

Chapter 123 -- Standards for Contaminants

NO_x ALLOWANCE REQUIREMENTS

§ 123.101. Purpose.

Sections 123.102—123.120 and this section establish a NO_x budget and a NO_x allowance trading program for NO_x affected sources for the purpose of achieving the health based ozone ambient air quality standard.

§ 123.102. Source NO_x allowance requirements and NO_x allowance control period.

(a) The owner or operator of each NO_x affected source shall, by December 31 of each calendar year, hold a quantity of NO_x allowances meeting the requirements of § 123.110(a) (relating to source compliance requirements) in the source's current year NATS account that is equal to or greater than the total NO_x emitted from the source during that year's NO_x allowance control period.

(b) The initial NO_x allowance control period begins on May 1, 1999.

§ 123.103. General NO_x allowance provisions.

(a) NO_x allowances shall be allocated, transferred or used as whole NO_x allowances. To determine the number of whole NO_x allowances, the number of NO_x allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(b) A NO_x allowance does not constitute a security or other form of property.

(c) Allowances may not be used to meet the requirements of this subchapter prior to the year for which they are allocated.

(d) For the purposes of account reconciliation, NO_x allowances allocated for the NO_x allowance control period shall be deducted first, and remaining allowances if not otherwise designated by the source shall be deducted on a first-in, first-out basis.

(e) NO_x allowances may only be used to comply with §§ 123.101, 123.102, 123.104—123.120 and this section.

§ 123.104. Source authorized account representative requirements.

(a) The owner or operator of a NO_x affected source shall designate for each source account, one authorized account representative and one alternate. Initial designations shall be submitted to the Department by December 1, 1997. An authorized account representative may be replaced or, for

a new NO_x affected source, designated with the submittal of a new “Account Certificate of Representation.”

(b) The “Account Certificate of Representation” shall be signed by the authorized account representative for the NO_x affected source and contain, at a minimum, the following:

(1) Identification of the NO_x affected source by plant name, state and fossil fired indirect heat transfer combustion unit number for which the certification of representation is submitted.

(2) The name, address, telephone and facsimile number of the authorized account representative and the alternate.

§ 123.105. NATS provisions.

(a) The NATS account records shall constitute a NO_x affected source’s NO_x allowance holdings.

(b) The transfer, use and deduction of NO_x allowances become effective only after entry in the tracking system account records.

(c) Any person may hold an account in the NATS.

§ 123.106. NO_x allowance transfer protocol.

(a) NO_x allowances may be transferred at any time between January 31 and December 31 in accordance with § 123.107 (relating to NO_x allowance transfer procedures).

(b) NO_x allowances shall be held by the originating account at the time of the transfer request.

(c) A transfer request shall be filed jointly with the NO_x budget administrator and the Department by the person named as the authorized account representative for the originating account.

(d) The transfer is effective as of the date the NO_x budget administrator posts the transfer of the allowances on the NATS.

§ 123.107. NO_x allowance transfer procedures.

NO_x allowances may be transferred under the following conditions:

(1) The transfer request shall be documented on a form, or electronic media, approved by the Department. The following information, at a minimum, shall be provided:

(i) The account number identifying both the originating account and the acquiring account.

(ii) The name and address associated with the owners of the originating account and the acquiring account.

(iii) The identification of the serial numbers for each NO_x allowance being transferred.

(2) The transfer request shall be authorized and certified by the authorized account representative for the originating account. To be considered correctly submitted, the request for transfer shall include the following statement of certification:

“I am authorized to make this submission on behalf of the owners and operators of the NO_x affected source and I hereby certify under the penalty provisions contained in the Air Pollution Control Act, that I have personally examined the foregoing and am familiar with the information contained in this document, and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment.”

The authorized account representative for the originating account shall provide a copy of the transfer request to each owner or operator of the NO_x affected source.

§ 123.108. Source emissions monitoring requirements.

The owner and operator of each NO_x affected source shall comply with the following requirements:

(1) NO_x emissions from each NO_x affected source shall be monitored as specified by this section and in accordance with the procedures contained in the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(2) The owner or operator of each NO_x affected source shall submit to the Department and the NO_x budget administrator a monitoring plan in accordance with the procedures outlined in the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(3) New and existing unit emission monitoring systems, as required and specified by this section, shall be installed and be operational and shall have met all of the certification testing requirements in accordance with the procedures and deadlines specified in the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program” in a manner consistent with Chapter 139 (relating to sampling and testing).

