# STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DEPARTMENT OF ENVIRONMENTAL MANAGEMENT PUBLIC NOTICE

Pursuant to the provisions of R.I. Gen. Laws Chapters 42-17.1 and 23-23, as amended, and consistent with the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Rhode Island Department of Environmental Management hereby gives notice of its intention to afford the public an opportunity to offer written comment and to request the scheduling of a public comment hearing at which oral and written comments may be offered concerning the Department's intention to repeal the following rules and regulations:

AIR POLLUTION CONTROL REGULATION No. 41

"NO<sub>x</sub> BUDGET TRADING PROGRAM"

ERLID # 4530

AIR POLLUTION CONTROL REGULATION No. 42

"HEAVY DUTY DIESEL ENGINE STANDARDS"

ERLID # 4532

Written comments concerning the proposed repeal of the above regulations will be accepted at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908 on or before 4:00 p.m. on May 8, 2014. A public hearing on the proposed repeal of the above regulations will be held if the Department receives requests for such a hearing from twenty-five (25) or more people, a governmental agency or subdivision, or an association having not less than twenty-five (25) members on or before 4:00 p.m. on May 8, 2014. If a public hearing is to be conducted, a public notice will be posted announcing the date, time, and place of such hearing.

The Department has determined that small businesses should not be adversely impacted by the proposed repeal of the above regulations. The public comment period is being afforded to solicit comment on the proposed repeal of the above regulations and to allow public input from small businesses or any cities or towns, which may nevertheless believe that they may be adversely affected. Small businesses are requested to comment on the proposed repeal of the above regulations as to how such proposed action can be changed to minimize the impact on those small businesses affected.

Copies of the subject regulations will be available for examination from April 7 2014 through May 8, 2014 by mail or at the offices of the Office of Air Resources, which is located at <a href="235">235</a> <a href="Promenade Street">Promenade Street</a>, Providence, RI 02908. Electronic copies of the subject regulations are also available by clicking on the above links.

Signed this 7<sup>th</sup> day of April, 2014.

Janet L. Coit, Director

# Rhode Island Department of Environmental Management Office of Air Resources AIR POLLUTION CONTROL REGULATION No. 41 "NO<sub>x</sub> BUGET TRADING PROGRAM" ERLID # 4530

#### Summary of Proposed Action

The subject regulations were adopted in order to establish the  $NO_x$  Budget Trading Program (NBP) which was a market-based cap and trade program created to reduce emissions of nitrogen oxides ( $NO_x$ ) from power plants and other large combustion sources in the eastern United States. Rhode Island was one of twenty states that adopted this program in response to EPA's NOx SIP Call.

In 2009, the EPA through the Clean Air Interstate Rule (CAIR), effectively replaced the NBP in the East in an effort to achieve further summertime  $NO_x$  reductions from the power sector. CAIR covers 27 eastern states and the District of Columbia. Rhode Island was not covered by CAIR. The NBP has not been in effect since 2009.

On the basis, of the above, the subject regulations are no longer necessary and should be repealed and expired.

# Rhode Island Department of Environmental Management Office of Air Resources AIR POLLUTION CONTROL REGULATION No. 42 "HEAVY DUTY DIESEL ENGINE STANDARDS" ERLID # 4532

#### Concise Summary of Proposed Action

The subject regulations were adopted in order to make sure that "clean" diesel engine standards were imposed in Rhode Island during the 2005-2006 time frame. At that time, the USEPA was considering modifying applicable national standards so the RIDEM promulgated these regulations in order to adopt the California standards in case the USEPA regulations lapsed. However, the USEPA regulations stayed in effect. Thus, these regulations became and are now moot.

On the basis, of the above, the subject regulations are no longer necessary and should be repealed and expired.

# STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES

#### **AIR POLLUTION CONTROL REGULATION NO. 41**

#### **NOX BUDGET TRADING PROGRAM**



Effective 21 October 1999

Last Amended 19 July 2007

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

# RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES AIR POLLUTION CONTROL REGULATION NO. 41

#### NO<sub>x</sub> BUDGET TRADING PROGRAM

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## RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES

#### AIR POLLUTION CONTROL REGULATION NO. 41

#### NO<sub>\*</sub> BUDGET TRADING PROGRAM

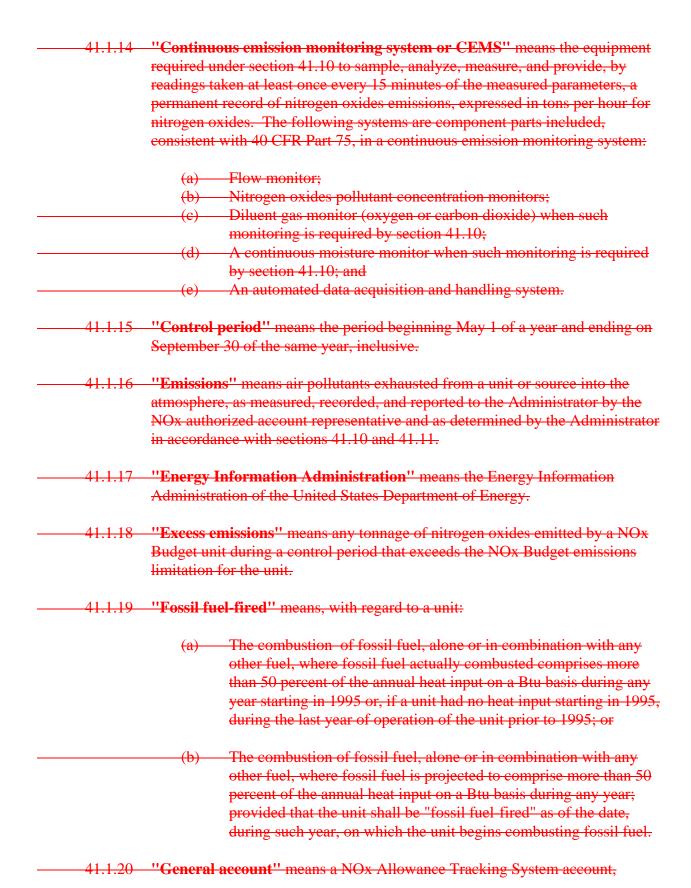
#### 41.1. Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

"Account certificate of representation" means the completed and signed submission required by section 41.6 for certifying the designation of a NOx authorized account representative for a NOx Budget source or a group of identified NOx Budget sources who is authorized to represent the owners and operators of such source or sources and of the NOx Budget units at such source or sources with regard to matters under the NOx Budget Trading Program. "Account number" means the identification number given by the Administrator to each NOx Allowance Tracking System account. "Acid Rain emissions limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA. 41.1.4 "Allocate or allocation" means the determination by the Department or the Administrator of the number of NOx allowances to be initially credited to a NOx Budget unit or an allocation set-aside. 41.1.5 "Automated data acquisition and handling system or DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under section 41.10, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by section 41.10 and 41.11. "Boiler" means an enclosed fossil or other fuel fired combustion device used <del>41.1.6</del> to produce heat and to transfer heat to recirculating water, steam, or other medium. 41.1.7 "Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam

production.

- 41.1.8 "Combustion turbine" means an enclosed fossil or other fuel fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.
- 41.1.9 "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in section 41.14, for a unit that is a NOx Budget unit under section 41.3 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in section 41.13 or section 41.14, for a unit that is not a NOx Budget unit under section 41.3 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under section 41.3 shall be the unit's date of commencement of commercial operation.
- 41.1.10 "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in section 41.14, for a unit that is a NOx Budget unit under section 41.3 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in section 41.13 or section 41.14, for a unit that is not a NOx Budget unit under section 41.3 on the date of commencement of operation, the date of commencement of operation.
- 41.1.11 "Common stack" means a single flue through which emissions from two or more units are exhausted.
- 41.1.12 "Compliance certification" means a submission to the Department or the Administrator, as appropriate, that is required under section 41.12 to report a NOx Budget source's or a NOx Budget unit's compliance or noncompliance with this regulation and that is signed by the NOx authorized account representative in accordance with section 41.6.
- 41.1.13 "Compliance account" means a NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under section 41.9, in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx Budget emissions limitation.



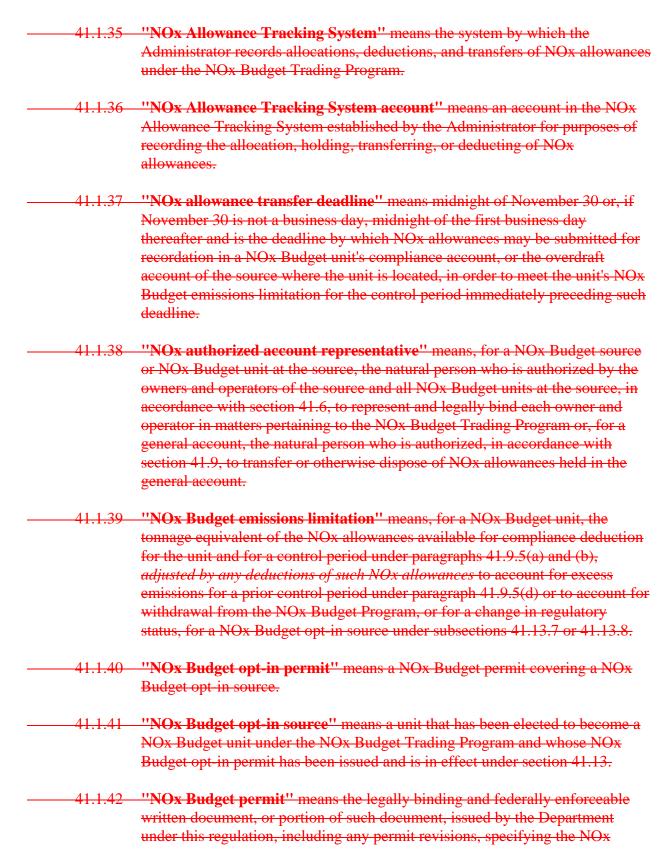
account. 41.1.21 "Generator" means a device that produces electricity. 41.1.22 "Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with sections 41.10 and 41.11, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources. "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract: (a) For the life of the unit; For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period. 41.1.24 "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit. 41.1.25 "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent  $CO_2$ ) or the minimum oxygen concentration (in percent  $O_2$ ).

