, allocation, deposit, and transfer is subject to relevant section of the Regulation of the Connecticut State Agencies and the Connecticut General Statutes.

Subdivision (2) establishes that the owner or operator of a budget source shall comply with this regulation by holding, by December 31, a number of allowances equal to or exceeding the number of tons of NO_x emitted by such budget source from May 1 through September 30.

Subdivision (3) provides that, except as provided by subdivision (f)(4), allowances cannot be used to satisfy the requirements of any other permit, order, or applicable requirement.

Subdivision (4) provides that the commissioner may allow the owner or operator of a budget source to use allowances to satisfy the Reasonably Available Control Requirement for NO_x codified in R.C.S.A. Section 22a-174-22(e), in accordance with R.C.S.A. Section 22a-174-22(j).

Subdivision (5) states that emissions offsets must be obtained in accordance with R.C.S.A. Section 22a-174-3, and that allowances may not be simply used as offsets. However, allowances may represent emission reductions implemented by the owner or operator of a budget source and be used as offsets.

Subdivision (6) provides that if the owner or operator of a budget source transfers allowances to a non-budget source for offsetting purposes, the allowances shall be deducted from the compliance account of the budget source, unless the non-budget source opted into the NO_x Budget Program.

Subdivision (7) provides for the transfer of allowances to budget sources in other states that have incorporated the NO_x Budget Program into their State Implementation Plans. The commissioner may restrict the use for compliance of allowances from any other state that does not have an approved State Implementation incorporating a similar NO_x Budget Program.

Subdivision (8) outlines the requirements to transfer allowances.

Subdivision (9) provides that the EPA shall track allowances transfers between the owners and operators of budget sources.

Subdivision (10) allows the owner or operator of a budget source to request the

commissioner to allocate all or a portion of its allowance allocation to the owner or operator of another budget source.

Subdivision (11) provides that the commissioner may request information regarding allowance transfer and cost from the owners or operators of budget sources.

Subsection (g), Allowance Banking

Subdivision (1) provides that allowances not used for compliance may be banked for later use in a compliance account.

Subdivision (2) provides that allowances not used for compliance may be banked for later use in a general account.

Subdivision (3) provides that allowances not used for compliance and retained in a compliance or general account shall be designated as banked allowances.

Subdivision (4) provides that the use of banked allowances across the OTR may be restricted should the number of banked allowances in the OTR exceed 10% of the OTR emission budget.

Subsection (h), The NO_x Allowance Tracking System

Subdivision (1) describes the NO_x Allowance Tracking System (NATS), an electronic database operated by the EPA for the purpose of tracking the use, transfer, and deposit of allowances.

Subdivision (2) provides that each budget source shall have a compliance account established in the NATS.

Subdivision (3) provides that budget sources at a common premise shall have an overdraft account established to hold allowances for use by such budget sources beyond their respective compliance accounts.

Subdivision (4) provides that any person may establish a general account in the NATS.

Subdivision (5) requires each owner of a compliance, general, and overdraft account to designate an Authorized Account Representative (AAR). Each owner may also designate an Alternate Authorized Account Representative (Alternate AAR).

Subdivision (6) requires the owner or operator of a compliance, general, and overdraft account to designate such AAR or Alternate AAR using an "Account Certificate of Compliance."

Subdivision (7) establishes the deadline for designating an AAR or Alternate AAR as the later of July 1, 1998, or sixty days after the effective date of this regulation.

Subsection (i), Emissions Monitoring

Subdivision (1) outlines the monitoring requirements of the owner or operator of a budget source.

Subdivision (2) outlines how the owner or operator of a budget source subject to 40 Code of Federal Regulations Part 75 shall demonstrate compliance with this regulation.

Subdivision (3) outlines how the owner or operator of a budget source not subject to 40 Code of Federal Regulations Part 75 shall demonstrate compliance with this regulation.

Subdivision (4) provides that the owner or operator of a budget source not subject to 40

Code of Federal Regulations Part 75 may use an alternative emissions monitoring method, subject to the approval by the commissioner.

Subdivision (5) establishes how the owner of a budget source not subject to 40 Code of Federal Regulations Part 75 shall calculate its NO_x emission rate.

Subdivision (6) outlines how the owner or operator of a budget source without a flow continuous emissions monitoring system shall determine hourly heat input rate.

Subdivision (7) establishes how the owner or operator of a budget source shall calculate the hourly heat NO_x emission rate in pounds per million BTU.

Subsection (j), Record Keeping

Subdivision (1) outlines the general requirement to make records of all measurements, data, reports, and other information required by this regulation and other state law.

Subdivision (2) requires the owner or operator of a budget source to retain such records for at least five years or longer if required by such budget source's operating permit.

Subdivision (3) requires that such records be made available upon the request of the commissioner.

Subsection (k), Reporting

Subdivision (1) outlines the requirements of the AAR or Alternate AAR of a budget source to report to the EPA the operations information of such budget source on a quarterly basis.

Subdivision (2) requires that the AAR or Alternate AAR submit with the quarterly reports NO_x emissions in pounds per hour ever hour from May through September, and cumulative hourly and total NO_x emissions data in pounds.

Subdivision (3) requires the AAR or Alternate AAR of a budget source subject to 40 Code of Federal Regulations Part 75 such data to the EPA with the reports required under 40 Code of Federal Regulations Part 75.

Subsection (*l*), Annual Reconciliation of Allowances

Subdivision (1) establishes that monitored emissions data reported to the EPA shall be the basis of the determination of compliance with this regulation.

Subdivision (2) requires the AAR or Alternate AAR of a budget source to request, between November 1 and December 31, that the EPA deduct a number of allowances from such budget source's compliance account a number of allowances equal to the number of tons of NO_x emitted by such budget source from May 1 through September 30.

Subdivision (3) provides that, regardless of the request of the AAR or the Alternate AAR, the EPA shall deduct a number of allowances from such budget source's compliance account a number of allowances equal to the number of tons of NO_x emitted by such budget source from May 1 through September 30.

Subdivision (4) provides if the number of allowances in a budget source's compliance account or overdraft account, the owner or operator must obtain additional allowances so the number of allowances in the compliance or overdraft account equals or exceeds the number of tons of NO_x emitted by such budget source from May 1 through September 30.

Subdivision (5) provides that the owner or operator of a budget source fails to hold a

number of allowances at least equal to the number of tons of NO_x emitted by such budget source from May 1 through September 30, such owner or operator shall be subject to enforcement action.

Subsection (m), Compliance Certification

Subdivision (1) requires the AAR or the Alternate AAR of a budget source to annually certify to the EPA that such budget source has complied with this regulation.

Subdivision (2) lists the required elements of the compliance certification.

Subdivision (3) provides that the commissioner shall have the right to verify compliance with this regulation by whatever means necessary, including the means listed in this subdivision.

Subsection (n), Allowance Adjustments and Penalties

Subdivision (1) provides that if, by December 31, the number of allowances in a budget source's compliance account is less than the number of tons of NO_x emitted by such budget source from May 1 through September 30, the commissioner shall deduct from such budget source's compliance or overdraft account the following year three allowances for every excess ton of NO_x emitted.

Subdivision (2) provides the formula for determining the number of days of violation, should the number of allowances in a budget source's compliance account be less than the number of tons of NO_x emitted by such budget source from May 1 through September 30.

Subdivision (3) provides that each excess ton of NO_x shall constitute a separate violation.

Subsection (o), Program Evaluation

Subdivision (1) provides that by May 1, 1999, the commissioner shall prepare and make available a report that documents the number of early reduction credits converted to allowances.

Subdivision (2) provides that the commissioner shall conduct an evaluation of the implementation of this regulation beginning in 2002 and each year thereafter. The subdivision list the required elements of the evaluation.

