

Effective February 25, 2020, Env-A 2900 reads as follows:

CHAPTER Env-A 2900 SULFUR DIOXIDE AND NITROGEN OXIDES ANNUAL BUDGET TRADING AND BANKING PROGRAM

Statutory Authority: RSA 125-O:3; RSA 125-O:8, I

PART Env-A 2901 PURPOSE; APPLICABILITY; REFERENCES

Env-A 2901.01 Purpose. The purpose of this chapter is to reduce emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) by establishing:

- (a) New Hampshire's SO₂ and NO_x annual budget trading and banking program;
- (b) The method for allocating allowances under that program; and
- (c) The requirements for emissions monitoring, recordkeeping, reporting, and automatic deduction of allowances to offset excess emissions.

Env-A 2901.02 Applicability.

(a) This chapter shall apply to affected sources as defined in RSA 125-O:2, I, namely "existing fossil fuel burning steam power plant units in this state, specifically Merrimack Units 1 and 2 in Bow; Schiller Units 4, 5, and 6 in Portsmouth; and Newington Unit 1 in Newington, excluding any of these units that may be repowered."

(b) Because Schiller Unit 5 commenced operation after repowering on October 20, 2006, that unit shall not be subject to this chapter.

Env-A 2901.03 References. For the purpose of this chapter, unless otherwise specified all references to 40 CFR 72 and 40 CFR 75 shall be to the July 1, 2019 edition.

PART Env-A 2902 DEFINITIONS

Env-A 2902.01 "Account number" means the identification number assigned by the allowance tracking system (ATS) administrator to an account in which allowances are held in the ATS.

Env-A 2902.02 "Account" means the place in the ATS where allowances are recorded that includes one or more of the following:

- (a) A compliance account;
- (b) A general account; and
- (c) An overdraft account.

Env-A 2902.03 "Acquiring account" means the account of the participant in an allowance transfer who obtains allowances through purchase, trade, or gift, or at auction.

Env-A 2902.04 "Affected sources" means "affected sources" as defined in RSA 125-O:2, I, reprinted in Appendix B, subject to the exception noted in Env-A 2901.02(b).

Env-A 2902.05 "Allocate" means the initial assignment of allowances to an affected source through this chapter that is recorded by the ATS administrator to an ATS account. The term includes "allocation."

Env-A 2902.06 "Allowance" means "allowance" as defined in RSA 125-O:2, II, reprinted in Appendix B, except that for purposes of this chapter, the term does not include mercury or carbon dioxide (CO₂).

Env-A 2902.07 “Allowance deduction” means the withdrawal of allowances by the ATS administrator from an ATS account for permanent retirement.

Env-A 2902.08 “Allowance tracking system (ATS)” means, as applicable based on context, either:

(a) The system operated and maintained by the U.S. Environmental Protection Agency (EPA) for tracking SO₂ allowance use for the acid rain program and for tracking the number of allowances held and used by any person; or

(b) A system operated and maintained by either EPA or the department for tracking annual NO_x allowance use and for tracking the number of allowances held and used by any account holder.

Env-A 2902.09 “Allowance transfer” means the conveyance of one or more allowances from one account to another by whatever means, including but not limited to purchase, trade, or gift or at auction, in accordance with the procedures established in this chapter.

Env-A 2902.10 “Allowance transfer deadline” means the deadline, which is 12:01 a.m. on January 31, for recording allowances in an affected source’s compliance or overdraft account for purposes of meeting the requirements of this chapter for the preceding calendar year.

Env-A 2902.11 “Alternative monitoring system” means a system, or a component of a system, that is designed to provide direct or indirect data of mass emissions per time period, pollutant concentration, or volumetric flow, as provided for in this chapter.

Env-A 2902.12 “ATS administrator” means:

(a) For an ATS operated and maintained by EPA, the administrator of EPA or the administrator’s designee; or

(b) For an ATS operated and maintained by the department, the commissioner of the department or the commissioner’s designee.

Env-A 2902.13 “Authorized account representative (AAR)” means an individual who has been authorized in writing by the account holder to transfer and otherwise manage allowances as well as to certify reports to the ATS and the ETS.

Env-A 2902.14 “Banked allowance” means an allowance that is not used to reconcile emissions in the designated year of allocation but that is carried forward into the next year and flagged in the account as banked.