(4) Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in the document titled “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget

Program.” Notwithstanding this provision, Non-Part 75 Sources which have Department approved NO_x CEMS reporting in accordance with § 139.101 (relating to general requirements) in units of pounds of NO_x per hour shall complete the periodic self-audits listed in the quality assurance section of § 139.102(3) (relating to references) at least annually and no sooner than 6 months following the previous periodic self-audit. If practicable, the audit shall be conducted between April 1 and May 31.

(5) During a period when valid data is not being recorded by devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative default data in accordance with 40 CFR Part 75 (relating to continuous emission monitoring) and the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.” Notwithstanding this provision, Non-Part 75 Sources which have Department approved NO_x CEMS reporting in accordance with § 139.101 in units of pounds of NO_x per hour shall report this data to the NETS and shall continue report submissions as required under Chapter 139 to the Department.

(6) Sources subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified Part 75 monitoring system.

(i) If the source has a flow monitor certified under Part 75, NO_x in pounds per hour shall be determined using the Part 75 NO_x CEMS and the flow monitor. The NO_x emission rate in pounds per million Btu shall be determined using the procedure in 40 CFR Part 75 Appendix F, Section 3 (relating to procedures for NO_x emission rate). The hourly heat input shall be determined by using the procedures in 40 CFR Part 75 Appendix F, Section 5 (relating to procedures for heat input). NO_x in pounds per hour shall be determined by multiplying the NO_x per million Btu by the Btus per hour.

(ii) If a Part 75 source does not have a certified flow monitor, but does have a certified NO_x CEMS, NO_x emissions in pounds per hour shall be determined by using the NO_x CEMS to determine the NO_x emission rate in pounds per million Btu and the heat input shall be determined by using the procedures in 40 CFR Part 75 Appendix D (relating to optional SO₂ emissions data protocol for gas-fired and oil-fired units). NO_x in pounds per hour shall be determined by multiplying the NO_x per million Btu and Btus per hour.

(iii) If the owner or operator of a source uses the procedures in 40 CFR Part 75, Appendix E (relating to optional NO_x emissions estimation protocol for gas-fired peaking units and oil-fired peaking units) to determine the NO_x emission rate, NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emission rate determined by using the Appendix E procedures times the heat input determined using the procedures in 40 CFR Part 75, Appendix D.

(iv) If the owner or operator of a source uses the procedures in 40 CFR Part 75, Subpart E (relating to alternative monitoring systems) to determine NO_x emission rate, NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75 Subpart E and the procedures contained in the document titled, “Guidance for

Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(v) If the source emits to common or multiple stacks, or both, the source shall monitor emissions according to the procedures contained in the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(7) Sources not subject to 40 CFR Part 75 and not meeting the requirements of paragraph (11) shall meet the monitoring requirements of this section by:

(i) Preparing and obtaining approval of a monitoring plan as specified in the document titled, “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(ii) Determining NO_x emission rate and heat input using a methodology specified in paragraphs (8) and (9) respectively or determining NO_x concentration and flow using a methodology specified in paragraphs (8) and (9) respectively.

(iii) Calculating NO_x emissions in pounds per hour using the procedure described in paragraph (10).

(8) The owner or operator of a NO_x affected source which is not subject to 40 CFR Part 75, may implement an alternative emission rate monitoring method. The NO_x emission rate in pounds per million Btu or NO_x concentration in ppm shall be determined using one of the following methods:

(i) The owner or operator of a NO_x affected source that has a maximum rated heat input capacity of 250 MMBtu/hr or greater which is not a peaking unit as defined in 40 CFR 72.2 (relating to definitions), which combusts any solid fuel or is required to or has installed a NO_x continuous emissions monitoring system (NO_x CEMS) for the purposes of meeting either the requirements of 40 CFR Part 60 (relating to standards of performance for new stationary sources) or another Department or Federal requirement, shall use that NO_x CEMS to meet the requirements of this section. If the owner or operator of the unit monitors flow according to paragraph (9), the owner or operator may use the NO_x CEMS to measure NO_x in ppm, otherwise the NO_x CEMS shall be used to measure the emission rate in lb/MMBtu. The owner or operator shall install, certify, operate and maintain this monitor in accordance with the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.” When a NO_x CEMS cannot be used to report data for this program because it does not meet the requirements of the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program,” missing data shall be substituted using the procedures in that document. In addition, the NO_x CEMS shall meet the initial certification requirements contained in the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(ii) The owner or operator of a source that is not required to have a NO_x CEMS, may request

approval from the Department to use any of the following appropriate methodologies to determine the NO_x emission rate:

(A) Boilers or turbines may use the procedures contained in 40 CFR Part 75 Appendix E to measure NO_x emission rate in pounds/MMBtu, consistent with the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(B) Owners and operators of combustion turbines that are subject to this section and § § 123.101—123.107 and 123.109—123.120 may also meet the monitoring requirements of this section and § § 123.101—123.107 and 123.109—123.120 by using default emission factors to determine NO_x emissions in pounds per hour as follows:

(I) For gas-fired turbines, the default emission factor is 0.7 pounds NO_x per MMBtu.

(II) For oil-fired turbines, the default factor is 1.2 pounds NO_x per MMBtu.

(III) Owners and operators of gas turbines or oil-fired turbines may perform testing, consistent with “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program,” to determine unit specific maximum potential NO_x emission rates.

(C) Owners and operators of boilers that are subject to this section and § § 123.101—123.107 and 123.109—123.120 may meet the monitoring requirements of this section and § § 123.101—123.107 and 123.109—123.120 by using a default emission factor of 2.0 pounds per MMBtu if they burn oil and 1.5 lb/MMBtu if they burn natural gas to determine NO_x emissions in pounds per hour, or may perform testing consistent with the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program,” to determine a unit specific maximum potential emission rate.

(9) The owner or operator of a source which is not subject to 40 CFR Part 75, and not meeting the requirements of paragraph (11), shall determine heat input in MMBtu or flow in standard cubic feet per hour using one of the following methods:

(i) The owner or operator of a source may install and operate a flow monitor according to 40 CFR Part 75.

(A) The owner or operator may either use the flow CEMS to monitor stack flow in standard cubic feet per hour and a NO_x CEMS to monitor NO_x in ppm.

(B) In the alternative, the owner or operator may use the flow CEMS and a diluent CEMS to determine heat input in MMBtu and a NO_x CEMS to monitor NO_x in lbs/MMBtu.

(ii) The owner or operator of a source that does not have a flow CEMS may request approval from the Department to use any of the following methodologies to determine their heat input rate:

(A) The owner or operator of a source may determine heat input using a flow monitor and a diluent monitor meeting 40 CFR Part 75 and the procedures in 40 CFR Part 75, Appendix F Section 5.

(B) The owner or operator of a source that combusts only oil or natural gas may determine heat input using a fuel flow monitor meeting 40 CFR Part 75 Appendix D and the procedures of 40 CFR Part 75, Appendix F Section 5.

(C) The owner or operator of a source that combusts only oil or natural gas which uses a unit specific or generic default NO_x emission rate, may determine heat input by measuring the fuel usage for a specified frequency of longer than an hour. This fuel usage shall then be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly Fuel Usage} = \frac{\text{Hourly Electrical Load} \times \text{Total fuel Usage}}{\text{Total Electrical Load}}$$

(D) The owner or operator of a source that combusts any fuel other than oil or natural gas, may request permission from the Department to use an alternative method of determining heat input. Alternative methods include:

(I) Conducting fuel sampling and analysis and monitoring fuel usage.

(II) Using boiler efficiency curves and other monitored information such as boiler steam output.

(III) Other methods approved by the Department and which meet the requirements in the “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(E) Alternative methods for determining heat input are subject to both initial and periodic relative accuracy, and quality assurance testing as prescribed by “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.”

(10) If the owner or operator determines NO_x emission rate in pounds per million Btu in accordance with paragraph (6)(iii) and heat input rate in MMBtu per hour in accordance with paragraph (7), the two values shall be multiplied to result in NO_x emissions in pounds per hour. If the owner or operator determines NO_x emissions in ppm and flow in standard cubic feet per hour, the procedures in “Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program” may be used to determine NO_x emissions of this rule in pounds per hour. This value shall be reported to the NETS.

(11) Non-Part 75 sources which have Department approved NO_x CEMS reporting in

accordance with § 139.101 in units of pounds of NO_x per hour may meet the monitoring requirements of paragraph (7); or shall comply with the following:

(i) Calibration standards used shall be in accordance with both 40 CFR Part 75, Appendix A, Section 5.2 (relating to concentrations) and with § 139.102(3).