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STATE OF CONNECTICUT

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concerning

SUBJECT MATTER OF REGULATION

THE NITROGEN OXIDES (NO_x) BUDGET PROGRAM

Section 1

The Regulations of Connecticut State Agencies are amended by adding a new section 22a-174-22a as follows:

(NEW)

22a-174-22a. The Nitrogen Oxides (NO_x) Budget Program

(a) Definitions. For the purposes of this section:

(1) "Account" means the portion of the NO_x Allowance Tracking System (NATS) where allowances are held by a budget source in a compliance account or an overdraft account, or by any person in a general account.

(2) "Account number" means the identification number assigned by the Administrator for an account in which allowances are held.

(3) "Acquiring account" means the account of the party in an allowance transfer that obtains allowances through whatever means, including but not limited to purchase, trade, auction, or gift. An acquiring account may be a compliance account, an overdraft account, or a general account.

(4) "Administrator" means Administrator of the United States Environmental Protection Agency or designee who administers the NATS and the NO_x Emissions Tracking System (NETS).

(5) "Allocation" means the initial deposit of allowances in the compliance account of a budget source, as set forth in this section.

(6) "Allocation period" means the time period designated by the commissioner for which an allowance is allocated.

(7) "Allowance" means the limited authorization to emit one (1) ton of NO_x during a specified control period. All allowances shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of

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allowances shall be rounded down for decimals less than 0.5, and rounded up for decimals of 0.5 or greater.

(8) "Allowance deduction" means the withdrawal of allowances for permanent retirement by the Administrator from a compliance account or overdraft account for purposes of annual reconciliation, or from a general account for other deductions not directly related to compliance.

(9) "Allowance transfer" means the conveyance of one or more allowances from an account to an acquiring account by whatever means, including but not limited to purchase, trade, auction, or gift.

(10) "Allowance transfer deadline" means midnight of December 31 of any calendar year, and is the deadline by which an allowance transfer request may be submitted to the Administrator to effect an allowance transfer to meet the requirements of this section for the most recent control period. An official U.S. Postal Service postmark or electronic time stamp shall establish the date of submittal.

(11) "Alternative monitoring system" means any method approved by the commissioner designed to provide direct or indirect data of emissions in units of mass per time period, pollutant concentrations, and/or volumetric flow.

(12) "Authorized Account Representative" or "AAR" means the person authorized to transfer and otherwise manage allowances and certify reports to the NATS and the NETS on behalf of the owner of a budget source or the owner of a general account. Such owner may also authorize an Alternate AAR, who shall transfer and otherwise manage allowances and certify reports to the NATS and the NETS on behalf of such owner in place of the AAR. The authorization of an AAR or an Alternate AAR shall be made in writing by such owner and submitted to the commissioner.

(13) "Banked allowance" means an allowance that is not used to reconcile emissions in the designated year of allocation, but is retained for use in a future control period and identified as such in a compliance or general account.

(14) "Banking" means the retention, in a compliance or general account, of unused allowances from one control period for use in a future control period.

(15) "Baseline" means the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, as the official baseline emissions of May 1 through September 30, 1990.

(16) "Baseline control period emissions," for the purpose of an owner or operator of a stationary source opting into this NO_x Budget Program, means a representative average of the actual emissions of two (2) consecutive control periods within five (5) years preceding the application to opt into this section.

(17) "Baseline heat input," for the purpose of an owner or operator

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of a stationary source opting into this NO_x Budget Program, means the heat derived from the combustion of fuel in such stationary source during the emission of baseline control period emissions.

(18) "Baseline utility unit" means a fossil-fuel-fired combustion unit that generates electricity at a rated output of fifteen (15) megawatts or more that operated during the 1990 control period.

(19) "Boiler" means a facility that combusts fossil fuel to produce steam, or to heat water or any other heat transfer medium.

(20) "Budget source" means:

(A) A baseline utility unit;

(B) A cogeneration unit;

(C) An industrial unit;

(D) A new unit;

(E) A new utility unit; or

(F) An opt in unit.

(21) "Clean Air Act" means the Clean Air Act as amended in 1990 (42 U.S.C. §§ 7401-7626).

(22) "Cogeneration unit" means a fossil-fuel-fired combustion unit that generates electricity at a rated output of fifteen (15) megawatts or more by employing "cogeneration technology," as defined in section 16-1(a)(21) of the Connecticut General Statutes.

(23) "Commissioner" means the Commissioner of Environmental Protection or his designee.

(24) "Compliance account" means the account of a budget source in the NATS that holds current and future-year allowances useable for a specific designated control period as indicated by each allowance's unique serial number.

(25) "Continuous emissions monitoring system" or "CEMS" means the equipment required by this section used to sample, analyze, and measure NO_x emissions to provide a permanent record of such emissions expressed in pounds per MMBTU and in tons per day. The following systems are component parts of a CEMS:

(A) Nitrogen oxides pollutant concentration monitor;

(B) Diluent gas monitor (oxygen or carbon dioxide);

(C) A data acquisition and handling system; and

(D) Flow monitoring systems (where appropriate).

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(26) "Control period" means the period from May 1 through September 30 of each calendar year.

(27) "Current year" means the calendar year in which an action occurs or for which an allocation is designated.

(28) "Early reduction credit" means a reduction of NO_x emissions below the most stringent NO_x emission rate applicable to a budget source, achieved during the control periods of 1997 or 1998 and approved by the commissioner.

(29) "Emission budget" or "budget" means the maximum amount of NO_x emissions that budget sources in Connecticut may emit during a given control period, where such budget is determined by the commissioner in accordance with the Ozone Transport Commission Memorandum of Understanding dated September 27, 1994. The budget is exclusive of NO_x emissions represented by allowances acquired through interstate transfer pursuant to subdivision (f)(8) of this section, banked from prior control periods pursuant to subsection (g) of this section, and converted from early reduction credit pursuant to subsection (e) of this section.

(30) "Enforceable," for the purpose of quantifying early reduction credit, means retrospective approval by the commissioner.

(31) "Excess emissions" means emissions of nitrogen oxides discovered by the commissioner or reported by the owner or operator of a budget source during the control period, rounded to the nearest whole ton, which exceed the number of allowances in the budget source's NATS compliance account or overdraft account as of the allowance transfer deadline of the control period.

(32) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material.

(33) "Fossil-fuel-fired" means combustion of, or ability to combust, fossil fuel, any derivative of fossil fuel alone, or a combination of fuels, of which fossil fuel comprises fifty-one percent (51%) or greater of the annual heat input, measured in Btu.

(34) "General account" means an account in the NATS that is not a compliance account.

(35) "Heat input" means heat derived from the combustion of fuel in a budget source, exclusive of the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

(36) "Indirect heat exchanger" means combustion equipment in which the flame or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, including, but not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed

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preheaters, fuel-fired reactors such as steam hydrocarbon reformer heaters, and pyrolysis heaters.

(37) "Industrial unit" means a fossil-fuel-fired boiler or indirect heat exchanger with a maximum rated heat input capacity of 250 MMBTU/hr or more.

(38) "Maximum heat input capacity" means the ability of a budget source to combust a stated maximum amount of fuel on a steady-state basis, as determined by the physical design and characteristics of the facility. Maximum heat input capacity is expressed in MMBTU per hour, which is the product of the total gross caloric value of the fuel, expressed in Btu per pound, multiplied by the maximum fuel feed rate in the combustion device, expressed in mass of fuel/hour.

(39) "New unit" means a cogeneration or industrial unit that began operating after September 30, 1990.

(40) "New utility unit" means a fossil-fuel-fired combustion unit that generates electricity at a rated output of fifteen (15) megawatts or more that began operating after September 30, 1990.