Env-A 2902.15 “Banking” means the retention of unused allowances from one year for use in a future year.

Env-A 2902.16 “Baseline power generation output” means the combined total megawatt-hours (MWh) produced by all affected sources during calendar year 1999, namely 4,859,247 MWh.

Env-A 2902.17 “Budget” means total combined annual allocations.

Env-A 2902.18 “Compliance account” means the ATS account for each affected source that holds current and future year allowances useable for a specific designated calendar year as indicated by their serial number.

Env-A 2902.19 “Discrete emission reduction (DER)” means “ ‘discrete emission reduction’ or ‘DER’ ” as defined in RSA 125-O:2, V, namely, “an emission reduction generated over a discrete period of time, and measured in weight (e.g., tons).”

Env-A 2902.20 “Electric generating device” means any fossil fuel combustion device of 25 MW nameplate capacity or greater that provides electricity for sale or use.

Env-A 2902.21 “Electric output” means the amount of electricity generated, in MWh, by an electric generating device.

Env-A 2902.22 “Emissions tracking system (ETS)” means the computerized system operated and maintained by EPA for tracking emissions for the acid rain program and for tracking emissions from affected sources.

Env-A 2902.23 “ETS administrator” means the administrator of EPA or the administrator’s designee.

Env-A 2902.24 “Excess emissions” means the amount of emissions, rounded to the nearest whole ton, that are greater than the equivalent number of allowances available in the affected source’s compliance or overdraft account by the allowance transfer deadline for that year.

Env-A 2902.25 “Fossil fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived wholly or in part from such material.

Env-A 2902.26 “General account” means an ATS account that is not a compliance account or an overdraft account.

Env-A 2902.27 “Heat input” means the heat derived from the combustion of fuel in an affected source not including the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

Env-A 2902.28 “Net electric output” means the final output of energy from a process after deducting any energy output consumed in any way related to generating energy through that process.

Env-A 2902.29 “Nameplate capacity” means the maximum unrestricted electrical generating output, in MW, that a generator can sustain over a specified period of time.

Env-A 2902.30 “Overdraft account” means the ATS account established by the ATS administrator for each facility where there are 2 or more affected sources, where allowances can be held by a group of affected sources.

Env-A 2902.31 “Ozone transportation region (OTR)” means “ozone transport region” as defined in RSA 125-O:2, VI, reprinted in Appendix B.

Env-A 2902.32 “Person” means “person” as defined in RSA 125-O:2, VII, reprinted in Appendix B.

Env-A 2902.33 “Recorded” for the purposes of an allowance transfer or deduction, means that the ATS administrator has updated an ATS account with the particulars of an allowance transfer or deduction.

Env-A 2902.34 “Renewable energy” means “renewable energy” as defined in RSA 125-O:2, VIII, reprinted in Appendix B.

Env-A 2902.35 “Repowered unit” means “repowered unit” as defined in RSA 125-O:2, IX, reprinted in Appendix B.

Env-A 2902.36 “Serial number” means the unique number assigned to a specific allowance by the ATS administrator that identifies the allowance and indicates the year of allocation.

Env-A 2902.37 “Submitted” means sent to the appropriate ATS or ETS, as applicable, under the signature of the AAR.

PART Env-A 2903 ALLOWANCES

Env-A 2903.01 Legal Attributes of Allowances.

- (a) An allowance shall be a marketable emissions authorization that can be bought, sold, or traded at any time during any year, not just the current year.
- (b) An allowance shall not be a property right or create a property right for any person.
- (c) Future allocations shall not be a property right or create a property right for any person.
- (d) No allowance or future allocation shall constitute a security or other form of property.

Env-A 2903.02 Holding and Using Allowances.