(ii) Testing listed in 40 CFR Part 75, Appendix A, Section 6.4 (relating to cycle time/response time test) not already conducted as part of the response time testing in § 139.102(3) shall be conducted.

(iii) Bias testing of the relative accuracy test data in accordance with 40 CFR Part 75, Appendix A, Section 6.5 (relating to relative accuracy and bias tests) shall be conducted. Data from previously conducted relative accuracy testing may be used to meet this requirement.

(iv) Adjustment of data due to failure of bias test (in accordance with 40 CFR Part 75, Appendix A, Section 7.6.5 (relating to bias adjustment) and Appendix B, Section 2.3.3 (relating to bias adjustment factor)) or relative accuracy greater than 10% but less than or equal to 20% (by multiplying the NO_x emissions rate by 1.1), or both, shall be conducted only for reporting to the NO_x budget administrator for purposes of this section.

(v) A Data Acquisition Handling System verification demonstrating that both the missing data procedures and formulas as applicable to this section shall be conducted.

§ 123.109. Source emissions reporting requirements.

(a) The authorized account representative for each NO_x affected source shall submit to the NO_x budget administrator, electronically in a format which meets the requirements of the EPA's Electronic Data Reporting convention, emissions and operations information for each calendar quarter of each year in accordance with the document titled, "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(b) Upon permanent shutdown, NO_x affected sources may be exempted from this section after receiving written Department approval of a request filed by the authorized account representative for the NO_x affected source which identifies the source and date of shutdown.

§ 123.110. Source compliance requirements.

(a) Each year from November 1 through December 31, inclusive, the authorized account representative shall request the NO_x budget administrator to deduct, consistent with § 123.107 (relating to NO_x allowance transfer procedures) a designated amount of NO_x allowances by serial number, from the NO_x affected source's compliance account in an amount equivalent to the NO_x emitted from the NO_x affected source during that year's NO_x allowance control period in accordance with the following:

(1) Allowances allocated for the current NO_x control period may be used without restriction.

(2) Allowances allocated for future NO_x control periods may not be used.

(3) NO_x allowances which were allocated for any preceding NO_x allowance control period which were not used (banked) may be used in the current control period even if this may result in an unlimited exceedance of the NO_x budget. Banked allowances shall be deducted against emissions in accordance with a ratio of NO_x allowances to emissions as specified by the NO_x budget administrator as follows:

(i) If the total NO_x allowances remaining in the NATS for all sources for preceding NO_x allowance control periods are less than or equal to 10% of the total NO_x allowances allocated for that NO_x allowance control period, the ratio is 1:1.

(ii) If the total NO_x allowances remaining in the NATS for all sources for preceding NO_x allowance control periods are greater than 10% of the NO_x allowances allocated for that NO_x allowance control period, the ratio is 2:1 for the portion of banked allowances used for compliance from an account which are in excess of the amount calculated by multiplying the total allowances banked in the account times the PFC (progressive flow control).

where

$$\text{PFC} = \frac{0.1 \times \text{NO}_x \text{ allowances allocated for the control period}}{\text{Total amount of banked allowances in the NATS}}$$

(b) If, by the December 31 compliance deadline, the authorized account representative either makes no NO_x allowance deduction request, or a NO_x allowance deduction request insufficient to meet the requirements of subsection (a), the NO_x budget administrator may deduct the necessary number of NO_x allowances from the NO_x affected source's compliance account. The NO_x budget administrator shall provide written notice to the authorized account representative that NO_x allowances were deducted from the source's account. If the necessary number of NO_x allowances is available, the source will be in compliance after the NO_x allowance deduction is completed. If there is an insufficient number of NO_x allowances available for NO_x allowance deduction, § 123.111 (relating to failure to meet source compliance requirements) applies.

(c) For each NO_x allowance control period, the authorized account representative for the NO_x affected source shall submit an annual compliance certification to the Department.

(d) The compliance certification shall be submitted no later than the NO_x allowance transfer deadline (December 31) of each year.

(e) The compliance certification shall contain, at a minimum, the following:

(1) An identification of the NO_x affected source, including the name, address, the name of the authorized account representative and the NATS account number.

(2) A statement indicating whether or not emissions data has been submitted to the NETS in accordance with § 123.108 (relating to source emissions monitoring requirements).