(41) "NO_x Allowance Tracking System" or "NATS" means the electronic record keeping and reporting system that records allowance allocations, transfers, and deductions. In conjunction with transfers, the system records the effective date of an allowance transfer, the names and account numbers of the originating and acquiring accounts, and the number of allowances transferred and their serial numbers, and then reports such information to AARs and states where the originating and acquiring accounts reside.

(42) "NO_x Emissions Tracking System" or "NETS" means the electronic system used to track NO_x emissions from budget sources.

(43) "Non-Part 75 budget source" means a budget source not subject to the requirements for NO_x emissions monitoring under 40 CFR Part 75.

(44) "Opt in," "opt into," or "opting in" means to voluntarily participate and agree to be subject to the requirements of this section.

(45) "OTC MOU" means the Memorandum of Understanding dated September 27, 1994, adopted by representatives of Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont as members of the Ozone Transport Commission. A copy of the OTC MOU will be maintained at the offices of the Department of Environmental Protection.

(46) "Overdraft account" means the account established in the NATS for budget sources at a common premises that holds allowances useable for compliance by each such budget source after all the allowances in such budget source's compliance account are

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deducted.

(47) "Owner or operator" means any person who owns, operates, controls, or supervises a budget source.

(48) "Ozone Transport Region" or "OTR" means the states and jurisdictions designated by section 184(a) of the Clean Air Act.

(49) "Quantifiable" means capable of being calculated on a reliable and replicable basis for calculating the amount of an emission reduction approved by the commissioner and the Administrator.

(50) "Real" means a reduction of actual emissions released into the air, quantified retrospectively, net of any consequential increase in actual emissions resulting from shifting demand.

(51) "Regional NO_x budget" means the maximum amount of NO_x emissions that may be emitted by the budget sources in the OTR during a given control period, in accordance with the OTC MOU.

(52) "Replacement source" means a new combustion source or the heat or power purchased from the owner of a new combustion source that replaces a budget source. The replacement source must be on the same or contiguous property as the budget source being replaced and have a maximum heat output rate that is equal to or greater than the maximum heat output rate of the budget source being replaced. Alternatively, the replacement source may have a power output rate that is equal to or greater than the power output rate of the budget source being replaced, and incorporate technology capable of controlling multiple combustion pollutants simultaneously, with greater fuel efficiency and significantly greater waste reduction, relative to the performance of technology in widespread commercial use as of November 15, 1990.

(53) "Repowering" or "repowers," for the purpose of an early reduction credit, means:

(A) "Qualifying repowering technology" as defined by 40 CFR Part 72; or

(B) The discontinued use of a budget source and its replacement by either a new combustion source or the purchase of heat or power from the owner of a new combustion source, provided that:

(i) the replacement source is on the same or contiguous property as the budget source being replaced; and

(ii) the replacement source has a maximum heat output rate that is equal to or greater than the maximum heat output rate of the budget source being replaced, or

(iii) the replacement source has a power output rate that is equal to or greater than the power output

rate of the budget source being replaced; and

(iv) the replacement source incorporates technology capable of controlling multiple combustion pollutants simultaneously, with greater fuel efficiency and significantly greater waste reduction, relative to the performance of technology in widespread commercial use as of November 15, 1990.

(54) "State implementation plan" or "SIP" means a plan required by section 110 of the Clean Air Act.

(55) "Surplus" means an emission reduction that was not required by any provision of the SIP at the time the reduction was made, relied upon in an applicable attainment demonstration, or required by state or federal permit or order. For the purpose of early reduction credit, emission reductions are surplus if emissions are below the emission limit established by this section.

(56) "Transferee" means the person to whom an allowance is conveyed through an allowance transfer.

(57) "Transferor" means the person who conveys an allowance through an allowance transfer.

(b) Applicability.

(1) As of May 1, 1999, this section shall apply to the owner or operator of a budget source.

(2) Any person who owns, operates, controls, or leases as a lessee a stationary source, other than a budget source, may opt into this section in accordance with the following manner:

(A) The owner or operator shall submit to the commissioner, on forms prescribed by the commissioner, an application that documents the baseline control period emissions of the stationary source. The baseline control period emissions of the stationary source shall not be greater than the allowable emissions established for the stationary source by permit or order. The baseline control period emissions of the stationary source shall be added to the NO_x emission budget for the state identified in subdivision (c)(1) of this section before the allocation of allowances to the owner or operator of the stationary source;

(B) Upon the commissioner's approval of the application, the stationary source shall be considered an opt in budget source and shall be subject to all terms and conditions of this section;

(C) An allowance allocation shall be assigned to the opt in budget source pursuant to subparagraph (d)(5)(C) of this section;

(D) The allocation of allowances to an opt in budget source

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shall not require adjustments to the allocation of allowances to budget sources;

(E) An opt in budget source's federally enforceable operating permit shall be modified to include the applicable requirements of this section, authority to trade allowances, and authority to emit NO_x in accordance with the allowances allocated or obtained by the allowance transfer deadline; and

(F) The owner or operator of an opt in budget source who subsequently ceases or curtails operations after opting in shall be subject to an allowance adjustment equivalent to the emissions reduced through the cessation or curtailment of operations that emit NO_x, rounded up or down to the nearest whole ton.

(G) The owner or operator of an opt in budget source may opt out of this section only if NO_x-emitting operations at the opt in budget source have ceased and the allowance adjustment of subparagraph (b)(2)(F) of this section has been made.

(3) If the Administrator redesignates any area of Connecticut as attainment of the national ambient air quality standard for ozone pursuant to section 107 of the Clean Air Act, the owner or operator of any budget source in that area shall remain subject to this section.

(c) The NO_x emission budget.

(1) The state NO_x emission budget is five thousand eight hundred sixty-six (5,866) tons of NO_x from all budget sources during each control period, plus the baseline control period emissions of any opt in industrial, cogeneration, or utility unit, for the years 1999 through and including 2002.

(2) The commissioner shall modify the emission budget, established in subdivision (c)(1) of this section, to include sources that opt into the requirements of this section pursuant to subdivision (b)(2) of this section. The commissioner shall record and maintain any modification of the initial budget, and annually submit any modification by January 31 to the Administrator.

(3) The commissioner shall implement the emission budget by allocation of allowances, as described in subsection (d) of this section.

(4) Nothing in this section waives or makes less stringent any NO_x reduction requirement, including Reasonably Available Control Technology (RACT) for owners or operators of major sources of NO_x, or preconstruction review of new sources of NO_x.

(d) Annual allowance allocation.

(1) The commissioner shall annually, by May 1, reserve or allocate allowances in accordance with the provisions of this

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subsection.

(2) For the 1999, 2000, 2001, and 2002 control periods, the commissioner shall allocate to the owners or operators of budget sources up to 5,866 allowances. Nothing herein shall require the commissioner to allocate all allowances.

(3) The commissioner shall establish the following accounts in the NATS:

(A) The Connecticut State Account, to hold the state NO_x emissions budget allowances for allocation to the compliance accounts of budget sources or to other accounts; and

(B) The Connecticut Retirement Account, to hold allowances exacted for purposes other than compliance and permanently retired.