- (a) The owner or operator of each affected source shall, no later than the allowance transfer deadline, hold in the appropriate account for that affected source:
 - (1) A quantity of SO₂ allowances equal to or greater than the total SO₂ emitted from that affected source during the previous year; and
 - (2) A quantity of NO_x allowances equal to or greater than the total NO_x emitted from that affected source during the previous year.
- (b) To use an allowance for compliance with this chapter in a designated compliance year, the allowance shall be:
 - (1) Already in a compliance or overdraft account as of the allowance transfer deadline; or
 - (2) Transferred into the compliance account by an allowance transfer submitted by the allowance transfer deadline.
- (c) Allowances shall be allocated, transferred, or used only as whole allowances.
- (d) If emissions are not reported in whole numbers, the number of allowances needed for those emissions shall be determined by rounding the tons emitted down to the nearest whole number if the fraction is less than 0.50 and rounding the tons emitted up to the nearest whole number if the fraction is 0.50 or greater.
- (e) An allowance shall not be used prior to the year for which the allowance is allocated.

Env-A 2903.03 Conversion of NO_x Allowances to DERs.

- (a) Allowances under this chapter shall not be considered offsets as defined in RSA 125-J:1, XX, however NO_x allowances that are not used to satisfy the requirements of this chapter and that are not banked may be converted to non-ozone season NO_x DERs in accordance with Env-A 3100.
- (b) Each affected source for which unused NO_x allowances are converted to NO_x DERs in accordance with Env-A 3103 shall surrender those converted allowances as if they had been used for actual emissions.

Env-A 2903.04 Repowering. Any affected source that repowers after May 13, 2003, the original effective date of this chapter, shall no longer receive allowances beginning on the date of commencement of operation after repowering.

PART Env-A 2904 ANNUAL EMISSION BUDGETS; ALLOWANCE ALLOCATION

Env-A 2904.01 SO₂ Budget.

- (a) Subject to (b), below, the annual SO₂ budget shall be determined by multiplying the combined baseline power generation from the affected sources by 3.0 pounds per MWh.
- (b) The annual SO₂ budget shall be no more than 7,289 tons.

Env-A 2904.02 NO_x Budget.

- (a) Subject to (b), below, the annual NO_x budget shall be determined by multiplying the combined baseline power generation from the affected sources by 1.5 pounds per MWh, and then subtracting the seasonal NO_x allowances allocated to the affected sources pursuant to Env-A 3200.
- (b) The annual NO_x budget, including the seasonal NO_x allowances allocated to each affected source pursuant to Env-A 3200, shall be no more than 3,644 tons.

Env-A 2904.03 Allocation of Emission Budgets. Using the methodology specified in Env-A 2904.05, the department shall allocate the allowances in each emission budget determined as specified in Env-A 2904.01 and Env-A 2904.02 to the affected sources on December 31 of each year.

Env-A 2904.04 Transfer of SO₂ Allowances. As required by RSA 125-O:4, IV(a)(2), each affected source shall transfer to the department all annual SO₂ allowance allocations provided under the federal acid rain program.

Env-A 2904.05 Allowance Allocation Methodology.

- (a) By April 30 of each year, the department shall calculate allowance allocations for each affected source for the following year in accordance with (c) through (e), below.
- (b) The department shall submit the allowance allocations for each year to the ATS administrator.
- (c) The following shall apply to the calculations of the number of allowances to be allocated to each affected source specified in (d) and (e), below:
- (1) “EB_{NO_x}” means the NO_x emissions budget determined as specified in Env-A 2904.02;
 - (2) “EB_{SO₂}” means the SO₂ emissions budget determined as specified in Env-A 2904.01;
 - (3) “EO(y-2)” means an affected source’s net electrical output in MWh for the year that was 2 years prior to y;
 - (4) “EO(y-3)” means an affected source’s net electrical output in MWh for the year that was 3 years prior to y;
 - (5) “UAA(y)” means an affected source’s allocation for year y, adjusted so that the total allocation does not exceed the budget; and
 - (6) “UUA(y)” means an affected source’s unadjusted allocation for year y.
- (d) The adjusted SO₂ allocation for each individual affected source shall be calculated as follows:
- (1) The affected source’s unadjusted allocation for the current year shall be determined by multiplying the average net electrical output of the affected source in MWh for the years 2 and 3 years prior to the current year by 3.0 lbs per MWh, and dividing the result by 2,000 lb/ton, as shown in the formula below:

$$UUA(y) = \frac{[(EO(y-2) + EO(y-3))/2] \times 3.0 \text{ lbs/MWh}}{2,000 \text{ lb/ton}}$$