(3) A statement indicating whether or not the NO_x affected source held sufficient NO_x allowances, as determined in subsection (a), in its compliance account for the NO_x allowance control period, as of the NO_x allowance transfer deadline, to equal or exceed the NO_x affected source's actual emissions and the emissions reported to the NETS for the NO_x allowance control period.

(4) A statement indicating whether or not the monitoring plan which governs the NO_x affected source was followed when monitoring the actual operation of the NO_x affected source.

(5) A statement indicating that all emissions from the NO_x affected source were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

(6) A statement indicating whether there were any changes in the method of operation of the NO_x affected source or the method of monitoring of the NO_x affected source during the current year.

(f) The Department may verify compliance by whatever means necessary, including one or more of the following:

(1) Inspection of facility operating records.

(2) Obtaining information on NO_x allowance deduction and transfers from the NATS.

(3) Obtaining information on emissions from the NETS.

(4) Testing emission monitoring devices.

(5) Requiring the NO_x affected source to conduct emissions testing in accordance with Chapter 139 (relating to sampling and testing).

§ 123.111. Failure to meet source compliance requirements.

(a) Failure by the NO_x affected source to hold in its compliance account, for a NO_x allowance control period, as of the NO_x allowance transfer deadline, sufficient NO_x allowances equal to or exceeding actual emissions for the NO_x allowance control period as specified under § 123.102 (relating to source allowance requirements and NO_x allowance control period) shall result in NO_x allowance deduction from the NO_x affected source's compliance account at the rate of 3 NO_x allowances for every 1 ton of excess emissions. If sufficient allowances meeting the requirements of § 123.110(a) (relating to source compliance requirements) are not available, the source shall provide other sufficient allowances which shall be deducted prior to the beginning

of the next NO_x allowance control period, otherwise the source may not operate during subsequent control periods.

(b) In addition to the NO_x allowance deduction required by subsection (a), the Department may enforce the provisions of this section and § § 123.101—123.110 and 123.112—123.120 under the act and the Clean Air Act.

(1) For purposes of determining the number of days of violation, any excess emissions for the NO_x allowance control period shall presume that each day in the NO_x allowance control period constitutes a day in violation (153 days) unless the NO_x affected source can demonstrate, to the satisfaction of the Department, that a lesser number of days should be considered.

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

§ 123.112. Source operating permit provision requirements.

The operating permit required under Chapter 127 (relating to construction, modification, reactivation and operations of sources) shall include a condition requiring compliance with § § 123.101—123.111, 123.113—123.120 and this section (relating to NO_x allowance requirements). The NATS compliance account number and the authorized account representative shall be listed on the permit.

§ 123.113. Source recordkeeping requirements.

The owner or operator of a NO_x affected source shall maintain for each NO_x affected source and for 5 years, or any other period consistent with the terms of the NO_x affected source's operating permit, the measurements, data, reports and other information required by § § 123.101—123.112, 123.114—123.120 and this section.

§ 123.114. General NO_x allocation provisions.

(a) NO_x allocations to NO_x affected sources may only be made by the Department.

(b) Except as provided in § 123.116 (relating to source opt-in provisions), for NO_x affected sources identified in Appendix A which shutdown or curtail operations, the source account will continue to receive NO_x allowances for each NO_x allowance control period.

§ 123.115. Initial NO_x allowance NO_x allocations.

(a) The sources contained in Appendix E are subject to the requirements of § § 123.101—123.114, 123.116—123.120 and this section. These sources are allocated NO_x allowances for the 1999-2002 NO_x allowance control periods as listed in Appendix E.

(b) The Department may allocate allowances to Duquesne Light Company's Phillips and Brunot Island facilities. The allowances allocated to these facilities are limited as follows:

(1) The facility shall be fully operational.

(2) The allowances allocated to the facility may only be used by the baseline sources located at that facility, and may not be banked or transferred.

(3) The allocation to Brunot Island source identification numbers 001—012 may not exceed an aggregate 246 allowances for the period May 1—September 30.

(4) The allocation to Phillips Station boilers 1—6 may not exceed an aggregate 1,686 allowances for the period May 1—September 30.

§ 123.116. Source opt-in provisions.

(a) A person who owns, operates, leases or controls a non-NO_x affected source located in this Commonwealth may apply to the Department to opt-in that source to become a NO_x affected source. For replacement sources, all sources to which production may be shifted to shall be opted-in together.