(4) By May 1 of each of the years 1999, 2000, 2001, and 2002, the commissioner, in the following manner and order, shall:

(A) Reserve in the Connecticut State Account for each industrial unit and each cogeneration unit the number of allowances equal to the product of the following equation:

(the lowest of [$ER_{0.95RACT}$ or $ER_{0.95P}$ or ER_{ACTUAL}] × $HIR_{1.10UA}$ × T) ÷ 2,000

where:

$ER_{0.95RACT}$ = 95% of the unit's NO_x RACT emission rate (in lb/MMBTU of heat input)

$ER_{0.95P}$ = 95% of the unit's permitted emission rate (in lb/MMBTU of heat input)

ER_{ACTUAL} = if the unit operated in 1990, the unit's actual emission rate (in lb/MMBTU of heat input) during the 1990 control period. If the unit did not operate in 1990, the average actual emission rate during two representative consecutive control periods after 1990

$HIR_{1.10UA}$ = 110% of the unit's average heat input (in MMBTU/hr) from May 1 through September 30 of the two prior years, unless the commissioner determines that an alternative period is more representative of operations

T = 3,672 hours

(B) Reserve in the Connecticut State Account for each new unit and each new utility unit the number of allowances equal to the product of the following equation:

(ER_P × HIR_{MAX} × T) ÷ 2,000

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where:

ER_P = the unit's permitted emission rate (in lb/MMBTU of heat input)

HIR_{MAX} = the unit's maximum heat input capacity (in MMBTU/hr)

T = 3,672 hours

(C) Allocate to the compliance account of each baseline utility unit the number of allowances equal to the product of the following equation:

$(A - A_{RES}) \times (HI_U \div HI_{TOTAL})$

where:

A = 5,866 allowances

A_{RES} = the number of allowances reserved for industrial, cogeneration, new, and new utility units

HI_U = the baseline utility unit's heat input (in MMBTU) during the 1990 control period, as established in the 1990 OTC NO_x Baseline Emission Inventory

HI_{TOTAL} = the total heat input (in MMBTU) of the baseline utility units during the 1990 control period

(5) After the end of the control period and before the allowance transfer deadline of each of the years 1999, 2000, 2001, and 2002, the commissioner, in the following manner and order, shall:

(A) Allocate to the compliance account of each industrial and cogeneration unit the number of allowances equal to the product of the following calculation:

(the lowest of $[ER_{0.95RACT}$ or $ER_{0.95P}$ or $ER_{ACTUAL}] \times HI_{ACTUAL}) \div 2,000$

where:

$ER_{0.95RACT}$ = 95% of the unit's NO_x RACT emission rate (in lb/MMBTU of heat input)

$ER_{0.95P}$ = 95% of the unit's permitted emission rate (in lb/MMBTU of heat input)

ER_{ACTUAL} = if the unit operated in 1990, the unit's actual emission rate (in lb/MMBTU of heat input) during the 1990 control period. If the unit did not operate in 1990, the average actual emission rate during two representative consecutive control periods after 1990

HI_{ACTUAL} = the unit's actual heat input (in MMBTU) during

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the preceding control period

(B) Allocate to the compliance account of each new unit and each new utility unit the number of allowances equal to the product of the following calculation:

$(ER_P \times HI_{ACTUAL}) \div 2,000$

where:

ER_P = the unit's permitted emission rate (in lb/MMBTU of heat input)

HI_{ACTUAL} = the unit's actual heat input (in MMBTU) during the preceding control period

(C) Allocate to the compliance account of each opt in unit the number of allowances equal to the product of the following calculation, subject to the limitation of subparagraph (d)(5)(C)(i) of this section:

$(\text{the lower of } [ER_{BASE} \text{ or } ER_P] \times HI_{ACTUAL}) \div 2,000$

where:

ER_{BASE} = the unit's actual emission rate (in lb/MMBTU) during the baseline control period

ER_P = the unit's permitted emission rate (in lb/MMBTU) during the preceding control period

HI_{ACTUAL} = the unit's actual heat input (in MMBTU) during the preceding control period

(i) the number of allowances allocated to an opt in unit shall not exceed the product of the following equation:

$(\text{the lower of } [ER_{BASE} \text{ or } ER_P] \times HI_{BASE}) \div 2,000$

where:

ER_{BASE} = the unit's actual emission rate (in lb/MMBTU) during the baseline control period

ER_P = the unit's permitted emission rate (in lb/MMBTU) during the preceding control period

HI_{BASE} = the unit's heat input (in MMBTU) during the baseline control period

(D) If the control period emissions of an industrial, cogeneration, new, or new utility unit exceeds the number of allowances reserved for such unit as a result of increased heat input, the commissioner shall:

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(i) transfer to the compliance account of each such unit, in addition to the number of allowances reserved for such unit pursuant to subdivision (d)(4) of this section, the number of unused reserved allowances equal to the deficiency between the number of allowances reserved for such unit and such unit's control period emissions, provided the number of unused reserved allowances equals or exceeds the total deficiency between such units' reserved allowances and their control period emissions, or

(ii) transfer to the compliance account of each such unit, in addition to the number of allowances reserved for such unit pursuant to subdivision (d)(4) of this section, the number of unused reserved allowances equal to the product of the following equation, rounded to the nearest whole allowance, provided the number of unused reserved allowances is less than the total deficiency between such units' reserved allowances and their control period emissions:

$$(D_U \div D_{TOTAL}) \times URA_{TOTAL}$$

where:

D_U = the deficiency between an industrial, cogeneration, new, and new utility unit's actual control period emissions and its allowances reserved as set forth in subdivision (d)(4) of this section

D_{TOTAL} = the total deficiency between the actual control period emissions and the allowances reserved of the industrial, cogeneration, new, and new utility units whose actual control period emissions exceed their allowances reserved as set forth in subdivision (d)(4) of this section.

URA_{TOTAL} = the total number of unused reserved allowances

(E) If, during any calendar year:

(i) the total number of allowances reserved for industrial, cogeneration, new, and new utility units is greater than the total number of allowances allocated to industrial, cogeneration, new, and new utility units after the control period, or

(ii) the total baseline control period emissions of opt in units are greater than the number of allowances allocated to opt in units,

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the commissioner shall mark the total difference as unused reserved allowances and allocate such allowances to baseline utility units after the end of the control period, but before the allowance transfer deadline, pursuant to the following formula:

$$URA_{REMAINDER} \times (HI_U \div HI_{TOTAL})$$

where:

$URA_{REMAINDER}$ = the number of unused reserved allowances remaining after the distribution of allowances pursuant to subparagraph (d)(5)(D), if any

HI_U = the baseline utility unit's heat input (in MMBTU) during the 1990 control period, as established in the 1990 OTC NOx Baseline Emission Inventory

HI_{TOTAL} = the total heat input (in MMBTU) of the baseline utility units during the 1990 control period

(F) If, after the distribution of unused reserved allowances in subparagraph (d)(5)(D) of this section, the control period emissions of an industrial, cogeneration, new, or new utility unit exceed the number of allowances held in such unit's compliance account, the owner or operator of such unit shall acquire sufficient allowances to make up the deficiency by the allowance transfer deadline.

(6) A budget source that begins operation after the initial reservation and allocation of allowances for a control period shall obtain by the allowance transfer deadline a number of allowances equal to or exceeding the total tons of NO_x emitted from such budget source during that control period. Allowances may be obtained from existing budget sources.

(7) A budget source that ceases to operate after the initial reservation and allocation of allowances will continue to receive allowances for each control period from 1999 through 2002, unless a request to reallocate allowances has been filed pursuant to subdivision (f)(11) of this section.

(e) Early emission reductions credit.

(1) The owner or operator of any budget source that reduces NO_x emissions from May 1 through September 30 in the years 1997 or 1998 may request, in accordance with subdivision (e)(6) of this section, that the commissioner approve such early emission reductions in accordance with the provisions of subdivision (e)(2) of this section and convert such early emission reductions to allowances for use beginning in 1999.

(2) The commissioner may approve early emission reductions for use as allowances if such reductions are real, quantifiable, surplus, and enforceable, and if the early emission reductions are based on a NO_x emission rate that is the most stringent of:

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

(B) The permitted allowable emissions of the budget source, unless the budget source is a replacement source for repowering, whereupon the level of control required by the OTC MOU supersedes the permitted allowable emissions;

(C) The actual emissions of the budget source during the 1990 control period; and

(D) The average actual emissions of the budget source during two (2) consecutive and representative control periods within the first five (5) years of operation, if the budget source commenced operation after 1990.