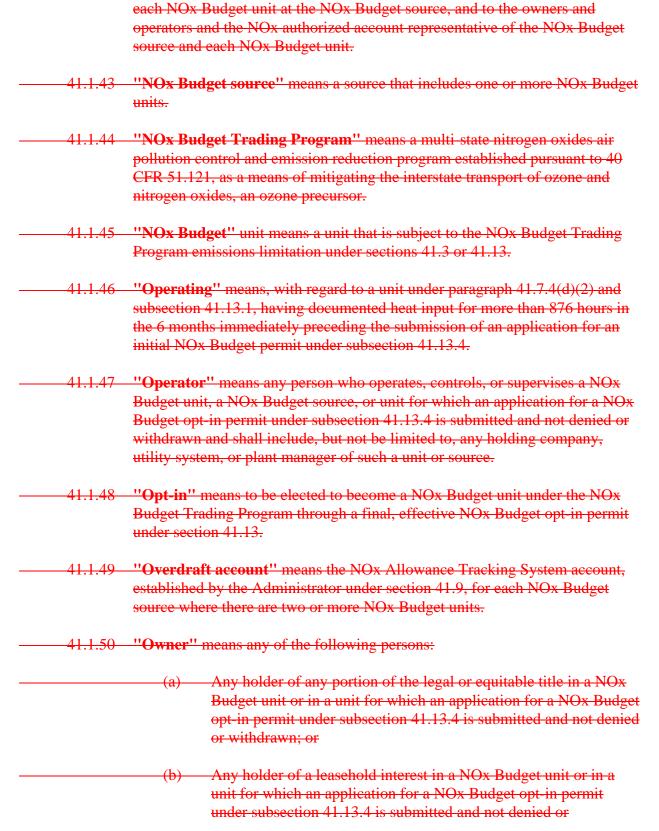
established under section 41.9 that is not a compliance account or an overdraft

either the maximum oxygen concentration (in percent O2) or the minimum carbon dioxide concentration (in percent CO<sub>2</sub>), under all operating conditions of the unit except for unit start up, shutdown, and upsets. "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input. 41.1.28 "Monitoring system" means any monitoring system that meets the requirements of section 41.10, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system. 41.1.29 "Most stringent State or Federal NOx emissions limitation" means, with regard to a NOx Budget opt-in source, the lowest NOx emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies. 41.1.30 "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards. 41.1.31 "Non-title V permit" means a federally enforceable permit administered by the Department pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and Air Pollution Control Regulation No. 29. "NOx allowance" means an authorization by the Department or the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter. "NOx allowance deduction or deduct NOx allowances" means the <del>41.1.33</del> permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with sections 41.10 and 41.11, or for any other allowance surrender obligation under this regulation. 41.1.34 "NOx allowances held or hold NOx allowances" means the NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with sections 41.8 and 41.9, in a NOx Allowance

nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of 40 CFR Part 75, and

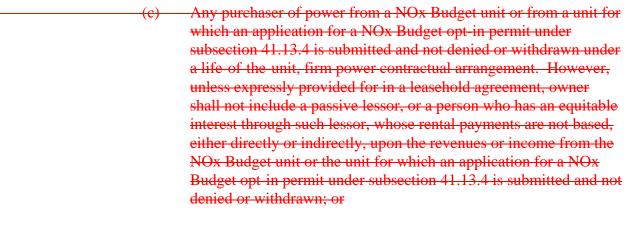
Tracking System account.





Budget Trading Program requirements applicable to a NOx Budget source, to

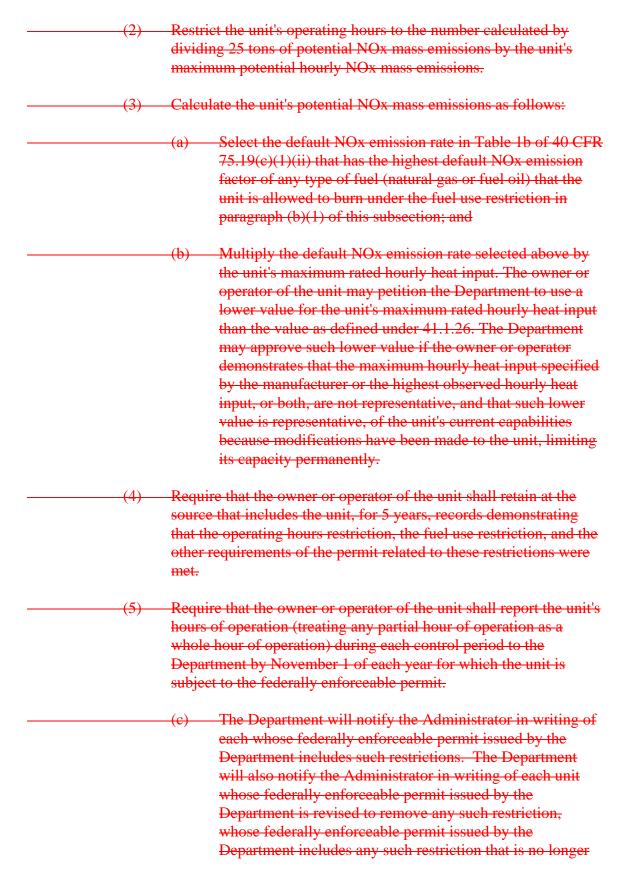
#### withdrawn: or



- (d) With respect to any general account, any person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.
- 41.1.51 "Receive or receipt of" means, when referring to the Department or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the Administrator in the regular course of business.
- 41.1.52 "Recordation, record, or recorded" means, with regard to NOx allowances, the movement of NOx allowances by the Administrator from one NOx Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.
- 41.1.53 "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR Part 60.
- 41.1.54 "Serial number" means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under paragraph 41.9.4(c).
- 41.1.55 "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

41.1.56 "State" means one of the 48 contiguous States and the District of Columbia specified in 40 CFR 51.121, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NOx Budget Trading Program pursuant to 40 CFR 51.121. To the extent a State incorporates by reference the provisions of 40 CFR Part 96, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context. "State trading program budget" means the total number of NOx tons apportioned to all NOx Budget units in a given State, in accordance with the NOx Budget Trading Program, for use in a given control period. 41.1.58 "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation: In person; <del>(a) </del> By United States Postal Service; or By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt. 41.1.59 "Title V operating permit" means an operating permit issued under Air Pollution Control Regulation No. 29. 41.1.60 "Ton or tonnage means" any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NOx Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with sections 41.10 and 41.11, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system. 41.1.62 "Unit operating day" means a calendar day in which a unit combusts any fuel. 41.1.63 "Unit operating hour or hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

	41.1.64	"Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR Part 75 if the NOx Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.
41.2		NO <sub>*</sub> Emission Budget
	<del>-41.2.1</del> -	The NO <sub>*</sub> Budget Trading Program is established to limit total mass NO <sub>*</sub> emissions from NO <sub>*</sub> Budget sources during the control period of May 1 through September 30. The initial NO <sub>*</sub> Budget is as follows:
		(a) For 2003 and each year thereafter, through and including 2005, not to exceed 936 tons during each control period.
		(b) [Reserved]
41.3		Applicability.
	41.3.1	General Applicability
		The following units shall be NOx Budget units, and any source that includes one or more such units shall be a NOx Budget source, subject to the requirements of this regulation:
		(a) Any unit that, any time on or after January 1, 1995, serves a generator—with a nameplate capacity greater than 15 MWe and sells any amount—of electricity; or
		(b) Any unit that is not a unit under paragraph (a) of this section and that — has a maximum design heat input greater than 250 mmBtu/hr.
	41.3.2	Exempted Units
		(a) A unit that meets the general applicability requirements under subsection 41.3.1, that has a federally enforceable permit that meets the requirements of paragraph (b) of this subsection, shall not be a NOx Budget unit starting with the effective date of such federally enforceable permit.
		(b) For each control period, the federally enforceable permit must:
		(1) Restrict the unit to burning only natural gas or fuel oil.



applicable, or which does not comply with any such restriction.

If, for any control period, the fuel use restriction under paragraph (b)(1) of this subsection or the operating hours restriction under paragraph (b)(2) subsection is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1) of this subsection or the operating hours restriction under paragraph (b)(2) of this subsection, the unit shall be a NOx Budget unit, subject to the requirements of this regulation. Such unit shall be treated as commencing operation and, for a unit under paragraph (a) of subsection 41.3.1, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

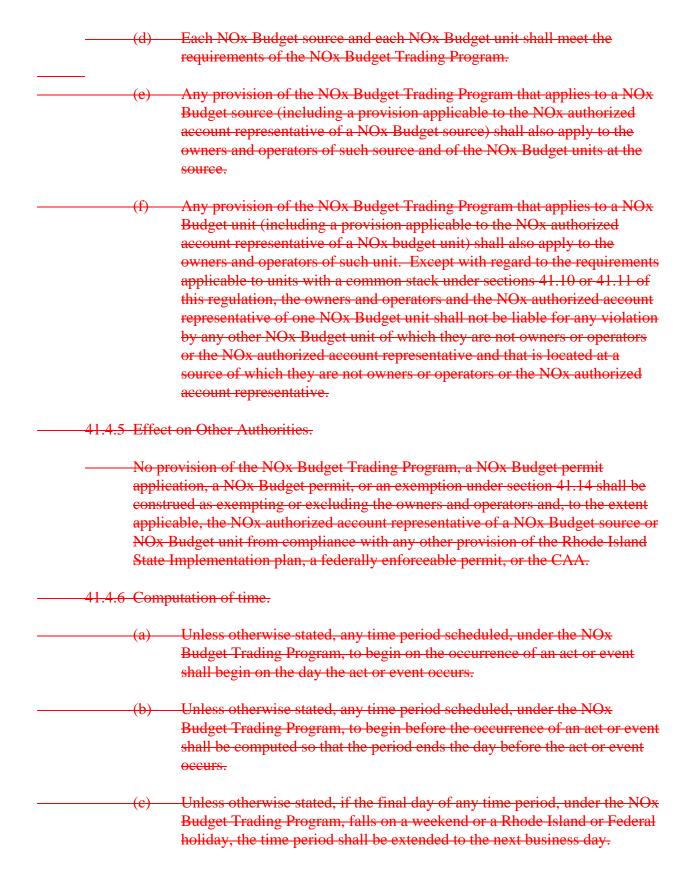
#### 41.4 General Provisions

#### 41.4.1 Nitrogen oxides requirements.

- (a) The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under subsection 41.9.5, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with sections 41.10 and 41.11 of this regulation.
- (b) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this regulation, the CAA, and applicable State law.
- (c) A NOx Budget unit shall be subject to the requirements under paragraph
  (a) of this subsection starting on the later of May 1, 2003 or the date on which the unit commences operation.
  - (d) NOx allowances shall be held in, deducted from, or transferred among NOx Allowance Tracking System accounts in accordance with Sections 41.5, 41.8, 41.9, and 41.13 of this regulation.