(b) A source which began operations without emission reduction credits transferred from a NO_x affected source may become a NO_x affected source under the following conditions:

(1) Submission of an opt-in application to the Department, including:

(i) Documentation of baseline NO_x allowance control period emissions which shall be the average of the actual emissions for the preceding two consecutive NO_x allowance control periods. The Department may approve selection of an alternative two consecutive NO_x allowance control periods within the 5 years preceding the opt-in application if the preceding two control periods are not representative of normal operations. The baseline may not exceed applicable emission limits.

(ii) Evidence that the requirements of §§ 123.101—123.115, 123.117—123.120 and this section (relating to NO_x allowance requirements) can be complied with, including, submission of an emission monitoring plan, designation of an authorized account representative, and that the source is not on the compliance docket established under section 7.1 of the act (35 P. S. § 4005).

(2) Submission of NO_x allowances established under paragraph (1)(i) or subsection (c) by the Department to the NO_x budget administrator.

(c) A source which began operations with emission reduction credits from a NO_x affected source may become a NO_x affected source by complying with subsection (b)(1). To operate the

source, NO_x allowances shall be acquired by the owner or operator from those available in the NATS.

(d) Opt-in sources which opted-in under subsection (b) and which shutdown or curtail operations during any NO_x allowance control period within the 5-calendar years after opting-in shall, prior to January 31 following the shutdown or curtailment, surrender to the Department NO_x allowances for the current NO_x allowance control period equivalent to the difference resulting from the reduction in utilization from the source's baseline operations as established in subsection (b)(1)(i) between the NO_x allowance control period allowance allocation and the emissions reported in accordance with § 123.109 (relating to source emissions reporting requirements). NO_x allocations for future NO_x allocation control periods shall also be surrendered. NO_x allowances which were allocated for any preceding NO_x allowance control period which were not used (banked) may not be surrendered. Surrendered NO_x allowances shall be retired from the NATS and NO_x budget except that upon request by the source owner or operator, the Department may reallocate the NO_x allowances to a qualifying replacement source.

(e) Opt-in sources which remain in operation for 5- calendar years from the date of opt-in shall have a new baseline and allowance allocation set in accordance with the procedure in subsection (b)(1)(i). This baseline may not exceed the opt-in baseline. Thereafter, the source is not subject to this section.

(f) Once electing to opt-in, a source may not revert to a non-NO_x affected source unless it is shut down.

§ 123.117. New NO_x affected source provisions.

(a) NO_x allowances may not be created for new NO_x affected sources. New NO_x affected sources are sources which are not listed in § 123.115 (relating to initial NO_x allowance NO_x allocations). The owner or operator of a new NO_x affected source shall establish a compliance account prior to the commencement of operations and is responsible to acquire any required NO_x allowances from those available in the NATS.

(b) Newly discovered NO_x affected sources not included in Appendix A which operated at any time between May 1 and September 30, 1990, shall comply with § § 123.101—123.116, 123.118—123.120 and this section (relating to NO_x allowance requirements) within 1-calendar year from the date of discovery. For those sources which notify the Department by April 1, 1998, the Department will petition the OTC to include the emissions in the NO_x MOU Budget and provide NO_x allowances to the source using the historical May 1 to September 30, 1990, emissions reduced as specified in § 123.119(a)(4)(ii) (relating to bonus NO_x allowance awards).

§ 123.118. Emission reduction credit provisions.

(a) NO_x affected sources may create, transfer and use emission reduction credits in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources)

and this section. ERCs may not be used to satisfy NO_x allowance requirements.

(b) Emission reductions made through overcontrol, curtailment or shutdown for which allowances are banked are not surplus and may not be used to create ERCs.

(c) A NO_x affected source may transfer NO_x ERCs to an NO_x affected source if the new or modified NO_x affected source's ozone season (May 1—September 30) allowable emissions do not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(d) A NO_x affected source may transfer NO_x ERCs to a non-NO_x affected source under the following conditions:

(1) The non-NO_x affected source's ozone season (May 1—September 30) allowable emissions may not exceed the ozone season portion of the baseline emissions which were used to generate the NO_x ERCs.

(2) The NATS account for NO_x affected sources which generated ERCs transferred to non-NO_x affected sources, including prior to the date of publication in the *Pennsylvania Bulletin*, shall have a corresponding number of allowances retired that reflect the transfer of emissions regulated under § § 123.101—123.117, 123.119—123.120 and this section (relating to NO_x allowance requirements) to the NO_x nonaffected sources. The amount of annual NO_x allowances deducted shall be equivalent to that portion of the nonaffected source's NO_x control period allowable emissions which were provided for by the NO_x ERCs from the affected source.