(3) The amount of early reduction credit shall presume a capacity utilization (in MMBTU of heat input) equal to the lower of the capacity utilization of the budget source for 1990 or the average capacity utilization of the budget source for the two (2) consecutive calendar years preceding the application, adjusted for any reduced capacity utilization that resulted from shutdown or curtailment of operations.

(4) If the budget source demonstrates to the satisfaction of the commissioner that two (2) alternative consecutive control periods within the five (5) years immediately preceding the early reduction credit request are more representative of normal operations, the amount of early reduction credit shall presume the capacity utilization of the two (2) alternative consecutive control periods.

(5) A budget source that repowers is eligible for early reduction credit provided that, in addition to the other requirements set forth in this subsection, the permit for construction of the replacement source is issued on or after May 1, 1996, and the budget source being replaced ceases operation in 1997 or 1998.

(6) Early reduction credit generated by a budget source will be eligible for a one-time conversion to allowances in 1999. After conversion, the allowances will be deposited in the compliance account of the budget source that generated the early reduction credit.

(f) Allowance use and transfer.

(1) An allowance shall not constitute a security or other form of property. An allowance reserved, allocated, banked, or traded is reserved, allocated, banked, or traded subject to all applicable legal requirements and limitations including, but not limited to, the requirements of this section, the emission budget set forth in subsection (c) of this section, the allowance allocation procedure set forth in subsection (d) of this section, the allowance penalties identified in subsection (n) of this section, and sections 22a-1, 22a-5, 22a-174, and 22a-174c of the Connecticut General Statutes.

(2) For compliance with this section, the owner or operator of a

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budget source shall, by the allowance transfer deadline of each calendar year, either hold a quantity of allowances in the budget source's compliance account or overdraft account that equals or exceeds the total tons of NO_x emitted from that budget source during the most recent control period, or submit a valid allowance transfer request to the Administrator that will transfer allowances sufficient to meet this requirement into the compliance account.

(3) Except as provided in subdivision (f)(4) of this section, allowances cannot be used to meet or exceed the limitations of any permit, order, or other applicable requirement.

(4) The commissioner, by order or permit, may allow the owner or operator of a budget source to use allowances beyond those otherwise required by this section to comply with subsection (e) of section 22a-174-22 of the Regulations of Connecticut State Agencies pursuant to the provisions of subsection (j) of section 22a-174-22 of the Regulations of Connecticut State Agencies. Each allowance used for compliance with subsection (e) of section 22-174-22 of the Regulations of Connecticut State Agencies shall be equivalent to one early reduction credit and shall be deducted from the compliance account of the budget sources upon such use.

(5) Emission offsets required by the Regulations of Connecticut State Agencies for new or modified major stationary sources of NO_x must be obtained in accordance with section 22a-174-3 of the Regulations of Connecticut State Agencies, and are subject to the offset requirements of section 173 of the Clean Air Act. Allowances under this section may not be used as offsets. However, if the owner or operator of a budget source:

(A) Reduces its emissions such that not all allowances are used, and

(B) Where the unused allowances represent real reductions in actual annual emissions,

these unused allowances may be approvable for use as offsets under the Regulations of Connecticut State Agencies. In no instance may emission reductions be used to simultaneously satisfy both the requirements of this section and the offset requirements set forth in section 22a-174-3 of the Regulations of Connecticut State Agencies. Upon the approval of unused allowances for use as offsets, the commissioner shall adjust the emission budget commensurate with the number of unused allowances approved for use as offsets.

(6) If an owner or operator of a budget source transfers such emission reductions as offsets to sources of NO_x not subject to a program established in accordance with the OTC MOU and contained in an approved SIP, the allowances representing the emissions reductions shall be deducted from its compliance account in an amount equivalent to the emission reductions transferred off-budget. This subdivision is inapplicable if the source receiving offsets opted into a program established

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in accordance with the OTC MOU and contained in an approved SIP before its construction approval was granted.

(7) Allowances allocated pursuant to this section may be traded to the holders of allowances in other states under a program established in accordance with the OTC MOU and which program is contained in an approved SIP. The owner or operator of a budget source in Connecticut may acquire allowances from the holders of allowances in other states, however, the commissioner has discretion whether to permit the use for compliance of allowances acquired from the holders of allowances in states with a submitted, but as yet unapproved, SIP.

(8) To complete an allowance transfer:

(A) The transferor shall document the transfer request in paper or electronic form as directed by the Administrator. The transferor shall provide to the Administrator, at a minimum, the following information:

(i) the account numbers of the transferor's and transferee's accounts,

(ii) the names and addresses of the owners of the originating and acquiring accounts, and

(iii) the serial number of each allowance being transferred.

(B) The transferor and transferee shall authorize and certify each allowance that is the subject of the transfer request. The transferor and the transferee shall personally examine the transfer request and authorization to transfer and be familiar with the information contained therein and contained in all attachments, and make inquiry of those individuals responsible for obtaining the information to ensure the information is true, accurate, and complete. The submission of false information may subject the transferor and/or transferee to significant penalties, including fines and imprisonment pursuant to section 22a-175 of the Connecticut General Statutes and section 22a-6 under section 53a-157 of the Connecticut General Statutes. The request for transfer shall include the following signed statement of certification:

> I am authorized to make this submission on behalf of the owners or operators of the budget source or on behalf of the parties holding allowances in a general account. I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete.

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I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.

(C) The transfer is complete when the Administrator verifies that:

(i) each allowance listed in the transfer request is held by the transferor in an account at the time the transfer is to be recorded;

(ii) the proposed transferee has an account in the NATS; and

(iii) the transferor and transferee filed the transfer request.

(9) Allowance transfers determined to be valid through verification by the Administrator shall be recorded in the NATS by deducting the allowances from the originating account and adding them to the acquiring account.

(10) If the owner or operator of a budget source determines that some or all allowances to be allocated to the compliance account of such budget source should be transferred to the owner or operator of another budget source for the remainder of the current allocation period, the AAR or Alternate AAR of the originating account shall submit a request for transfer to the Administrator. This request shall conform to the specifications of subdivision (f)(8) of this section, and shall be submitted to the commissioner with a letter requesting that future allowance allocations for the remainder of the allocation period be made directly to the acquiring account.

(11) The commissioner may request from the owner or operator of a budget source information regarding transaction cost and allowance price. Such owner or operator shall provide such information upon the commissioner's request.

(g) Allowance banking.

(1) Unused allowances may be retained in a compliance account or overdraft account from one year to a future year.

(2) Unused allowances may be retained in a general account from one year to a future year.

(3) Unless otherwise provided by subdivision (g)(4) of this section, allowances unused as of the allowance transfer deadline shall be retained in the compliance or general account and designated as banked allowances.

(4) Use of banked allowances.

(A) The total number of banked allowances in the OTR, as determined by the Administrator before May 1, 1999, and annually thereafter, shall be used to determine the number

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of banked allowances available for use in the current year.

(B) If the total number of banked allowances in the OTR is less than or equal to ten percent (10%) of the OTR NO_x budget for the current year control period, all banked allowances may be used in the current year on a one-for-one basis.