	<i>(</i> )	
	<del>(e)</del>	A NOx allowance shall not be deducted, in order to comply with the
		requirements under paragraph (a) of this subsection, for a control period in
		a year prior to the year for which the NOx allowance was allocated.
	<del>(f)</del>	A NOx allowance allocated by the Department or the Administrator under
	(1)	the NOx Budget Trading Program is a limited authorization to emit one
		ton of nitrogen oxides in accordance with the NOx Budget Trading
		Program. No provision of the NOx Budget Trading Program, the NOx
		Budget permit application, the NOx Budget permit, or an exemption under
		section 41.14 and no provision of law shall be construed to limit the
		authority of the United States or the State of Rhode Island to terminate or
		limit such authorization.
	<del>(g)</del>	A NOx allowance allocated by the Department or the Administrator under
	(5)	the NOx Budget Trading Program does not constitute a property right.
		the 140x Budget Truding 110grain does not constitute a property fight.
	<del>(h)</del>	Upon recordation by the Administrator under section 41.8, 41.9, or 41.13
		of this regulation, every allocation, transfer, or deduction of a NOx
		allowance to or from a NOx Budget unit's compliance account or the
		overdraft account of the source where the unit is located is deemed to
		amend automatically, and become a part of, any NOx Budget permit of the
		NOx Budget unit by operation of law without any further review.
		NOX Budget unit by operation of law without any further review.
41.4.2	Exces	ss emissions requirements.
	(a)	The owners and operators of a NOx Budget unit that has excess emissions
	(u)	in any control period shall:
		in any control period shall.
		(1) Surrender the NOx allowances required for deduction under
		subsection 41.9.5(d)(1); and
		subsection 41.7.5(a)(1), and
		(2) Pay any fine, penalty, or assessment or comply with any other
		remedy imposed under subsection 41.9.5(d)(3).
41.40	Б	
41.4.3	Recor	dkeeping and Reporting Requirements.
	<del>(a)</del>	Unless otherwise provided, the owners and operators of the NOx Budget
		source and each NOx Budget unit at the source shall keep on site at the
		source each of the following documents for a period of 5 years from the
		date the document is created. This period may be extended for cause, at
		any time prior to the end of 5 years, in writing by the Department or the
		Administrator.
		Administrator.
		(1) The account certificate of representation for the NOv authorized

	account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with subsection 41.6.5; provided that the certificate and documents shall be retained on site at the source beyond such 5 year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative.
	(2) All emissions monitoring information, in accordance with sections 41.10 and 41.11 of this regulation; provided that to the extent that section 41.11 of this regulation provides for a 3-year period for recordkeeping, the 3-year period shall apply.
	(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.
	(4) Copies of all documents used to complete a NOx Budget permit application and any other submission under the NOx Budget Trading Program or to demonstrate compliance with the requirements of the NOx Budget Trading Program.
——————————————————————————————————————	The NOx authorized account representative of a NOx Budget source and each NOx Budget unit at the source shall submit the reports and compliance certifications required under the NOx Budget Trading Program, including those under sections 41.10, 41.11, 41.12, or 41.13 of this regulation.
41.4.4 Liabi	<del>lity.</del>
<del>(a)</del>	Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under section 41.14 shall be subject to enforcement pursuant to applicable State or Federal law.
(b)	Any person who knowingly makes a false material statement in any record, submission, or report under the NOx Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.
<del>(c)</del>	No permit revision shall excuse any violation of the requirements of the NOx Budget Trading Program that occurs prior to the date that the revision takes effect.



### 41.5 NOx Allowance Allocations 41.5.1 Timing requirements for NOx allowance allocations. By April 1, 2003 and April 1 of each year thereafter, the Department will submit to the Administrator the NOx allowance allocations for the control period in the year that is three years after the year of the applicable deadline for submission under this paragraph. If the Department fails to submit to the Administrator the NOx allowance allocations in accordance with this paragraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period. <del>41.5.2 (a)</del> The initial allocation of allowances, for each control period, by budget source, for the allocation period 2003-2005 is as follows: Allowance Allocation Budget source 275 Ocean State Power Pawtucket Power Associates 42 Manchester Street Station 262 Tiverton Power Associates 46 (b) [Reserved] 41.5.3 [Reserved for a possible new source set aside or energy efficiency and renewable energy set aside.] 41.6 NOx Authorized Account Representative for NOx Budget Sources 41.6.1 Authorization and responsibilities of the NOx authorized account representative. Except as provided under subsection 41.6.2, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source. The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source. Upon receipt by the Administrator of a complete account certificate of representation under subsection 41.6.5, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each

owner and operator of the NOx Budget source represented and each NOx

Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the Department, the Administrator, or a court regarding the source or unit.

- (d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under subsection 41.6.5 for a NOx authorized account representative of the source and the NOx Budget units at the source.
  - (e) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative:

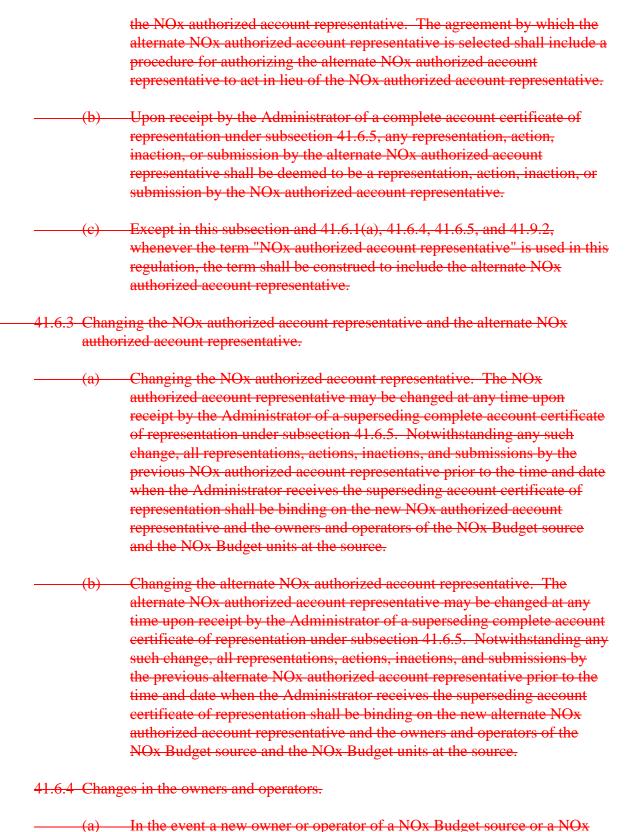
"I am authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

The Department and the Administrator will accept or act on a submission made on

behalf of owner or operators of a NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e) of this subsection.

41.6.2 Alternate NOx authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of



Budget unit is not included in the list of owners and operators submitted in

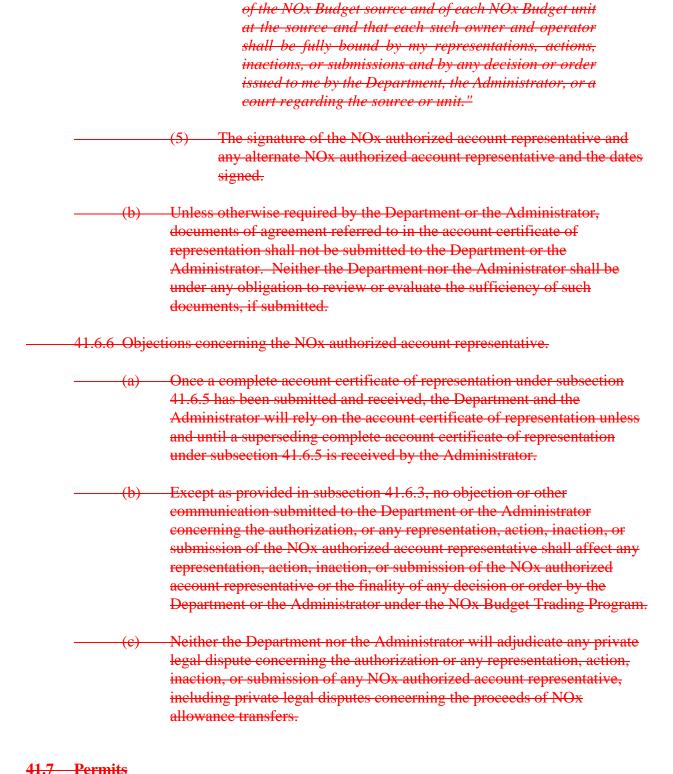
the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Department or the Administrator, as if the new owner or operator were included in such list.

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

#### 41.6.5 Account certificate of representation.

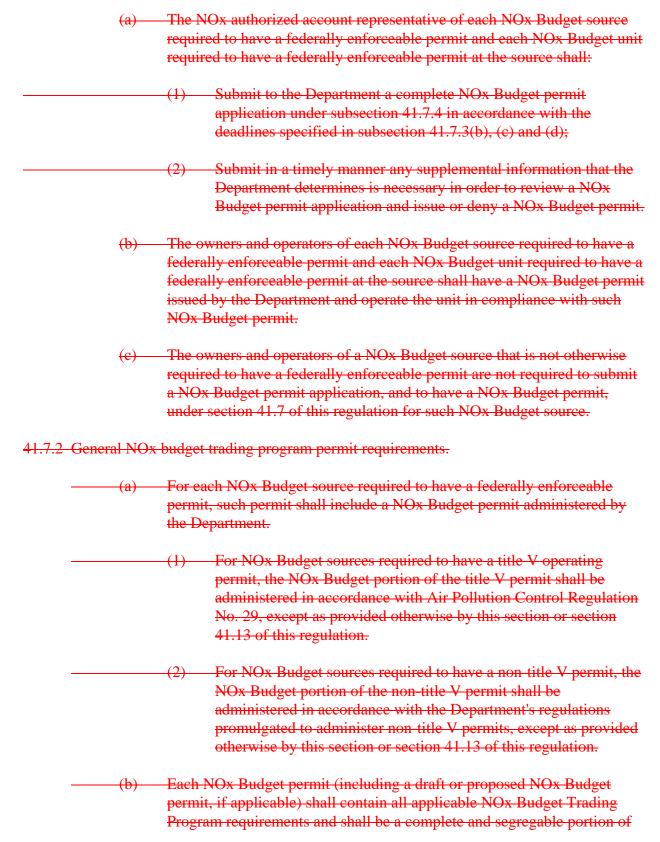
- (a) A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:
- (1) Identification of the NOx Budget source and each NOx Budget unit at the source for which the account certificate of representation is submitted.
  - (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.
    - (3) A list of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source.
      - (4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative:

"I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties—and—responsibilities—under—the—NOx—Budget



Trading Program on behalf of the owners and operators

41.7.1 Permit Requirements.



the permit under paragraph (a) of this subsection.

41.7.3 NOx Budget permit applications.

## The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the Department a complete NOx Budget permit application under subsection 41.7.4 by the applicable deadline in paragraph (b) or (c) of this subsection. For NOx Budget sources required to have a title V operating permit: For any source, with one or more NOx Budget units under subsection 41.3.1 that commences operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget units to the Department before November 1, 2001. For any source, with any NOx Budget unit under subsection 41.3.1 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget unit to the Department at least 18 months before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation. For NOx Budget sources required to have a non-title V permit: For any source, with one or more NOx Budget units under subsection 41.3.1 that commences operation before January 1. 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget units to the Department before November 1, 2001. For any source, with any NOx Budget unit under subsection 41.3.1 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 covering such NOx Budget unit to the Department at least 18 months before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation. Duty to Reapply.