(3) Allocations for NO_x allowance control periods following 2002 to the NO_x ERC generating source may not include the allowances identified in paragraph (2).

§ 123.119. Bonus NO_x allowance awards.

(a) The Department will, upon receipt of a complete application by November 1, 1998, award a NO_x affected source with bonus NO_x allowances for certain creditable emission reductions made during the 1997 and 1998 ozone seasons (May 1—September 30) under the following conditions:

(1) Creditable reductions shall be in excess of the OTC MOU reduction requirements and any applicable emission limits including RACT and maximum achievable control technology.

(2) Bonus allowances shall be calculated separately for the 1997 and 1998 ozone seasons (May 1—September 30).

(3) The actual average ozone season (May 1—September 30) heat input used to calculate the emission reduction may not exceed the average 1995 and 1996 ozone season actual heat input, or if the Department finds that it is more representative of normal operations, the average ozone season (May 1—September 30) actual heat input which occurred during another consecutive 2

years between and including 1991 and 1995.

(4) Bonus NO_x allowances shall be calculated by multiplying the actual 1997 or 1998, as applicable, average ozone season (May 1—September 30) heat input, times the difference between the following:

(i) The after-control emission rate calculated using the average rate occurring during the 1997 or 1998 NO_x allowance control.

(ii) The lower of the source's applicable emission rate for NO_x expressed in pounds of NO_x per MMBtu, or the baseline emission rate established in Appendix A after applying the following reduction, as applicable. The reduction for sources located in the outer zone is 55% or 0.2 lbs/MMBtu whichever is less stringent, and for sources located in the inner zone, 65%, or 0.2 lbs/MMBtu whichever is less stringent. The inner zone includes Berks, Bucks, Chester, Delaware, Montgomery and Philadelphia counties, and the outer zone includes the remaining counties within this Commonwealth.

(5) Applications shall include the information necessary to determine that the reductions meet the requirements of this section.

(b) On or before May 1, 1999, the Department will publish a report in the *Pennsylvania Bulletin* which documents the number of bonus NO_x allowances awarded.

§ 123.120. Audit.

(a) The Department will complete an audit of the program established by § § 123.101—123.119 and this section (relating to NO_x allowance requirements) prior to May 1, 2002, and at a minimum every 3 years thereafter. The audit shall include the following:

(1) The resulting geographic distribution of emissions as well as the hourly, daily and running average emission totals shall be examined in the context of ozone control requirements. This analysis shall be used in making a determination as to whether the zonal, seasonal and interseasonal trading and banking provisions of the rule require modification to ensure the reductions are as effective as daily emission limits on all sources would be at reducing ozone.

(2) Confirmation of emissions reporting accuracy through validation of NO_x allowance CEMS and data acquisition systems at the NO_x affected source.

(3) If emissions in excess of the NO_x allowances allocated occurred in any NO_x allowance control period, as a result of banking provisions, a determination whether or not the NO_x allowance banking provisions require modification or deletion.

(4) NO_x allowance banking privileges will be examined to determine whether they adversely influenced market availability and price of NO_x allowances or created unfair competitive

advantages and if so, recommend amendments to rectify these problems.

(5) An assessment of whether the program is providing the level of emission reductions included in the current SIP.

(b) In addition to the Department audit, the Department may seek a third party audit of the program. The third party audit can be implemented on a state by state basis or can be performed on a region-wide basis under the supervision of the Ozone Transport Commission.

(c) The Department will propose regulation revisions consistent with the audit results within 6 months of the completion of the audit.

§ 123.121. NO_x Allowance Program transition.

(a) NO_x allocations for the NO_x allowance control periods starting May 1, 2003, will be distributed in accordance with Chapter 145 (relating to interstate pollution transport reduction).

(b) The emission limitations and monitoring requirements established in §§ 123.101—123.120 are replaced by the requirements in Chapter 145 beginning with the May 1, 2003, control period. If a source has failed to demonstrate compliance with § 123.111 (relating to failure to meet source compliance requirements), the provisions in § 145.54(d) (relating to compliance) shall be used to withhold NO_x allowances in calendar year 2003 and beyond. If no NO_x allowances are provided to the source under § 145.42 (relating to NO_x allowance allocations), the source will be obligated to acquire and retire a number of NO_x allowances as specified in § 145.54.