(C) If the total number of banked allowances in the OTR exceeds ten percent (10%) of the OTR NO_x budget for the current year control period, in accordance with subparagraph (g)(4)(D) of this section the following ratio, as computed by the Administrator, shall determine the number of banked allowances that shall be used on a one-for-one basis and the number of allowances that shall be used on a two-for-one basis in the current year control period:

$$(0.1 \times B_{OTC}) \div A_{BANKED}$$

where:

B_{OTC} = the regional NO_x budget of the current year control period

A_{BANKED} = the total number of banked allowances in the OTR

(D) The product of the ratio calculated in subparagraph (g)(4)(C) of this section shall be applied to the banked allowances in each account to yield the number of banked allowances in the account that may be used in the current year control period on a one-for-one basis. Allowances in excess of this number shall be used on a two-for-one basis.

(h) The NO_x Allowance Tracking System.

(1) The NO_x Allowance Tracking System (NATS) is an electronic database for record keeping and reporting for all allowances used, transferred, and banked pursuant to this section. The NATS shall track:

(A) The compliance account established for each budget source;

(B) The allowances allocated to each budget source;

(C) The allowances deducted from the compliance account or overdraft account of each budget source to cover control period emissions of NO_x;

(D) The general accounts opened by persons;

(E) The allowances held in each account; and

(F) Allowance transfers.

(2) Each budget source shall have a compliance account with a

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unique account number provided. For each compliance account, the following information shall be recorded and maintained:

(A) The name of the account owner;

(B) The name, mailing address, and telephone number of the AAR and Alternate AAR; and

(C) The state where the associated budget source is sited.

(3) Budget sources at a common premises shall have an overdraft account with a unique account number provided by the Administrator. Each budget source at such common premises may hold allowances in the overdraft account and use the allowances for compliance after all allowances in the budget source's compliance account have been deducted. Allowances held in the overdraft account will be withdrawn, as needed, by the Administrator in order of budget source number at the common premises. For each overdraft account, the following information shall be recorded and maintained by the Administrator:

(A) The name of the account owner;

(B) The name, mailing address, and telephone number of the AAR and Alternate AAR; and

(C) The state where the common premises is sited.

(4) Any person may establish a general account in the NATS. Each general account shall have a unique account number assigned. For each general account, the following information shall be recorded and maintained:

(A) The name of the account owner; and

(B) The name, mailing address, and telephone number of the AAR and Alternate AAR.

(5) Each owner of a compliance, overdraft, or general account shall designate one AAR and may designate one Alternate AAR to represent the owner. The AAR shall be responsible for all transactions and reports submitted to the Administrator, and for the transfer of allowances in a compliance account, overdraft account, or general account. The Alternate AAR shall have the same authority as the AAR, but the AAR shall receive all correspondence from the Administrator.

(6) The AAR shall be designated as such by the owner. Such designation shall become effective upon the Administrator's receipt of a signed form entitled "Account Certificate of Representation" and recording of the information therein in the NATS. The account certificate of representation shall contain, at a minimum, the following:

(A) Identification of the budget source by plant name, state, and Office Regulatory Information System (ORIS) code number for which the Account Certificate of Representation

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is submitted;

(B) The name, address, telephone and facsimile numbers, e-mail address (if available), and AAR identification number (if known) of the AAR and the Alternate AAR;

(C) The names of all owners and operators of the budget source;

(D) A statement signed by the AAR or Alternate AAR stating: "I certify that I, [name], was selected as the Authorized Account Representative or Alternate Authorized Account Representative, as applicable, by an agreement binding on the owners and operators of the budget source(s) legally designated as [plant name]"; and

(7) The owner of a compliance account shall designate the AAR and Alternate AAR, as desired, not later than July 1, 1998, or sixty (60) days after the effective date of this section. After such designation, the owner of a compliance or general account may replace the AAR or Alternate AAR by submitting a new, signed Account Certificate of Representation. For the owner of a budget source entering the NO_x Budget Program after the effective date of this section, the information specified in subdivision (h)(6) of this section shall be submitted to the commissioner at the time the budget source becomes subject to this section, or a request is made to opt into the program set forth in this section. Any change of AAR or Alternate AAR and the naming of the AAR and Alternate AAR shall be confirmed after the redesignation is recorded in the NATS.

(i) Emissions monitoring.

(1) The owner or operator of each budget source shall:

(A) Monitor NO_x emissions from each budget source in accordance with this subsection and *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997);

(B) Except as provided in subparagraph (i)(1)(B)(i) of this section, submit to the commissioner, not later than July 1, 1998, or sixty (60) days after the effective date of this section, a monitoring plan in accordance with this subsection and *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997). The monitoring plan, at a minimum, shall include a description of the monitoring system or systems to be used at the budget source.

(i) the owner or operator of a budget source that commences operation after the effective date of this section shall submit a monitoring plan in accordance with this subsection and *Guidance for Implementation of Emission Monitoring Requirements*

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for the NO_x Budget Program (Ozone Transport Commission, Washington, D.C., January 28, 1997) within ninety (90) days after such budget source commences operation.

(C) Except as provided in subparagraph (i)(1)(C)(i) of this section, install, operate, and certify a monitoring system or systems as required by this section no later than March 31, 1999. Certification testing must be in accordance with the requirements specified in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997),

(i) the owner or operator of a budget source that commences operation after the effective date of this section shall install, operate, and certify a monitoring system(s) as required by this section not later than April 30 of the year following the date of the commencement of operations, or one hundred eighty (180) days after commencement of operations. Certification testing must be in accordance with the requirements specified in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997),

(D) Perform initial testing and periodic calibration, accuracy testing, and quality assurance/quality control testing of all monitoring systems for each budget source as specified in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997), subject to the following requirements:

(i) the owner or operator of a budget source shall notify the commissioner in writing prior to conducting any certification or quality assurance/quality control testing. A budget source subject to 40 CFR Part 75 must comply with the notification requirements in 40 CFR Part 75, Subpart G. A Non-Part 75 budget source shall notify the commissioner at least thirty (30) days prior to conducting any tests, and

(ii) any such testing shall be conducted in accordance with a test protocol approved by the commissioner;

(E) Replace any missing or invalid data with representative default data in accordance with the missing data provisions of *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997); and

(F) Report NO_x emissions data to the Administrator in

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accordance with subsection (j) of this section.

(2) The owner or operator of a budget source subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified 40 CFR Part 75 monitoring system and the following procedures, as applicable:

(A) If such owner or operator has installed a flow monitor certified under 40 CFR Part 75, NO_x emissions in pounds per hour shall be determined using a NO_x CEMS and the flow monitor. NO_x in pounds per MMBTU shall be determined by using the procedure in 40 CFR Part 75, Appendix F, Section 3. The heat input in MMBTU per hour shall be determined by using the procedures in 40 CFR Part 75, Appendix F, Section 5. NO_x emissions in pounds per hour shall be determined by multiplying NO_x in pounds per MMBTU by the heat input in MMBTU per hour;

(B) If such owner or operator has not installed a certified flow monitor, but has installed a NO_x CEMS, then such owner or operator shall determine NO_x emissions in pounds per hour using the NO_x CEMS and hourly heat input. NO_x in pounds per MMBTU shall be determined by using the procedure in 40 CFR Part 75, Appendix F, Section 3. The hourly heat input in MMBTU per hour shall be determined by using the procedures in 40 CFR Part 75, Appendix D. NO_x emissions in pounds per hour shall be determined by multiplying NO_x in pounds per MMBTU by the heat input in MMBTU per hour;

(C) If such owner or operator uses the procedures in 40 CFR Part 75, Appendix E, then NO_x emissions in pounds per hour shall be determined by using the Appendix E NO_x correlation curve and the budget source's hourly heat input. NO_x in pounds per MMBTU shall be determined by using the procedure in 40 CFR Part 75, Appendix E. The hourly heat input in MMBTU per hour shall be determined by using the procedures in 40 CFR Part 75, Appendix D. NO_x emissions in pounds per hour shall be determined by multiplying NO_x in pounds per MMBTU by the heat input in MMBTU per hour; and

(D) If such owner or operator uses the procedures in 40 CFR Part 75, Subpart E to determine the NO_x emission rate, then NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75, Subpart E and the procedures contained in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997).