(2) The affected source's adjusted allocation for the current year shall be determined by multiplying the UUA(y) calculated pursuant to (1), above, by the SO₂ emissions budget and dividing the result by the sum of all affected sources' unadjusted allocations, as shown in the formula below:

$$UAA(y) = \frac{UUA(y) \times EB_{SO_2}}{\text{sum of all affected sources' UUA}(y)}$$

(e) The adjusted NO_x allocation for each individual affected source shall be calculated as follows:

(1) The affected source's unadjusted allocation for the current year shall be determined by multiplying the average net electrical output of the affected source in MWh for the years 2 and 3 years prior to the current year by 1.5 lbs per MWh, and dividing the result by 2,000 lb/ton, as shown in the formula below:

$$UUA(y) = \frac{[(EO(y-2) + EO(y-3))/2] \times 1.5 \text{ lbs/MWh}}{2,000 \text{ lb/ton}}$$

(2) The affected source's adjusted allocation for the current year shall be determined by multiplying the UUA(y) calculated pursuant to (1), above, by the NO_x emissions budget and dividing the result by the sum of all affected sources' unadjusted allocations, as shown in the formula below:

$$UAA(y) = \frac{UUA(y) \times EB_{NO_x}}{\text{sum of all affected sources' UUA}(y)}$$

(f) Using the best available data as reported by the affected source to the Energy Information Administration and to the department no later than April 15 of each year, the department shall determine the net electric output for the affected source.

Env-A 2904.06 Allocation of Bonus SO₂ Allowances.

(a) Each affected source shall be eligible to receive bonus SO₂ allowances for local reductions made by the affected source in the previous year.

(b) To receive an allocation of bonus SO₂ allowances for local reductions, the AAR of an affected source shall submit a written request to the department, requesting the department to distribute bonus SO₂ allowances to the general account of the affected source for the affected source's local reductions.

(c) The request submitted pursuant to (b), above, shall:

(1) Include detailed calculations that show the difference between the affected source's annual average SO₂ emissions for the 3 years prior to the previous year and the annual SO₂ emissions for the previous year; and

(2) Be submitted no later than April 15 of each year.

(d) Subject to (h), below, in response to a request that complies with (c), above, the department shall allocate bonus SO₂ allowances equal to the difference between the affected source's annual average SO₂ emissions for the 3 years prior to the previous year and the annual SO₂ emissions for the previous year.

(e) Each affected source also shall be eligible to receive one bonus SO₂ allowance per year for every 4 SO₂ allowances that were initially allocated to a source located within the OTR and subsequently purchased

by the affected source under the federal acid rain program and used for compliance with this chapter in the previous year.

(f) To receive an allocation of bonus SO₂ allowances pursuant to (e), above, the AAR of the affected source shall submit a written request to the department, requesting the department to distribute bonus SO₂ allowances to the general account of the affected source for the affected source's allowances that meet the criteria specified in (e), above.

(g) The request submitted pursuant to (f), above, shall:

- (1) Identify the serial numbers of all SO₂ allowances being used to qualify for the bonus allowances;
- (2) Provide the name and location of each source to which the allowances were initially allocated, and
- (3) Be submitted no later than April 15.

(h) Subject to (i), below, in response to a request that complies with (g), above, the department shall allocate one bonus SO₂ allowance per year for every 4 SO₂ allowances that initially were allocated to a source located within the OTR and subsequently purchased by the affected source under the federal acid rain program and used for compliance with this chapter in the previous year.

(i) The combined sum of all bonus SO₂ allowances received by the affected sources shall not exceed 20,000 in any given year.

PART Env-A 2905 ALLOWANCE TRANSFER AND BANKING

Env-A 2905.01 Initiating an Allowance Transfer.

(a) To initiate an allowance transfer, the AAR for the originating account shall:

- (1) Prepare a transfer request as specified in (b), below;
- (2) Authorize and certify the transfer request by signing the statement specified in (c), below;
- (3) Send the transfer request in writing or in electronic form to the ATS administrator; and
- (4) Provide a copy of the transfer request to each owner or operator of the affected source.

(b) The transfer request shall contain the following information:

- (1) The account number of the originating account and of the acquiring account;
- (2) The name and address associated with the owner(s) of the originating account and of the acquiring account; and
- (3) The serial number of each allowance being transferred.