For a NOx Budget source required to have a title V operating permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 for the NOx Budget source covering the NOx Budget units at the source in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit renewals. For a NOx Budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under subsection 41.7.4 for the NOx Budget source covering the NOx Budget units at the source in accordance with the Department s non-title V permits regulations addressing permit renewal. 41.7.4 Information requirements for NOx Budget permit applications. A complete NOx Budget permit application shall include the following elements concerning the NOx Budget source, for which the application is submitted, in a format prescribed by the Department: Identification of the NOx Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable; Identification of each NOx Budget unit at the NOx Budget source and whether it is a NOx Budget unit under subsection 41.3.1 or under section 41.13 of this regulation; The standard requirements under 40 CFR 96.6; and For each NOx Budget opt-in unit at the NOx Budget source, the following certification statements by the NOx authorized account representative: "I certify that each unit for which this permit application is submitted under section 41.13 of Air Pollution Control Regulation No. 41 is not a NOx Budget unit under section 41.3 and is not covered by a retired unit exemption under section 41.14 that is in effect." If the application is for an initial NOx Budget opt in permit:

"I certify that each unit for which this permit application is submitted under section 41.13 of Air Pollution Control Regulation No. 41 is currently operating, as that term is defined under section

41.7.5 NO	x Budget	t permit contents.
	(a)	Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the Department, all elements required for a complete NOx Budget permit application under subsection 41.7.4 as approved or adjusted by the Department.
	(b)	Each NOx Budget permit is deemed to incorporate automatically the definitions of terms under section 41.1 and, upon recordation by the Administrator under sections 41.8, 41.9, or 41.13 of this regulation, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.
41.7.6 Eff	ective dat	te of initial NOx Budget permit.
	<del>NOx</del>	initial NOx Budget permit covering a NOx Budget unit for which a complete Budget permit application is timely submitted under the applicable provision bsection 41.7.3(b) or (c) or shall become effective by the later of:
	<del>(a)</del>	May 1, 2003;
	<u>(b)</u>	May 1 of the year in which the NOx Budget unit commences operation, if the unit commences operation on or before May 1 of that year;
	<del>(c)</del>	The date on which the NOx Budget unit commences operation, if the unit commences operation during a control period; or
	(d)	May 1 of the year following the year in which the NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.
41.7.7 NO	x Budget	t permit revisions.
	——(a)—	For a NOx Budget source with a title V operating permit, except as provided in subsection 41.7.5(b), the Department will revise the NOx Budget permit, as necessary, in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit revisions.
	<del>(b)</del>	For a NOx Budget source with a non-title V permit, except as provided in subsection 41.7.5(b), the Department will revise the NOx Budget permit,

as necessary, in accordance with the Department's non-title V permits

### 41.8 NOx Allowance Transfers

<del>11.8.1 Su</del>	<del>bmission (</del>	of NOx allowance transfers.
	<del>allow</del>	NOx authorized account representatives seeking recordation of a NOx vance transfer shall submit the transfer to the Administrator. To be dered correctly submitted, the NOx allowance transfer shall include the
	follo	wing elements in a format specified by the Administrator:
	(a)	The numbers identifying both the transferor and transferee accounts;
_	<del>(b)</del>	A specification by serial number of each NOx allowance to be transferred and
	(c)	The printed name and signature of the NOx authorized account representative of the transferor account and the date signed.
<del>11.8.2 EP</del>	' <del>A recorda</del>	a <del>tion.</del>
	<del>(a)</del>	Within 5 business days of receiving a NOx allowance transfer, except as provided in paragraph (b) of this subsection, the Administrator will record a NOx allowance transfer by moving each NOx allowance from the transferor account to the transferee account as specified by the request, provided that:
		(1) The transfer is correctly submitted under section 41.8;
		(2) The transferor account includes each NOx allowance identified by serial number in the transfer; and
		(3) The transfer meets all other requirements of this regulation.
	(b)	A NOx allowance transfer that is submitted for recordation following the NOx allowance transfer deadline and that includes any NOx allowances allocated for a control period prior to or the same as the control period to which the NOx allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NOx allowance allocations in subsection 41.9.4(b).
_	<del>(c)</del>	Where a NOx allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will

not record such transfer.

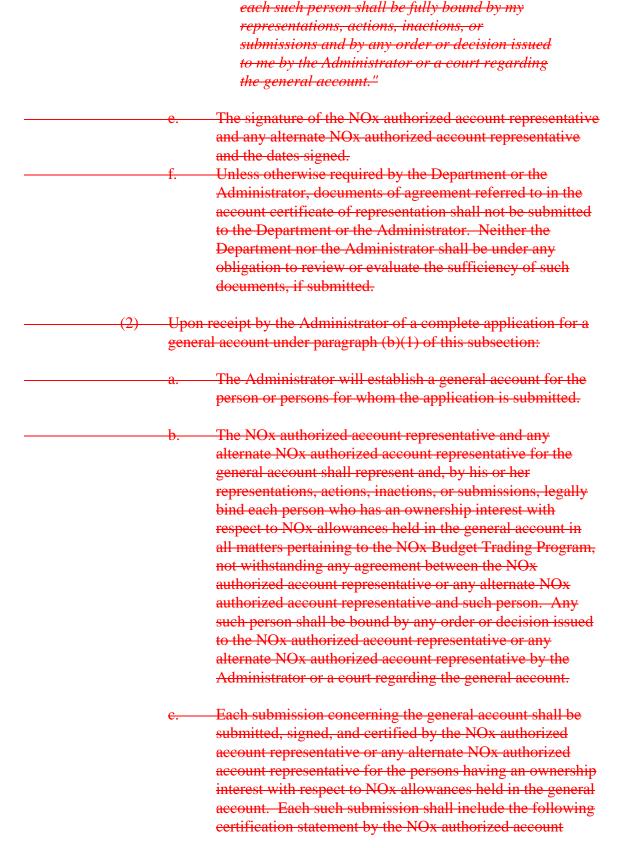
41.8.3	Notification.	
	<del>(a)</del>	Notification of recordation. Within 5 business days of recordation of a NOx allowance transfer under subsection 41.8.2, the Administrator will notify each party to the transfer. Notice will be given to the NOx authorized account representatives of both the transferor and transferee accounts.
	————(b)	Notification of non-recordation. Within 10 business days of receipt of a NOx allowance transfer that fails to meet the requirements of subsection 41.8.2(a), the Administrator will notify the NOx authorized account representatives of both accounts subject to the transfer of:
		(1) A decision not to record the transfer, and
		(2) The reasons for such non-recordation.
	<del>(e)</del>	Nothing in this section shall preclude the submission of a NOx allowance transfer for recordation following notification of non-recordation.
41.9.1	-NOx Allowa	nce Tracking System accounts.
	(a)	Nature and function of compliance accounts and overdraft accounts. Consistent with subsection 41.9(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with two or more NOx Budget units. Allocations of NOx allowances pursuant to section 41.5 or subsection 41.13.9 and deductions or transfers of NOx allowances pursuant to subsections 41.12.2, 41.9.5, 41.9.7, section 41.8, or section 41.13 will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.
	<del>(b)</del>	Nature and function of general accounts. Consistent with subsection 41.9.2(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to section 41.8 will be recorded in the general account in accordance with this section.
41.9.2	- Establishmer	at of accounts.
	<del>(a)</del>	Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under subsection 41.6.5, the

## Administrator will establish: A compliance account for each NOx Budget unit for which the account certificate of representation was submitted; and An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NOx Budget units. General accounts. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator: Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative; At the option of the NOx authorized account representative, organization name and type of organization; A list of all persons subject to a binding agreement for the NOx authorized account representative or any alternate NOx authorized account representative to represent their ownership interest with respect to the allowances held in the general account; The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: "I certify that I was selected as the NOx authorized account representative or the NOx alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with

respect to allowances held in the general account. I certify that I have all the necessary

responsibilities under the NOx Budget Trading Program on behalf of such persons and that

authority to carry out my duties and



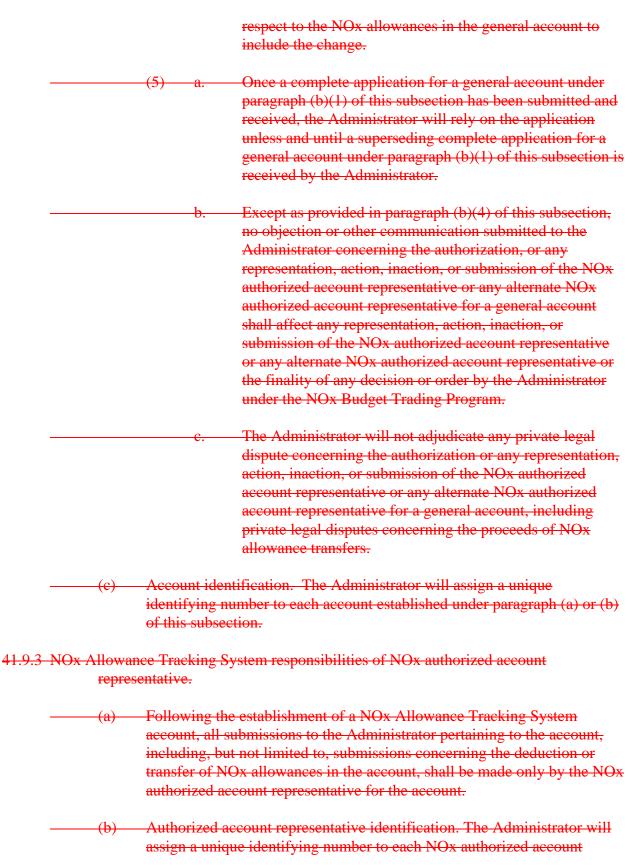
representative or any alternate NOx authorized account representative any:

"I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

- d. The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2) c. of this subsection.
- (3) a. An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.
  - b. Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this subsection, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

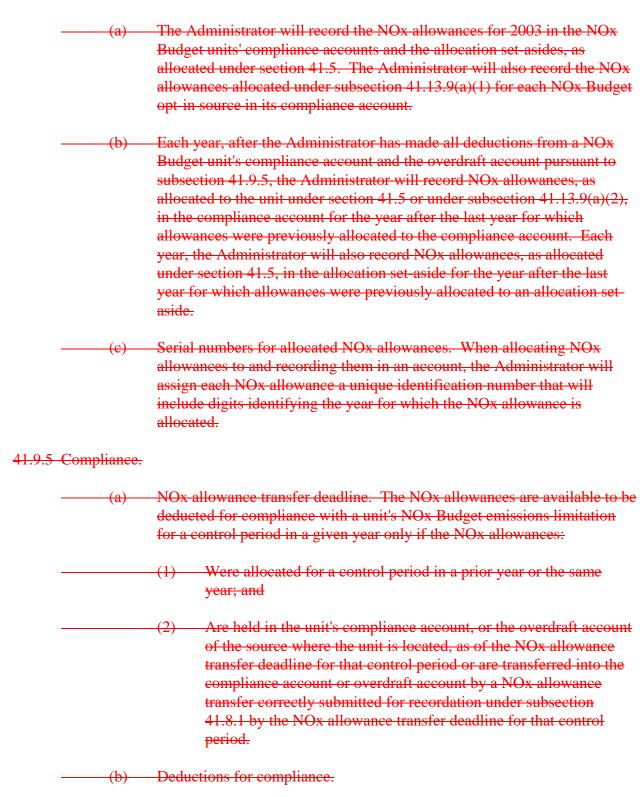
The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account. The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account. In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list. Within 30 days following any change in the persons having an ownership interest with respect to NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx authorized account representative shall submit a revision to the application for a general account amending

the list of persons having an ownership interest with



representative.

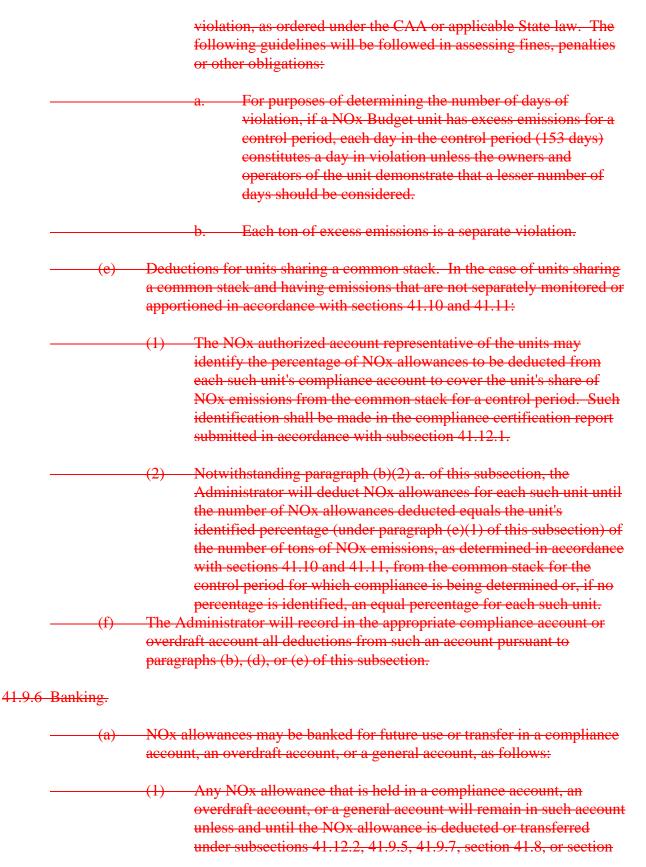
41.9.4 Recordation of NOx allowance allocations.