(3) The owner or operator of a Non-Part 75 budget source shall:

(A) Prepare and obtain approval of a monitoring plan as specified in subdivision (i)(4) and subparagraph (i)(1)(B) of this section;

(B) Determine the NO_x emission rate using a methodology specified in subdivision (i)(5) of this section;

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(C) Determine the heat input rate using the methodology described in subdivision (i)(6) of this section; and

(D) Convert the NO_x emission rate and heat input rate to NO_x emissions in pounds per hour using the procedure described in subdivision (i)(7) of this section.

(4) The owner or operator of a Non-Part 75 budget source who wants to use an alternative monitoring method shall not commence construction or testing of any alternative monitoring system before the commissioner approves an alternative monitoring plan. Such owner or operator shall submit an alternative monitoring plan not later than July 1, 1998, or sixty (60) days after the effective date of this section. An approvable alternative monitoring plan, at a minimum, shall contain the following, as appropriate:

(A) A description of the proposed monitoring system, including the manufacturer, the serial number of each component, the measurement ranges and the span of each component, and documentation to demonstrate that the measurement range of each component is appropriate for measuring all expected values. This requirement applies to all monitoring systems proposed under this subdivision, including CEMS, that have not been certified pursuant to 40 CFR Part 75;

(B) An estimate of the accuracy of the monitoring system and documentation of how the estimate of accuracy was determined;

(C) A description of the tests to be performed for initial certification of the monitoring system, initial quality assurance, periodic quality assurance, and relative accuracy, meeting all the requirements contained in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997); and

(D) The following additional information:

(i) if the alternative monitoring method of determining heat input involves boiler efficiency testing, a description of the test used to determine boiler efficiency,

(ii) if the alternative monitoring method uses fuel sampling, a description of the test to be used in the fuel sampling program,

(iii) if the alternative monitoring method uses a default emission rate or unit-specific emission factor, as specified in subparagraph (i)(5)(D) of this section, the monitoring plan shall include:

(aa) all information necessary to support the emission rate, including historical monitoring data and historical fuel usage data. If the source plans to conduct emission testing to

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determine the emission rate, the plan shall include a test protocol explaining the testing to be conducted,

(bb) procedures to demonstrate that any control equipment operating during the testing to develop source-specific emission factors or during the development of load-based emissions curves, is in use when those emission factors or emissions curves are applied to estimate NO_x emissions, and

(cc) alternative uncontrolled emission rates to be used to estimate NO_x emissions during periods when control equipment is inoperable or unused,

(iv) if the alternative monitoring method uses a fuel flow meter that is not certified pursuant to 40 CFR Part 75 to determine heat input, the monitoring plan shall include a description of all components of the fuel flow meter, the manufacturer's original accuracy specifications of the fuel flow meter, the estimated current accuracy of the fuel flow meter, and the most recent calibration of each component.

(5) The owner or operator of a Non-Part 75 budget source shall determine the NO_x emission rate, expressed in MMBTU, by using one of the following methods:

(A) Monitor NO_x emissions in accordance with 40 CFR Part 75;

(B) If such owner or operator is required to install and operate a NO_x CEMS under 40 CFR Part 60, or in accordance with state permit or order, then that NO_x CEMS shall be used to meet the monitoring requirements of this subsection. All 40 CFR Part 60 monitors used for this purpose shall meet the quality assurance criteria described in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997). If a 40 CFR Part 60 CEMS cannot be used to report data for this section because such CEMS fails to meet the requirements of *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997), missing data shall be substituted using the procedures in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997). A CEMS not initially certified under 40 CFR Part 75 shall meet the initial certification requirements contained in *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997);

(C) If the budget source is a boiler or turbine, the

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procedures contained in 40 CFR Part 75, Appendix E, consistent with the provisions of *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997);

(D) If such owner or operator does not determine the NO_x emission rate using the methods listed in subparagraphs (i)(5)(A), (i)(5)(B), or (i)(5)(C) of this section, such owner or operator shall request the approval of the commissioner to use any of the following methodologies, as appropriate, to determine the NO_x emission rate:

(i) for a combustion turbine, the default emission factors to determine the NO_x emission rate in pounds per hour, as follows:

(aa) for a gas-fired turbine, the default emission factor shall be 0.7 lb/MMBTU,

(bb) for an oil-fired turbine, the default emission factor shall be 1.2 lb/MMBTU,

(cc) for a gas- or oil-fired turbine, a unit-specific default factor equal to the maximum potential NO_x emission rate as determined through testing conducted in accordance with a protocol approved by the commissioner, and

(ii) for a boiler, the default emission factors to determine the NO_x emission rate in pounds per hour, as follows:

(aa) for a gas-fired boiler, the default emission factor shall be 1.5 lb/MMBTU or a unit-specific default factor equal to the maximum potential NO_x emission rate as determined through testing conducted in accordance with a protocol approved by the commissioner.

(bb) for an oil-fired boiler, the default emission factor shall be 2.0 lb/MMBTU or a unit-specific default factor equal to the maximum potential NO_x emission rate as determined through testing conducted in accordance with a protocol approved by the commissioner.

(6) The owner or operator of a budget source without a flow CEMS shall request approval from the commissioner, on forms prescribed by the commissioner, to use any of the following methodologies to determine the hourly heat input rate:

(A) A flow monitor and a diluent monitor meeting the requirements of 40 CFR Part 75 and the procedures in 40 CFR Part 75, Appendix F, Section 5;

(B) For a budget source that combusts only oil or natural gas, a fuel flow monitor meeting the requirements of 40 CFR

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Part 75, Appendix D and the procedures of 40 CFR Part 75, Appendix F, Section 5;

(C) For a budget source that combusts only oil or natural gas and measures fuel on a frequency other than hourly, the owner or operator must report fuel usage on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$FU_H = (EL_H \div EL_{TOTAL}) \times FU_{TOTAL}$$

where:

FU_H = Hourly fuel usage

EL_H = Hourly electrical load

EL_{TOTAL} = Total electrical load

FU_{TOTAL} = Total fuel usage

(D) For a budget source that combusts any fuel other than oil or natural gas, one of the following alternative methods of determining heat input, as approved by the commissioner:

(i) conducting fuel sampling and analysis, and monitoring fuel usage,

(ii) using boiler efficiency curves and other monitored information, such as boiler steam output, and

(iii) any other methods approved by the commissioner that meet the requirements of *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997).

(E) The alternative methods for determining heat input are subject to initial and periodic relative accuracy, and quality assurance testing requirements as prescribed by *Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program* (Ozone Transport Commission, Washington, D.C., January 28, 1997).

(7) The hourly NO_x emission rate in pounds per MMBTU, as determined in accordance with subdivision (i)(5) of this section, and hourly heat input rate in MMBTU per hour, as determined in accordance with subdivision (i)(6) of this section, shall be multiplied to determine the NO_x emission rate in pounds per hour. The owner or operator of a budget source shall report this figure to the Administrator pursuant to subsection (*l*) of this section.

(j) Record keeping.

(1) The owner or operator of a budget source shall make records of all measurements, data, reports, and other information

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required by this section or other state law, regulation, permit, or order.

(2) The owner or operator of a budget source shall maintain such records for a period of five (5) years or such longer period if required by the budget source's operating permit.

(3) The records and documents required by this subsection shall be made available to the commissioner upon the request of the commissioner.

(k) Reporting.