(c) The authorization and certification statement shall read as follows:

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

Env-A 2905.02 Transfer Processing. The ATS administrator shall process transfer requests in order of receipt.

Env-A 2905.03 Transfer Completion. The transfer shall be complete when the ATS administrator has verified that:

- (a) Each allowance listed in the transfer request is held by the originating account at the time the transfer was recorded;
- (b) The acquiring party has an account in the ATS; and
- (c) The transfer request was filed by the person named as AAR for the originating account.

Env-A 2905.04 Transfer Validation. The ATS administrator shall record allowance transfers determined to be valid, through verification by the ATS administrator, in the ATS by deducting the specified allowances from the originating account and adding the allowances to the acquiring account.

Env-A 2905.05 Transfer Notification.

- (a) The ATS administrator shall send written or electronic notification of an allowance transfer to:
 - (1) The AAR for the originating account; and
 - (2) The AAR for the acquiring account.
- (b) The notification sent pursuant to (a), above, shall include:
 - (1) The effective date of the transfer;
 - (2) Identification of the originating account and the acquiring account by name and account number;
 - (3) The number of allowances transferred; and
 - (4) The serial number of each allowance transferred.

Env-A 2905.06 Price Disclosure. Subject to a claim of confidentiality in accordance with Env-C 208, each affected source shall make available to any person, all information regarding transaction cost and allowance price.

Env-A 2905.07 Use of Allowances by Utilities. As provided in RSA 125-J:5, XIII, the use of allowances by a utility, as defined in RSA 362:2, shall be subject to such additional conditions as are ordered by the New Hampshire public utilities commission pursuant to its authority.

Env-A 2905.08 Banking Unused Allowances.

- (a) Any allowances remaining in an account after the ATS administrator has made all deductions for a given year from the compliance account or overdraft account pursuant to Env-A 2908.03 shall be designated as unused allowances.
- (b) Unused allowances may be retained, or banked, for use in a future year in a compliance, overdraft, or general account.

PART Env-A 2906 ALLOWANCE TRACKING SYSTEM (ATS)

Env-A 2906.01 Database Maintenance for Allowance Transfer and Use.

- (a) The ATS administrator shall maintain the ATS as the official database for all SO₂ and NO_x allowance use and transfer.
- (b) The ATS administrator shall track and maintain the following information:
 - (1) The allowances allocated to each affected source;
 - (2) The allowances held in each account;
 - (3) The allowances used by each affected source during each year;
 - (4) The accounts established for each affected source to determine compliance for the source;
 - (5) The accounts opened by individuals or entities, upon request, that are not used for compliance purposes;
 - (6) The allowance transfers, as submitted voluntarily by the source; and
 - (7) The deductions of allowances for compliance purposes.

Env-A 2906.02 Compliance and Overdraft Accounts.

- (a) The ATS administrator shall maintain:
 - (1) A compliance account for each unit at each affected source; and
 - (2) An overdraft account for each owner or operator of one or more units.
- (b) The ATS administrator shall identify each account using an account number.
- (c) The ATS administrator shall maintain the following information for each compliance and each overdraft account:
 - (1) The name and mailing address of the account owner;
 - (2) The name, mailing address, and daytime telephone number of the AAR for the account; and
 - (3) The physical location, by street address and municipality, of the affected source.

Env-A 2906.03 General Accounts.

- (a) The ATS administrator shall allow general accounts to be established.
- (b) Any person wishing to open a general account shall:
 - (1) Designate an AAR as described in Env-A 2906.04; and
 - (2) Provide an account certificate of representation prepared in accordance with Env-A 2906.05 to the ATS administrator.

Env-A 2906.04 Authorized Account Representative.

- (a) Each holder of a compliance account, overdraft account, or general account shall designate one individual to be the AAR for the account and one individual to be the alternate AAR for the account.
- (b) The alternate AAR shall have the same authority to initiate allowance transfers and file reports as the AAR.

Env-A 2906.05 Account Certificate of Representation.

(a) The ATS administrator shall officially accept the designated AAR for an account upon receipt of an Account Certificate of Representation (ACR) from the AAR.

(b) The ACR shall contain the following information:

- (1) Identification of the affected source by plant name, address, and unit number;
- (2) The number of the account for which the ACR is being submitted;
- (3) The name, mailing address, and telephone number of the AAR and alternate AAR and, if available, a fax number and e-mail address; and
- (4) The name of each owner and operator of the affected source.