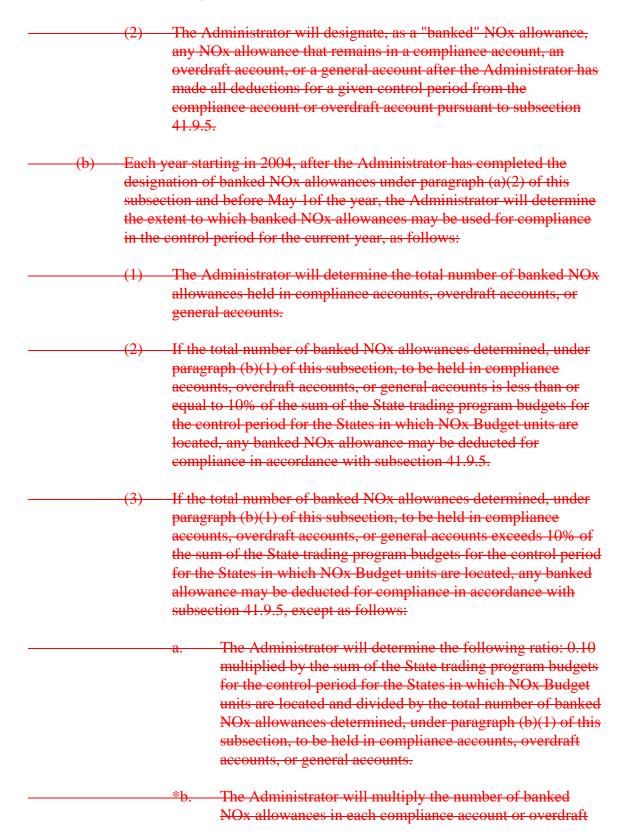


<del>(1)</del>	Following the recordation, in accordance with subsection 41.8.2, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this subsection to cover the unit's NOx emissions (as determined in accordance with sections 41.10 and 41.11):
	a. From the compliance account; and
	b. Only if no more NOx allowances available under paragraph (a) of this subsection 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 NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).
(2)	The Administrator will deduct NOx allowances first under paragraph (b)(1) a. of this subsection and then under paragraph (b)(1) b. of this subsection:
	a. Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with sections 41.10 and 41.11, from the unit for the control period for which compliance is being determined; or
	b. Until no more NOx allowances available under paragraph
(c) Iden	(a) of this subsection remain in the respective account.  tification of NOx allowances by serial number.
(1)	The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this subsection. Such identification shall be made in the compliance certification report submitted in accordance with

# subsection 41.12.1.

(2	First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under paragraph (c)(1) of this subsection, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:		
	a. Those NOx allowances that were allocated for the control period to the unit under sections 41.5 or 41.13;		
	b. Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to section 41.8, in order of their date of recordation;		
	c. Those NOx allowances that were allocated for a prior control period to the unit under sections 41.5 or 41.13; and		
	d. Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to section 41.8, in order of their date of recordation.		
——————————————————————————————————————	Deductions for excess emissions.		
(1	After making the deductions for compliance under paragraph (b) of this subsection, 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 NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.		
(2	If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.		
(3	Any allowance deduction required under paragraph (d) of this subsection shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same		





account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with subsection 41.9.5. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with subsection 41.9.5, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under subsection 41.9.5.

### 41.9.7 Account error.

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

### 41.9.8 Closing of general accounts.

- (a) The NOx 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 NOx Allowance Tracking System and by correctly submitting for recordation under subsection 41.8.1 an allowance transfer of all NOx allowances in the account to one or more other NOx 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 NOx allowances, the Administrator may notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20 day period unless before the end of the 20 day period the Administrator receives a correctly submitted transfer of NOx allowances into the account under subsection 41.8.1 or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

### 41.10 Monitoring

### 41.10.1 Monitoring requirements.

(a) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx Budget source and each

NOx Budget unit at the source shall comply with the monitoring requirements of this section and in subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 41.1 and in 40 CFR 72.2 shall apply, and the terms "affected unit", "designated representative", and "continuous emission monitoring system"(or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NOx Budget unit", "NOx authorized account representative", and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in section 41.1.

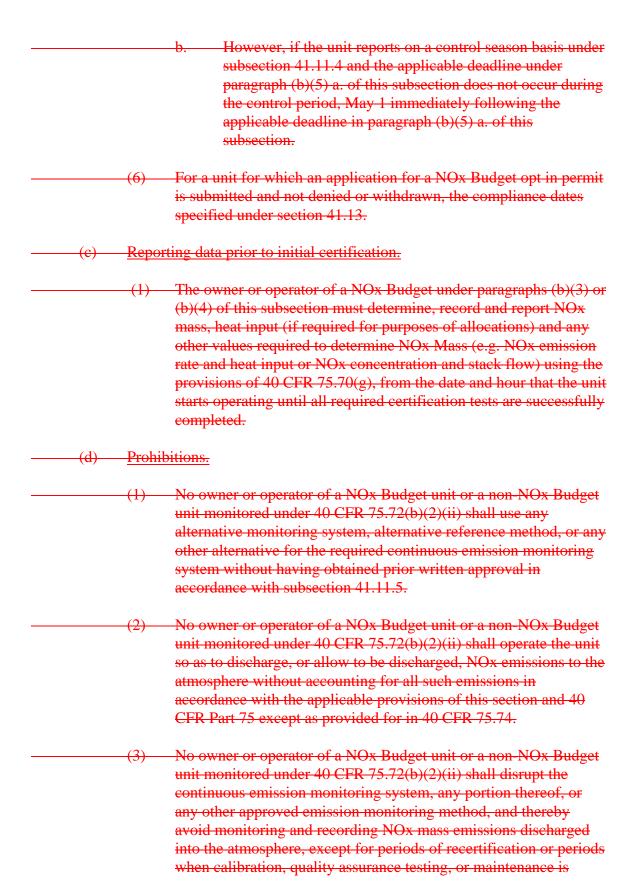
(b) The emissions measurements recorded and reported in accordance with this section shall be used to determine compliance by the unit with the NOx Budget emissions limitation under subsection 41.4.1.

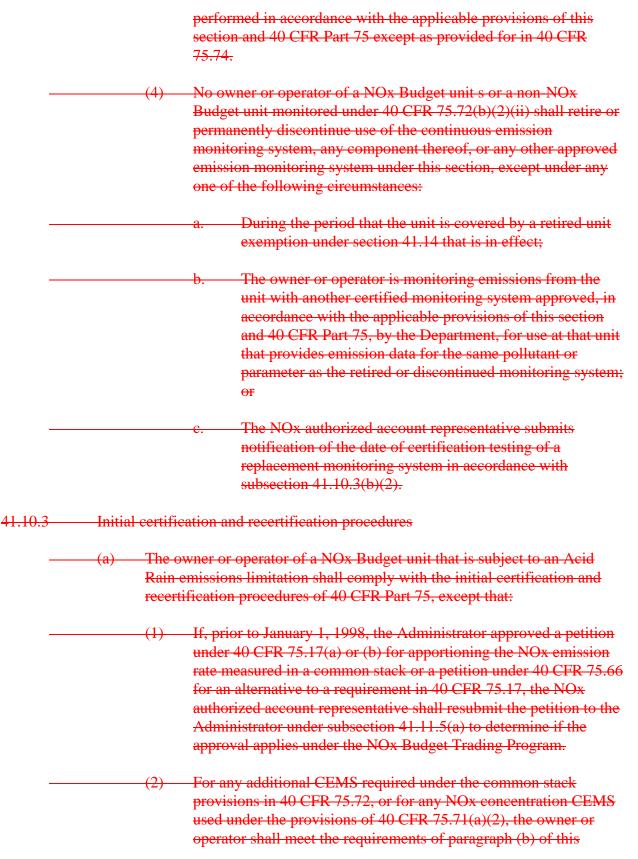
# 41.10.2 General Requirements.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each NOx Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, as provided in section 41.13:
- (1) Install all monitoring systems required under this section for monitoring NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with 40 CFR Parts 75.71 and 75.72.
- (2) Install all monitoring systems for monitoring heat input, if required under subsection 41.11.6 for developing NOx allowance allocations.
- (3) Successfully complete all certification tests required under subsection 41.10.3 and meet all other provisions of this section and 40 CFR Part 75 applicable to the monitoring systems under paragraphs (a)(1) and (2) of this subsection.
- (4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this subsection.
- (b) <u>Compliance dates.</u> The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:
- (1) NOx Budget units under section 41.3 that commence operation before January 1, 2002, must comply with the requirements of this

(3)	NOx Budget units under section 41.3 that commence operation on or after January 1, 2002 and that report on an annual basis under subsection 41.11.4 must comply with the requirements of this section by the later of the following dates:
	a. May 1, 2002; or
	b. the earlier of:
	(i) 180 days after the date on which the unit commences operation or,
	(ii) For units under paragraph 41.3.1(a), 90 days after the date on which the unit commences commercial operation.
(4)	NOx Budget units under section 41.3 that commence operation on or after January 1, 2002 and that report on a control season basis under subsection 41.11.4 must comply with the requirements of this section by the later of the following dates:
	a. the earlier of
	(i) 180 days after the date on which the unit commences operation or,
	(ii) for units under paragraph 41.3.1(a), 90 days after the date on which the unit commences commercial operation.
	b. However, if the applicable deadline under paragraph (b)(4) a. subsection does not occur during a control period, May 1; immediately following the date determined in accordance with paragraph (b)(4) a. of this subsection.
(5)	For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this subsection or section 41.13:
	a. 90 days after the date on which emissions first exit to the

section by May 1, 2002.