(1) The AAR or Alternate AAR of a budget source using CEMS-based methodologies shall submit to the Administrator emissions and operations information for all four (4) calendar quarters of each year. The AAR or Alternate AAR of a budget source using non-CEMS-based methodologies shall submit to the Administrator emissions and operations information for the second and third calendar quarters of each year. All emissions and operations information shall be submitted in accordance with 40 CFR Part 75, Subpart G and Guidance for Implementation of Emission Monitoring Requirements for the NOx Budget Program (Ozone Transport Commission, Washington, D.C., January 28, 1997). The AAR or Alternate AAR shall submit such emissions and operations information within thirty (30) days after the end of the quarter in which the information was recorded. The AAR or Alternate AAR shall submit this information in an electronic format consistent with the requirements of Emission Reporting Requirements and Instructions (EDR 2.0) (United States Environmental Protection Agency, Acid Rain Division, July 3, 1997), or in any other format approved by the commissioner and the Administrator.

(2) The AAR or Alternate AAR of a budget source shall provide, in the same quarterly reports, NO_x emissions in pounds per hour for every hour of the control period, and cumulative quarterly and control period NO_x emission data in pounds. The AAR or Alternate AAR shall submit this information in a format consistent with *Emission Reporting Requirements and Instructions (EDR 2.0)* (United States Environmental Protection Agency, Acid Rain Division, July 3, 1997).

(3) The AAR or Alternate AAR of a budget source subject to 40 CFR Part 75 shall submit the data required by this subsection as part of the quarterly reports submitted to the Administrator to comply with 40 CFR Part 75.

(l) Annual reconciliation of allowances.

(1) Monitored emissions data as reported to the Administrator by the owner or operator of a budget source and as adjusted by the Administrator to be in accordance with subsection (i) of this section, and allowance allocations and transfers recorded in the NATS shall provide the basis for the determination of compliance with this section.

(2) Each year, the AAR or Alternate AAR of a budget source shall

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submit a request to the Administrator between November 1 through December 31, inclusive, to deduct from the budget source's compliance account the number of allowances equal to the NOx emissions in tons emitted by the budget source during the most recent control period. The AAR shall identify the compliance account from which the deductions shall be made. The AAR may also identify the serial numbers of the allowances to be deducted.

(3) Regardless of the request submitted pursuant to subdivision (1)(2) of this section, the number of allowances equal to the NO_x emissions in tons emitted by the budget source during the most recent control period shall be deducted from the budget source's compliance account or overdraft account as necessary.

(4) If the number of tons of NO_x emitted by the budget source in the most recent control period exceeds the number of allowances in the budget source's compliance account or overdraft account, the owner or operator of the budget source must obtain additional allowances so that the total number of allowances in the compliance account or overdraft account, including allowance transfers properly submitted to the Administrator by the allowance transfer deadline, equals or exceeds the control period NO_x emissions in tons, rounded to the nearest whole ton.

(5) If, by the allowance transfer deadline, the budget source fails to hold in its compliance account or overdraft account allowances equal to NO_x emissions in tons during the control period, the owner or operator of the budget source shall be subject to enforcement action and allowance adjustments pursuant to subsection (n) of this section.

(m) Compliance certification.

(1) For each control period, the AAR or Alternate AAR of a budget source shall submit an annual compliance certification to the commissioner no later than the allowance transfer deadline following the control period.

(2) The compliance certification shall contain:

(A) The name and address of the owner and operator of the budget source, the name of the AAR or Alternate AAR, the NATS account number, and the address of the budget source, if different from that of the owner or operator;

(B) A statement that emissions data have been submitted to the NETS in accordance with subsection (k) of this section, and the requirements of the Administrator;

(C) A statement that the budget source operated in compliance with the allowances allocated for the control period, including those obtained through transfer by the allowance transfer deadline, and that allowances are held in the budget source's compliance account equal to the emissions recorded during the control period;

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(D) A statement certifying that the monitoring plan of the budget source was maintained to reflect actual operation of the budget source;

(E) A statement certifying that all emissions from the budget source are accounted for, through either applicable monitoring or application of appropriate missing data procedures;

(F) A statement indicating whether the methods of operation or monitoring of the budget source changed during the current year; and

(G) Any other information the commissioner may request.

(3) The commissioner shall have the right to verify compliance with this section by whatever means necessary, including, but not limited to:

(A) Inspecting unit operations records;

(B) Obtaining information on allowance deduction and transfers from the NATS;

(C) Obtaining emissions information from the NETS;

(D) Requiring testing of emission monitoring devices; and

(E) Requiring the budget source to conduct emissions testing under the supervision of the commissioner.

(n) Allowance adjustments and penalties.

(1) For any control period during which emissions from a budget source exceed allowances held in the budget source's compliance account or overdraft account as of the allowance transfer deadline, allowances shall be deducted from the budget source's compliance account or overdraft account for the next control period at a rate of three (3) allowances for every one (1) ton of excess emissions and placed in the Connecticut Retirement Account.

(2) When emissions from a budget source exceed allowances held in the budget source's compliance account or overdraft account as of the allowance transfer deadline, for purposes of determining the number of days of violation, any excess emissions for the control period shall presume that each day in the control period constitutes a day in violation, unless the owner or operator of a budget source can demonstrate, to the satisfaction of the commissioner, that a lesser number of days should be considered.

(3) When emissions from a budget source exceed allowances held in the budget source's compliance account or overdraft account as of the allowance transfer deadline, each ton of excess emissions constitutes a separate violation.

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(o) Program evaluation.

(1) On or before May 1, 1999, the commissioner shall make available to the public a report that documents the number of early reduction credits converted to allowances for use in 1999.

(2) The commissioner shall conduct an evaluation of the implementation of this section beginning in 2002 and every three (3) years thereafter. Each audit shall include, as appropriate:

(A) A confirmation of the accuracy of emissions reporting through validation of CEMS and data acquisition systems at the budget source;

(B) A review of the geographic and temporal transfer and use of allowances by budget sources;

(C) An examination of the extent to which banked allowances have contributed to emissions in excess of the regional and state emission budget for each year preceding the audit;

(D) An assessment of the consistency of this section with the requirements for reasonable further progress and the attainment demonstration set forth in section 172 of the Clean Air Act; and

(E) A quantification and comparison of control period NO_x emissions from budget sources throughout the OTR and in each state of the OTR.

STATEMENT OF PURPOSE: To reduce the emissions of nitrogen oxides from large stationary sources during the period of May 1 through September 30 by means of a market-based, cap-and-trade system, pursuant to the Ozone Transport Commission Memorandum of Understanding dated and signed September 27, 1994.

CERTIFICATION

R-39 REV. 1/77

Be it known that the foregoing:

☒ Regulations ☐ Emergency Regulations

Are:

☒ Adopted ☐ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 22a-174 of the General Statutes.

☐ Section _____ of the General Statutes, as amended by Public Act No. _____ of the ____ Public Acts.

☐ Public Act No. _____ of the Public Acts.

After publication in the Connecticut Law Journal on January 13, 1998, of the notice of the proposal to:

☒ Adopt ☐ Amend ☐ Repeal such regulations

(If applicable): ☒ And the holding of a public hearing on 17th day of February, 1998

WHEREFORE, the foregoing regulations are hereby:

☒ Adopted ☐ Amended as hereinabove stated ☐ Repealed

Effective:

☒ When filed with the Secretary of State.

(OR)

☐ The _____ day of _____, 19 ____.

In Witness Whereof:	DATE	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED
	December 15, 1998		Commissioner
Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:		SIGNED	OFFICIAL TITLE, DULY AUTHORIZED Assoc. Atty. General

12/15/98

☐ Approved

☐ Disapproved

☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes.	DATE	SIGNED *(Clerk of the Legislative Regulation Review Committee)*

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED *(Secretary of the State)*	BY

INSTRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.