(c) The AAR or alternate AAR shall sign the ACR.

(d) The signature of the AAR or alternate AAR shall constitute agreement with the following statement, which shall be included verbatim in the ACR:

“I certify that I, _____ (name of AAR or alternate AAR) _____ have been designated as the AAR / alternate AAR (select one) by an agreement binding on the owners and operators of the affected source legally designated as _____ (name of plant) _____. I certify that I have all of the authority necessary to carry out my duties and responsibilities under the SO₂ and NO_x Annual Budget Trading and Banking Program on behalf of the owners and operators of the affected source and of each unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department, the administrator, or a court regarding the source or unit.”

(e) A new AAR shall be designated by submitting a revised ACR to the ATS administrator, with the following information:

- (1) All information required by (b), above, and the signature required by (c), above; and
- (2) The name of the AAR who is being replaced.

(f) The ATS administrator shall record the change of AAR in the ATS.

(g) After the change of AAR has been recorded, the ATS administrator shall send notification of the change of AAR to the department.

PART Env-A 2907 EMISSIONS MONITORING AND REPORTING

Env-A 2907.01 Emissions Monitoring and Reporting Required.

(a) The owner(s), operator(s), and AAR of each affected source shall comply with the emissions monitoring and reporting requirements as specified in this part and as specified in 40 CFR 75, Subpart H.

(b) For purposes of complying with (a), above, the definitions in 40 CFR §72.2 and 40 CFR 75 shall apply, except that:

- (1) The term “affected unit” shall be replaced with the term “affected source” as defined in Env-A 2902.04; and
- (2) The term “designated representative” shall be replaced with the term “AAR” as defined in Env-A 2902.13.

Env-A 2907.02 Emissions Monitoring Systems and Data Accounting. The owner or operator of each affected source shall:

- (a) Maintain all monitoring systems installed as required by Env-A 2910.02 as effective May 13, 2003, as reprinted in Appendix C, for the purposes of monitoring mass emissions, including all systems that monitor emission rate, concentration, heat input, net electrical output, and flow, in accordance with 40 CFR 75;
- (b) Successfully complete all certification tests required and meet all other provisions of this part and 40 CFR 75 applicable to the monitoring systems identified in (a), above; and
- (c) Record and report data from the monitoring systems identified in (a), above.

Env-A 2907.03 Unapproved Modifications to Monitoring Systems Prohibited.

- (a) No owner or operator of any source monitored under 40 CFR §75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval from the department and EPA in accordance with this part.
- (b) No owner or operator of any source monitored under 40 CFR §75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part and 40 CFR 75, except as provided in 40 CFR §75.74.
- (c) No owner or operator of any source monitored under 40 CFR §75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, or any portion thereof, or any other approved emission monitoring method, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this part and 40 CFR 75, except as provided in 40 CFR §75.74.
- (d) No owner or operator of any source monitored under 40 CFR §75.72(b)(2)(ii) shall permanently discontinue the use of the continuous emission monitoring system, or any component thereof, or any other approved emission monitoring system under this part, except under any one of the following circumstances:
 - (1) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved for use at that unit in accordance with the applicable provisions of this part and 40 CFR 75, based on the system providing emission data for the same pollutant or parameter as the discontinued monitoring system; or
 - (2) The AAR submits notification to the department and the ETS administrator of the date of certification testing of a replacement monitoring system in accordance with the applicable provisions of this part.

Env-A 2907.04 Initial Certification and Recertification Procedures. The owner or operator of an affected source shall comply with the initial certification and recertification procedures of 40 CFR 75.

Env-A 2907.05 Certification/Recertification Procedures for Alternative Monitoring Systems.

- (a) The AAR of each unit for which an application for approval to use an alternative monitoring system is being submitted to the ATS administrator and, if applicable, the department, under 40 CFR 75, Subpart E, shall apply for certification to the department prior to using the system to comply with this chapter.
- (b) The AAR shall apply for recertification following a replacement of, or modification to, an alternative monitoring system by following the same procedures as are required for initial certification and recertification as specified in 40 CFR 75.