#### subsection.

- (b) The owner or operator of a NOx Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of paragraph (c) of this subsection and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall also meet the requirements of paragraph (d) of this subsection. The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NOx concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.
  - (1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection 41.10.2(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.
  - Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing

of flow rate monitor polynomial coefficients. Certification approval process for initial certifications and recertification. Notification of certification. The NOx authorized account representative shall submit to the Department, the appropriate EPA Regional Office and the Administrator a written notice of the dates of certification in accordance with subsection 41.10.5. Certification application. The NOx authorized account representative shall submit to the Department a certification application for each monitoring system required under subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in subpart H of 40 CFR Part 75. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (b)(3) b. of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department. Certification application formal approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3) b. of this subsection. In the event the Department does not issue such a notice within such 120-day period, each monitoring

system which meets the applicable performance

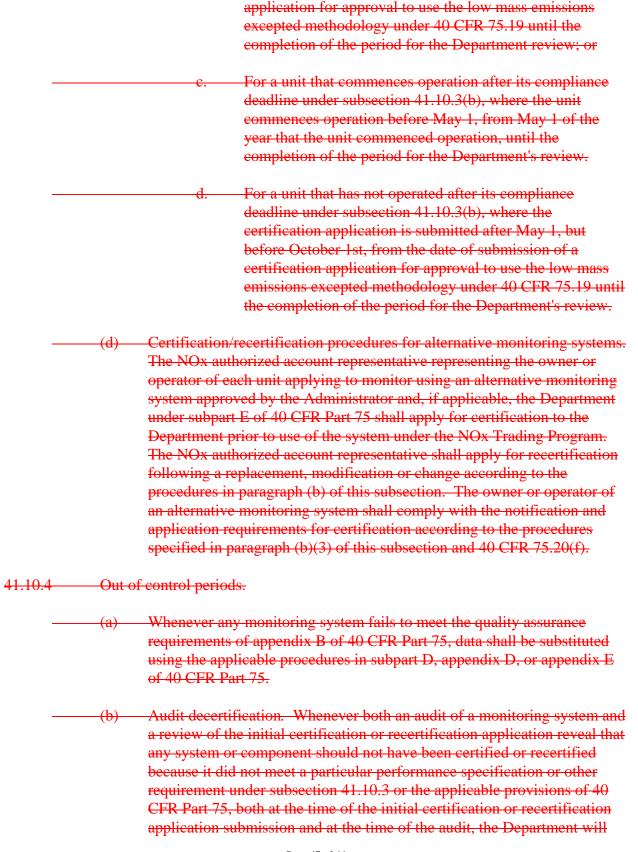
requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NOx Budget Trading Program.

- (i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.
- Incomplete application notice. A certification <del>(ii)</del> application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3) b. of this subsection has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification application. If the NOx authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under paragraph (b)(3) d. (iii) of this subsection.
- Disapproval notice. If the certification application <del>(iii)</del> shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3) d. (ii) of this subsection has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3) e. of this subsection for each monitoring

	system or component thereof which is disapproved for initial certification.
— (iv	Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 41.10.4(b).
<del>iss</del> <del>un</del> <del>of</del>	ocedures for loss of certification. If the Department ues a notice of disapproval of a certification application der paragraph (b)(3) d. (iii) of this subsection or a notice disapproval of certification status under paragraph (b)(3) (iv) of this subsection, then:
——————————————————————————————————————	The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):
	(A) For units using or intending to monitor for NOx emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit.
	(B) For units intending to monitor for NOx mass emissions using a NOx pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOx and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR Part 75;
(ii)	The NOx authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3) a. and b. of this subsection; and
<del>(iii</del>	The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit

operating days after the date of issuance of the notice of disapproval.

(e)	Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas fired or oil fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of subsection 41.10.3, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program, as of the following dates:		
	(1) For units that are reporting on an annual basis under subsection 41.11.4(b)(1):	under subsection	
	a. For a unit that has commences operation before its compliance deadline under subsection 41.10.3(b), from January 1 of the year following submission of the certification application for approval to use the low mas emissions excepted methodology under 40 CFR 75.19 u the completion of the period for the Department review;	ntil	
	b. For a unit that commences operation after its compliance deadline under subsection 41.10.3(b), the date of submission of the certification application for approval tuse the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for Department review, or	<del>to</del>	
	(2) For units that are reporting on a control period basis under subsection 41.11.4(b)(2):		
	a. For a unit that commenced operation before its compliant deadline under subsection 41.10.3(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or		
	b. For a unit that commenced operation before its compliant deadline under subsection 41.10.3(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certificat		



issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsection 41.10.3 for each disapproved system.

### 41.10.5 Notifications.

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

### 41.11 Recordkeeping and reporting.

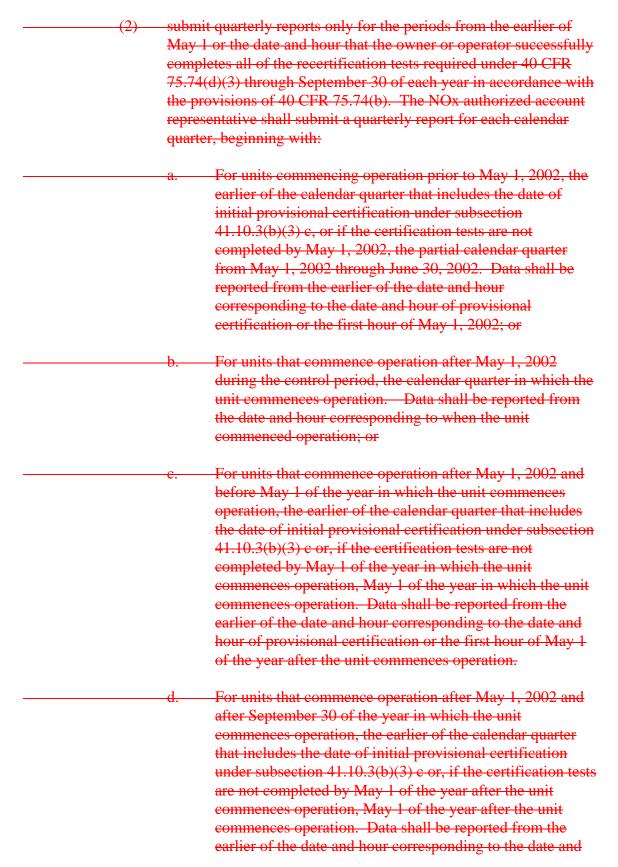
### 41.11.1 General provisions

- (a) The NOx authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subsection 41.6.1(e).
- (b) If the NOx authorized account representative for a NOx Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR Part 75 and which includes data and information required under this section, section 41.10 or subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission must also be signed by the designated representative or the alternative designated representative.

### 41.11.2 Monitoring Plans.

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

	<del>(b)</del>	The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR Part 75.
41.11.3	Certific	cation Applications.
	(a)	The NOx authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under subsection 41.10.3 including the information required under subpart H of 40 CFR Part 75.
41.11.4	Quarte	e <del>rly reports.</del>
_	The No	Ox authorized account representative shall submit quarterly reports, as s:
	(a)	If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NOx budget unit chooses to meet the annual reporting requirements of this section, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:
		(1) For units commencing operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under subsection 41.10.3(b)(3) c or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or
		(2) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.
	<del>(b)</del>	If a NOx budget unit is not subject to an Acid Rain emission limitation, then the NOx authorized account representative shall either:
		(1) Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NOx mass emissions during the entire year and meet the reporting deadlines specified in paragraph (a) of this subsection: or



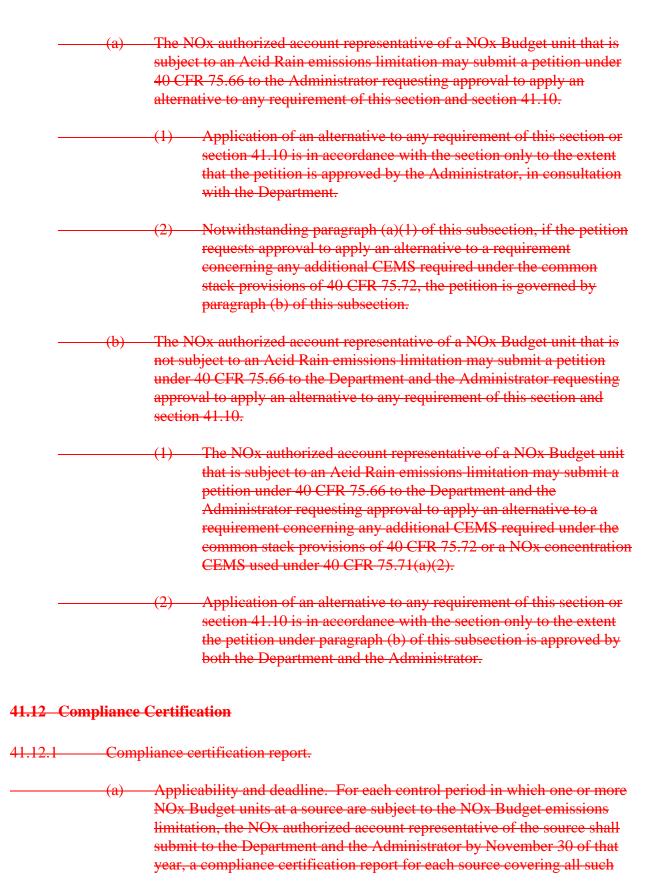
of the year after the unit commences operation. The NOx authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR Part 75 and 40 CFR 75.64. For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR Part 75 for each NOx Budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR Part 75. For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR Part 75 for each NOx Budget unit (or group of units using a common stack). Compliance certification. The NOx authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that: The monitoring data submitted were recorded in accordance with the applicable requirements of this section, section 41.10 and 40 CFR Part 75, including the quality assurance procedures and specifications; and For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and For a unit that is reporting on a control period basis under

hour of provisional certification or the first hour of May 1

41.11.5 Petitions

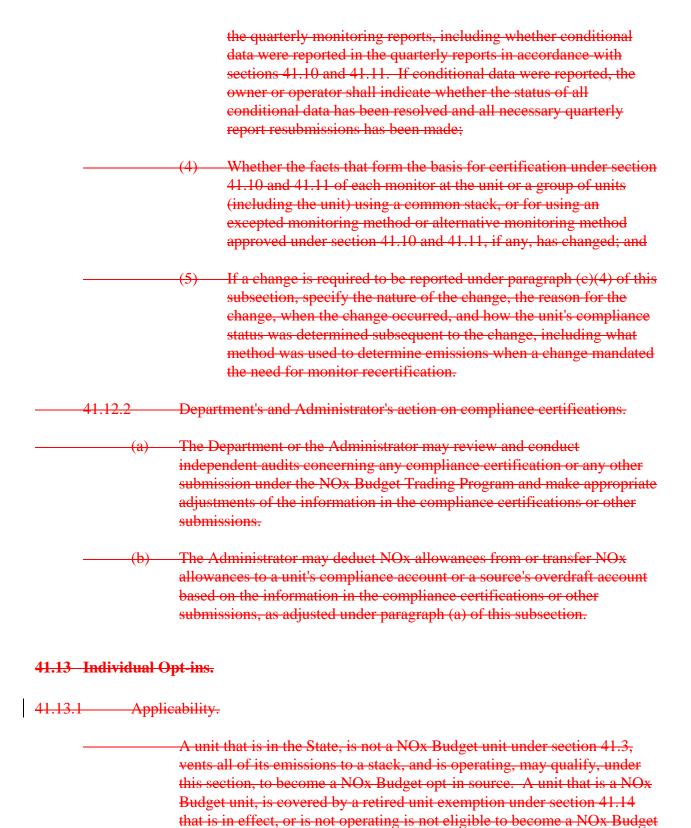
not systematically underestimate NOx emissions.

subsection 41.11.4 the NOx emission rate and NOx concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from a control period and do



units.

(	( <del>b)</del>	Contents of report. The NOx authorized account representative shall include in the compliance certification report under paragraph (a) of this subsection the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NOx Budget emissions limitation for the control period covered by the report:
		(1) Identification of each NOx Budget unit;
		(2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under subsection 41.9.5 for the control period;
		(3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx emissions that are not monitored separately or apportioned in accordance with section 41.10, the percentage of allowances that is to be deducted from each unit's compliance account under subsection 41.9.5(e); and
		(4) The compliance certification under paragraph (c) of this subsection.
	( <del>c)</del>	Compliance certification. In the compliance certification report under paragraph (a) of this subsection, the NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx Budget Trading Program applicable to the unit, including:
		(1) Whether the unit was operated in compliance with the NOx Budget emissions limitation;
		Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOx emissions to the unit, in accordance with sections 41.10 and 41.11;
		(3) Whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in



opt in source.