(c) The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification by following the same procedures as are required for notification and application relative to initial certification and recertification, as specified in 40 CFR 75.20(f).

Env-A 2907.06 Out of Control Periods.

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

(b) Whenever an audit of a monitoring system and a review of the initial certification or recertification application both reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under this part or the applicable provisions of 40 CFR 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department shall issue a notice of disapproval of the certification status of such system or component to the owner or operator of the affected source.

(c) For the purposes of this section, an audit shall be either a field audit or an audit of any information submitted to the department or the ATS administrator.

(d) The data measured and recorded by a system or component for which a notice of disapproval has been issued pursuant to (b), above, shall not be considered valid quality-assured data from the date of issuance of the notification of the disapproval of certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests in accordance with Env-A 2907.04 or Env-A 2907.05, as applicable.

(e) The owner or operator of an affected source shall follow the initial certification or recertification procedures for each disapproved system in accordance with Env-A 2907.04 or Env-A 2907.05.

Env-A 2907.07 Notification. The AAR for an affected source shall comply with the notification requirements of 40 CFR §75.61, except that the notice shall also be submitted to the ATS administrator.

Env-A 2907.08 Recordkeeping and Reporting of Transactions Required.

(a) The AAR shall comply with all recordkeeping and reporting requirements relative to acquisitions and transfers of allowances specified in this part and in Env-A 2905.

(b) Any submission made in accordance with 40 CFR 75, Subpart F or Subpart G that includes data and information required under this part or under 40 CFR 75, Subpart H, shall be signed by both the AAR and the designated representative as defined in Env-A 100.

Env-A 2907.09 Monitoring Plans. The owner or operator of an affected source shall comply with the requirements of 40 CFR §75.62, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H.

Env-A 2907.10 Certification Applications.

(a) The AAR shall submit an application to the department within 45 days after completing all initial certification or recertification tests.

(b) The application submitted pursuant to (a), above, shall include the information required under 40 CFR 75, Subpart H.

Env-A 2907.11 Quarterly Reports.

- (a) The AAR shall submit a quarterly report for each calendar quarter beginning with the calendar quarter that includes the date and hour of initial certification.
- (b) The AAR shall submit the reports required by (a), above, to the ATS administrator within 30 days following the end of the calendar quarter covered by the report, in the manner specified in 40 CFR 75, Subpart H and 40 CFR §75.64.
- (c) Each report required by (a), above, shall include:
- (1) All of the data and information required by 40 CFR 75, Subpart H, for each affected source or group of units using a common stack;
 - (2) The information required by 40 CFR 75, Subpart G; and
 - (3) A compliance certification in support of the report based on an inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored.
- (d) The certification required by (c) above, shall state that:
- (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this part and 40 CFR 75, including the quality assurance procedures and specifications;
 - (2) For a unit with add-on 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 emissions; and
 - (3) The emission rate and concentration values substituted for missing data under of 40 CFR 75, Subpart D do not systematically underestimate emissions.

Env-A 2907.12 Reporting in Electronic Format.

- (a) The AAR for each affected source shall submit, in electronic format using EPA's electronic data reporting (EDR) convention, emissions and operations information as specified in this part.
- (b) Emissions and operations information shall be submitted to the ETS administrator within 30 days of the end of any quarter in which the owner or operator is required to report.

Env-A 2907.13 Pounds per Hour and Pounds per Year. The owner or operator of each affected source shall provide the ETS administrator, in the same quarterly reports and in a format consistent with the format required under Env-A 2907.12, SO₂ and NO_x emissions in pounds per hour for every hour during the year and cumulative quarterly and annual SO₂ and NO_x emission data in pounds.

Env-A 2907.14 Quarterly Reporting. Each affected source shall submit the data required pursuant to Env-A 2907.12 and Env-A 2907.13 to EPA as part of the quarterly reports submitted to EPA for the purpose of compliance with 40 CFR 75.

PART Env-A 2908 END-OF-YEAR RECONCILIATION

Env-A 2908.01 Determination of Compliance. The department shall determine compliance with this chapter based on:

- (a) Monitored emissions data as reported by the affected source to the ETS administrator, and as adjusted by the administrator to be in accordance with Env-A 2907; and

- (b) Allowance allocations and transfers recorded in the ATS.