41.13.2	— General.		
	Except otherwise as provided in this regulation, a NOx Budget opt-in source shall be treated as a NOx Budget unit for purposes of applying sections 41.1 through 41.12 of this regulation.		
41.13.3	NOx authorized account representative.		
	A unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, or a NOx Budget opt in source, located at the same source as one or more NOx Budget units, shall have the same NOx authorized account representative as such NOx Budget units.		
41.13.4	Applying for NOx Budget opt in permit.		
	(a) Applying for initial NOx Budget opt-in permit. In order to apply for an initial NOx Budget opt-in permit, the NOx authorized account representative of a unit qualified under subsection 41.13.1 may submit to the Department at any time, except as provided under subsection 41.13.7(g):		
	(1) A complete NOx Budget permit application under subsection 41.7.4;		
	(2) A monitoring plan submitted in accordance with section 41.10; and		
	(3) A complete account certificate of representation under subsection 41.6.5, if no NOx authorized account representative has been previously designated for the unit.		
	(b) Duty to reapply. The NOx authorized account representative of a NOx Budget opt in source shall submit a complete NOx Budget permit application under subsection 41.7.4 to renew the NOx Budget opt in permit in accordance with subsection 41.7.3(c) and, if applicable, an updated monitoring plan in accordance with section 41.10.		
41.13.5	Opt-in process.		
	The Department will issue or deny a NOx Budget opt in permit for a unit for which an initial application for a NOx Budget opt-in permit under subsection 41.13.4 is submitted, in accordance with subsection 41.7.2 and the following:		
	(a) Interim review of monitoring plan. The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the		

initial application for a NOx Budget opt in permit under subsection 41.13.4. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input of the unit are monitored and reported in accordance with sections 41.10 and 41.11. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

- (b) If the Department determines that the unit's monitoring plan is sufficient under paragraph (a) of this subsection and after completion of monitoring system certification under section 41.10, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with section 41.10 for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NOx Budget unit" prior to issuance of a NOx Budget opt-in permit covering the unit.
- (c) Based on the information monitored and reported under paragraph (b) of this subsection, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx mass emissions (in lb) for the control period divided by the unit's baseline heat rate.
- (d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under paragraph (c) of this subsection, the Department will serve a draft NOx Budget opt in permit on the NOx authorized account representative of the unit.
- (e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx authorized account representative of the unit must submit to the Department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under subsection 41.13.4. The Department will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.
- (f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt in the unit under paragraph (e) of this subsection, the Department will issue the draft NOx Budget opt-in permit in accordance with subsection 41.7.2.
- (g) Not withstanding paragraphs (a) through (f) of this subsection, if at any

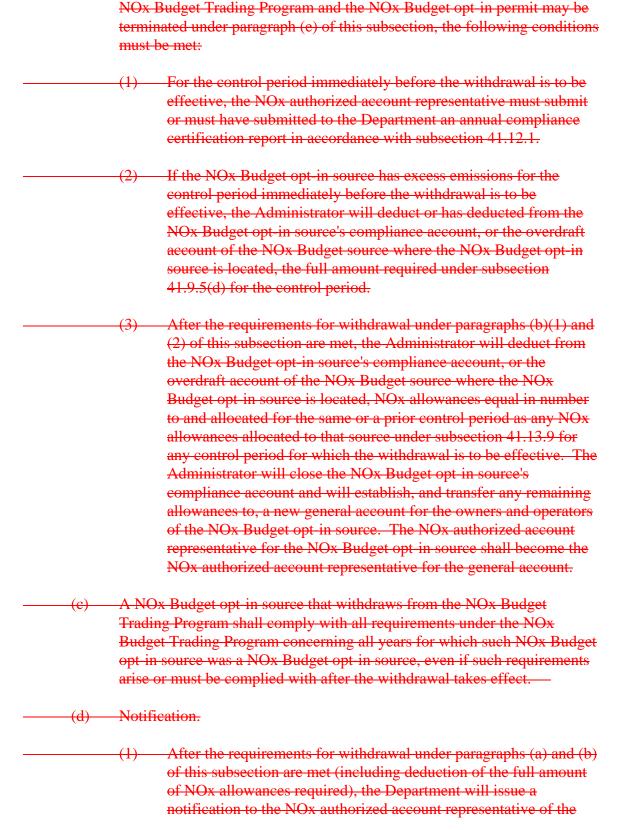
opt-in source under subsection 41.13.1, the Department will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with subsection 41.7.2. Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under subsection 41.13.4 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under subsection 41.13.4. Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the Department. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt in permit. NOx Budget opt-in permit contents. Each NOx Budget opt in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under subsection 41.7.3 as approved or adjusted by the Department. <del>(b)</del> Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under subsection 41.1 and, upon recordation by the Administrator under sections 41.8, 41.9 and 41.13, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt in permit or the overdraft account of the NOx Budget source where the NOx Budget opt in source is located. Withdrawal from NOx Budget Trading Program. Requesting withdrawal. To withdraw from the NOx Budget Trading

time before issuance of a draft NOx Budget opt in permit for the unit, the Department determines that the unit does not qualify as a NOx Budget

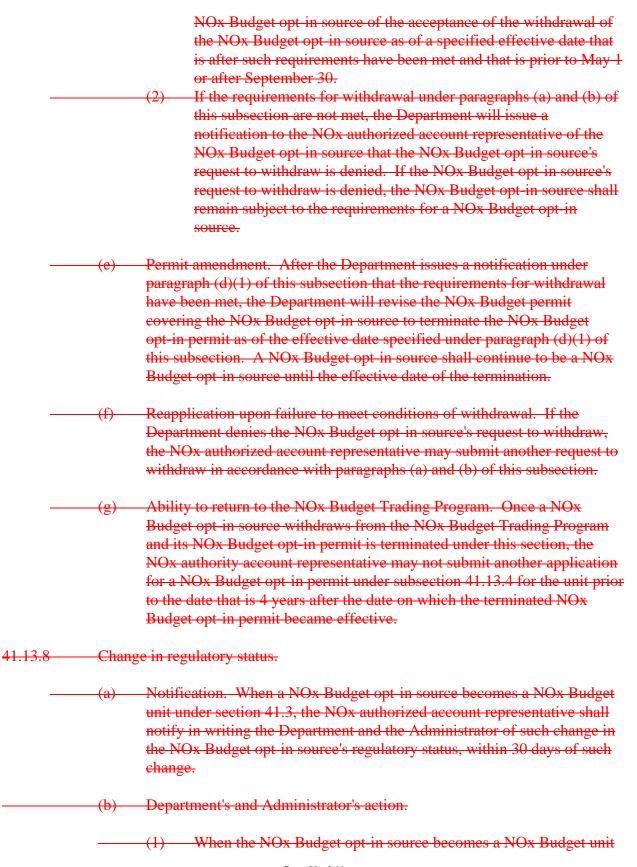
Program, the NOx authorized account representative of a NOx Budget opt in source shall submit to the Department a request to withdraw

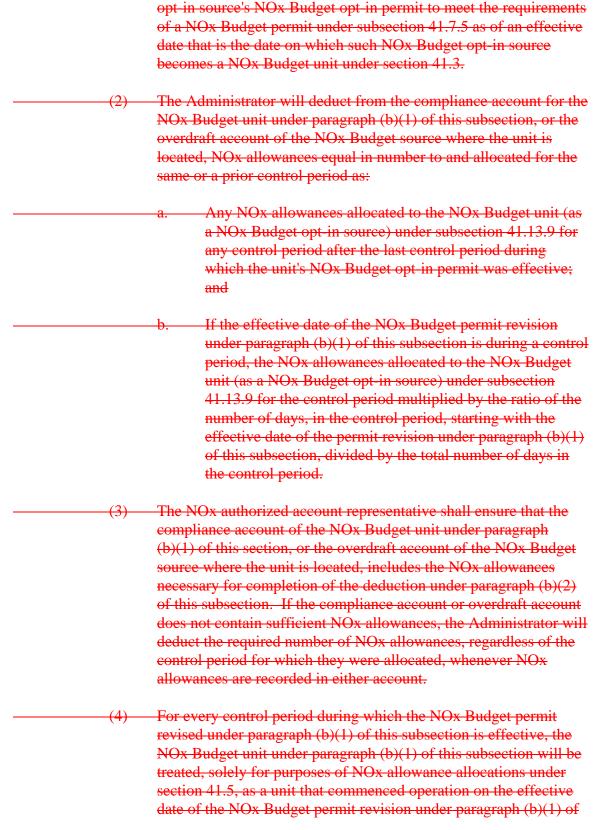
effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested

effective date of withdrawal.



by a request under paragraph (a) of this subsection may withdraw from the





under section 41.3, the Department will revise the NOx Budget

this subsection and will be allocated NOx allowances under subsection 41.5.

- (5) Notwithstanding paragraph (b)(4) of this subsection, if the effective date of the NOx Budget permit revision under paragraph (b)(1) of this subsection is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1) of this subsection under section 41.5 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under section 41.5 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1) of this subsection, divided by the total number of days in the control period.
- $\frac{(6)}{}$ When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under subsection 41.13.4(b), the Administrator will deduct from the NOx Budget opt in unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt in source under subsection 41.13.9 for any control period after the last control period for which the NOx Budget opt-in permit is effective. The NOx authorized account representative shall ensure that the NOx Budget opt-in source's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.
  - (7) After the deduction under paragraph (b)(6) of this subsection is completed, the Administrator will close the NOx Budget opt in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under subsection 41.9.5, the Administrator will close the NOx Budget opt in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt in source.

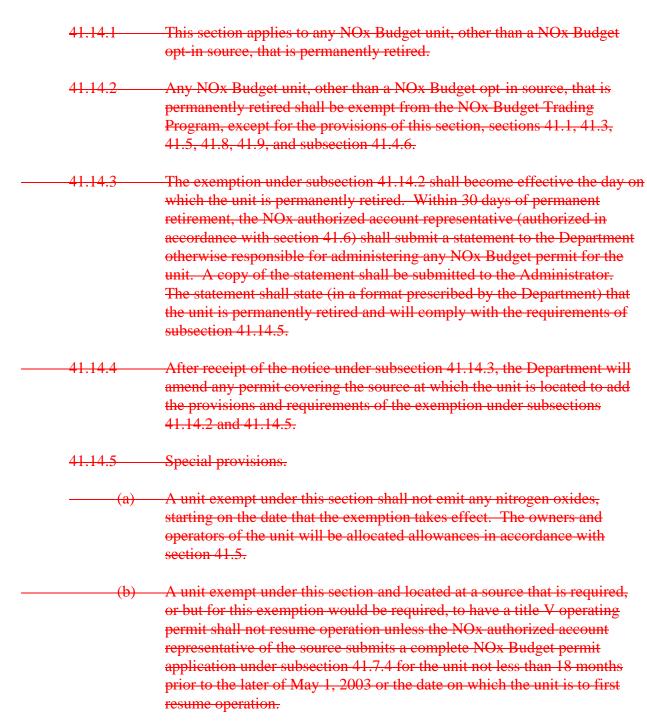
    The NOx authorized account representative for the NOx Budget opt in source shall become the NOx authorized account

# representative for the general account.

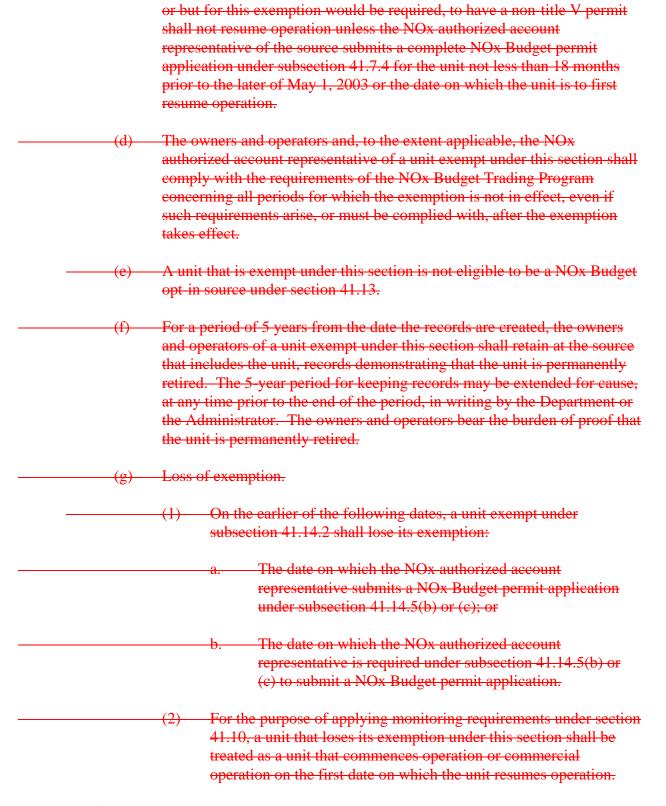
41.13.9	NOx	allowance allocations to opt-in units.
	<del>(a)</del>	NOx allowance allocation.
		(1) By December 31 immediately before the first control period for which the NOx Budget opt in permit is effective, the Department will allocate NOx allowances to the NOx Budget opt in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this subsection.
		(2) By no later than December 31, after the first control period for which the NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the Department will allocate NOx allowances to the NOx Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this subsection.
	<del>(b)</del>	For each control period for which the NOx Budget opt-in source has an approved NOx Budget opt-in permit, the NOx Budget opt-in source will be allocated NOx allowances in accordance with the following procedures:
		(1) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:
		a. The NOx Budget opt-in source's baseline heat input determined pursuant to subsection 41.13.5(c); or
		b. The NOx Budget opt-in source's heat input, as determined in accordance with section 41.10, for the control period in the year prior to the year of the control period for which the NOx allocations are being calculated.
		(2) The Department will allocate NOx allowances to the NOx Budget opt in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this subsection multiplied by the lesser of:
		a. The NOx Budget opt in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to subsection 41.13.5(e); or
		b. The most stringent State or Federal NOx emissions

limitation applicable to the NOx Budget opt in source during the control period.

# 41.14 Retired unit exemption.



A unit exempt under this section and located at a source that is required,



### 41.15 General Provisions

### 41.15.1 Purpose

The purpose of this regulation is to specify the requirements of a nitrogen oxides budget trading program

# 41.15.2 Authority

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

# 41.15.3 Application

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

### 41.15.4 Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

### 41.15.5 Effective Date

# W. Michael Sullivan, PhD., Director Department of Environmental Management

Notice Given on: February 21, 2007

Public Hearing held: March 23, 2007

Filing Date: June 29, 2007

Effective Date: July 19, 2007

# STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES

# **AIR POLLUTION CONTROL REGULATION NO. 42**

# **HEAVY-DUTY DIESEL ENGINE STANDARDS**



Effective 10 January 2002

Last Amended 19 July 2007

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws § 42 17.1 2(s) and 23 23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42 35.

# RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES

### AIR POLLUTION CONTROL REGULATION NO. 42

### **HEAVY DUTY DIESEL ENGINE STANDARDS**

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# RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT OFFICE OF AIR RESOURCES AIR POLLUTION CONTROL REGULATION NO. 42

### HEAVY-DUTY DIESEL ENGINE STANDARDS

### 42 Heavy-Duty Diesel Engine Standards

#### 42.1 Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

- 42.1.1 "California Air Resources Board" or "CARB" means the California state agency established and empowered to regulate sources of air pollution in California, including motor vehicles, pursuant to California health & safety code sections 43100, 43101 & 43102 et seq.
- 42.1.2 "California Standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States

  Environmental Protection Agency pursuant to the authority of 42

  U.S.C.A. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C.A. Section 7507.
- 42.1.3 "CCR" shall mean the California Code of Regulations
- 42.1.4 "Certification" means a finding issued by CARB certifying that a specified engine family or model year motor vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.
- 42.1.5 "Certified device" means an air contaminant emission control system for which a certification has been issued by CARB or the Department.
- 42.1.6 "Dealer" means every person actively engaged in the business of buying transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.
- 42.1.7 "Division of Motor Vehicles" or "DMV" means the Division of Motor Vehicles of the Rhode Island Department of Administration.

- 42.1.8 "Emergency vehicle" shall have the same meaning, usage and application that it has developed under the heavy-duty diesel engine program adopted by CARB on December 8, 2000.
- 42.1.9 "Emissions-related part" means any automotive part, which affects any regulated emissions from a motor vehicle which is subject to California or federal emission standards. This includes, at a minimum, those parts specified in the "Emissions Related Parts List," adopted by CARB on November 4, 1977, as is or as amended.
- 42.1.10 **"Executive order"** means a document issued by CARB certifying that a specified engine family or model year motor vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.
- 42.1.11 "Gross vehicle weight rating" shall have the same meaning, usage and application that it has developed under the heavy duty diesel engine program adopted by CARB on December 8, 2000.
- 42.1.12 "Heavy-duty diesel engine" means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.
- 42.1.13 "Mail out" means a widely distributed general correspondence issued by CARB whenever said board needs information from the public, or when it wishes to inform the public of new information.
- 42.1.14 "Manufacturer" means any person who produces and/or assembles heavyduty diesel engines or motor vehicles.
- 42.1.15 "Manufacturers advisory correspondence" means a policy document issued by CARB, which interprets the application of the CCR to motor vehicles.
- 42.1.16 "Military tactical vehicle or equipment" shall have the same meaning, usage and application that it has developed under the heavy duty diesel engine program adopted by CARB on December 8, 2000.
- 42.1.17 "Model year" means a motor vehicle manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

- 42.1.18 "Motor vehicle" shall have the same meaning, usage and application that it has developed under the heavy-duty diesel engine program adopted by CARB on December 8, 2000.
- 42.1.19 "New motor vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser.
- 42.1.20 "New motor vehicle engine" means a new engine in a motor vehicle.

### 42.1.21 "Recall" means:

- (a) a manufacturer's issuing of notices directly to consumers that motor vehicles in their possession or control should be corrected;
- (b) a manufacturer's efforts to actively locate and correct motor vehicles in the possession or control of consumers.
- 42.1.22 "Recall campaign" means a plan approved by CARB or the Department, by which a manufacturer will recall non-complying motor vehicles.
- 42.1.23 "Section 1956.8" means Title 13, Division 3, Chapter 1, Article 2, section 1956.8 of the California Code of Regulations.
- 42.1.24 "Title 13" means Title 13 of the California Code of Regulations.
- 42.1.25 "Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.
- 42.1.26 "Ultra-small volume manufacturer" means any manufacturer with California sales less than or equal to 300 new passenger cars, light duty trucks, medium duty vehicles, heavy duty vehicles, and heavy duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.
- 42.1.27 "Urban bus" means a passenger carrying motor vehicle powered by a heavy duty diesel engine, or of a type normally powered by a heavy duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick operating entrance and exit doors would normally be installed. Since fares are usually paid in

cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry on luggage.

### 42.2 Applicability

42.2.1 The Department hereby adopts all sections of the California certification of model years 2005 and 2006 for heavy duty diesel engines certifying that the engine complies with Section 1956.8.

42.2.2 This regulation shall apply to all model year 2005 and 2006 heavy duty diesel engines and to new motor vehicles containing such engines.

42.2.3 The Department shall apply technical guidance issued by CARB relative to the implementation of Title 13, including but not limited to Manufacturers Advisory Correspondences and Mail Outs regarding motor vehicles subject to this regulation.

### 42.3 Requirements for Motor Vehicle Registration and Transactions

42.3.1 No new motor vehicle equipped with a 2005 or 2006 model year heavy duty diesel engine may be registered with the Division of Motor Vehicles unless the applicant presents documentation showing that an Executive Order has been issued for such engine, certifying that the engine complies with Section 1956.8.

42.3.2 No person who is a resident of this state, or who operates an established place of business within this state, shall:

- (a) sell, lease, rent, import, deliver, purchase, acquire, or receive in this state any heavy-duty diesel engine or motor vehicle subject to these regulations; or,
- (b) offer for sale, lease, or rental in this state any heavy duty diesel engine or motor vehicle subject to these regulations; or,
- (c) attempt or assist in any action prohibited by Sub paragraphs (a) or (b), above.

unless the manufacturer of the engine has received an Executive Order certifying that the engine complies with Section 1956.8.

42.3.3 The Department may require a motor vehicle manufacturer or dealer of motor vehicles subject to this regulation to submit documentation to demonstrate their compliance with any Executive Order.

## 42.4 Exemptions

Notwithstanding section 42.3 et seq., this regulation shall not apply to:

- 42.4.1 A model year 2005 or 2006 heavy duty diesel engine manufactured by an ultra small volume manufacturer;
- 42.4.2 An heavy duty diesel engine installed in an urban bus;
- 42.4.3 An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy duty diesel engines of that particular model year and engine family;
- 42.4.4 A motor vehicle acquired by a resident of this state to replace a motor vehicle registered to such resident that was:
  - (a) damaged; or,
  - (b) became inoperative beyond reasonable repair; or,
  - (c) was stolen while out of this state; provided that the replacement motor vehicle is acquired out of state at the time the previously owned motor vehicle was either damaged or became inoperative or was stolen;
- 42.4.5 A motor vehicle with an engine that predates these standards that was transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;
- 42.4.6 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the motor vehicle in this state provides satisfactory evidence to the Division of Motor Vehicles of the previous residence and registration;
- 42.4.7 An emergency vehicle;
- 42.4.8 A military tactical vehicle or equipment; or

42.4.9 Any other motor vehicles exempted by the California Health and Safety Code, section 43656.

### 42.5 Manufacturer Compliance with California Orders and Voluntary Recalls

- 42.5.1 Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation that are: sold, leased, or rented; offered for sale, lease, or rental or; registered in Rhode Island, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such California Air Resources Board action, that this action is not applicable to such engines or motor vehicles in the State of Rhode Island.
- Any voluntary or influenced emission related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation that are: sold, leased, or rented; offered for sale, lease or, rental or; registered in the State of Rhode Island, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the California Air Resources Board, that this campaign is not applicable to such engines or motor vehicles in the State of Rhode Island.

### 42.6 General Provisions

### 42.6.1 Purpose

The purpose of this regulation is to adopt emissions standards for mobile source heavy-duty diesel engines.

### 42.6.2 Authority

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

### 42.6.3 Application

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

### 42.6.4 Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

### 42.6.5 Effective Date

W. Michael Sullivan, PhD., Director

Department of Environmental Management

Notice Given on: February 21, 2007

Public Hearing held: March 23, 2007

Filing Date: June 29, 2007

Effective Date: July 19, 2007