Env-A 2908.02 Request for Deduction of Allowances.

(a) No later than the allowance transfer deadline of each year, the AAR shall request the ATS administrator to deduct allowances available for the previous year from the compliance account or overdraft account, or both, in an amount equivalent to the number of allowances required to cover the emissions during the previous year.

- (b) The request submitted pursuant to (a), above, shall identify:
 - (1) The compliance account or overdraft account from which the deductions should be made; and
 - (2) The serial number of each allowance to be deducted.

Env-A 2908.03 Deduction of Allowances.

(a) The ATS administrator shall deduct from the affected source's compliance account or overdraft account a number of allowances equal to the affected source's previous year emissions in response to a request submitted pursuant to Env-A 2908.02 or on the ATS's own initiative if a request is not received.

(b) If the serial number of each allowance to be deducted is not specified, the ATS administrator shall deduct allowances for that compliance year in the order of their arrival into the affected source's account, with allocated allowances being deducted first followed by the deduction of transferred allowances.

(c) If allowances equivalent to the emissions are not available in the account, the ATS administrator shall notify the AAR of the deficiency.

Env-A 2908.04 Procurement of Additional Allowances. If the emissions of the affected source in the previous year exceed the allowances in the affected source's compliance account and overdraft account, the affected source shall obtain additional allowances by the allowance transfer deadline so the total number of allowances in the affected source's compliance account and overdraft account, including allowance transfers properly submitted to the ATS administrator by the allowance transfer deadline, equals or exceeds the previous year annual emissions rounded to the nearest whole ton.

PART Env-A 2909 COMPLIANCE CERTIFICATION

Env-A 2909.01 Annual Compliance Certification Required. The AAR for each affected source shall submit an annual compliance certification to the department no later than January 30 of each year.

Env-A 2909.02 Annual Compliance Certification Content. The compliance certification required by Env-A 2909.01 shall contain the following information:

- (a) Identification of the affected source, including:
 - (1) The name, mailing address, and physical location of the affected source;
 - (2) The name of the AAR; and
 - (3) The ATS account number;
- (b) A statement whether emissions data has been submitted to the ETS in accordance with the procedures established in Env-A 2907 and in conformance with the requirements of the ETS administrator;
- (c) A statement whether the affected source:

- (1) Operated in compliance with the allowances allocated for the year, including those obtained through transfer by the allowance transfer deadline;
 - (2) Held sufficient allowances in its compliance account and overdraft account for the year, as of the allowance transfer deadline, to equal or exceed the recorded emissions for the year; and
 - (3) Was actually operated and maintained in accordance with the applicable monitoring plan;
- (d) A statement of certification that all emissions from the affected source were accounted for, either through monitoring in compliance with applicable requirements of this chapter or by applying appropriate missing data procedures; and
- (e) A statement of whether there were any changes during the current year in the method of operating or monitoring the affected source.

Env-A 2909.03 Compliance Verification. The department shall verify compliance by one or more of the following means, as needed to make an accurate compliance determination:

- (a) Inspecting facility operating records;
- (b) Obtaining information on allowance deduction and transfers from the ATS;
- (c) Obtaining information on emissions from the ETS;
- (d) Information relative to testing emission monitoring devices; and
- (e) Requiring the affected source to conduct emissions testing under the supervision of the department.

PART Env-A 2910 ENFORCEMENT PROVISIONS

Env-A 2910.01 Automatic Deduction If emissions from an affected source exceed allowances held in the affected source's compliance account or overdraft account for the year as of the allowance transfer deadline, the ATS administrator shall deduct allowances from the affected source's compliance account or overdraft account for the next year at a rate of 3 allowances for every one ton of excess emissions.

Env-A 2910.02 Determination of Violations. In accordance with RSA 125-O:7, for purposes of enforcement of this chapter, the following shall apply:

- (a) In determining the number of days of violation, any excess emissions for the year shall create a presumption that each day in the year of 365 days constitutes a day in violation;
- (b) The affected source may rebut the presumption established in (a), above, by demonstrating, through use of verifiable emission data, that a lesser number of days should be considered; and
- (c) Each ton of excess emissions shall constitute a separate violation.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statute(s) Implemented
Env-A 2900 (also see specific sections listed below)	RSA 125-O:2; RSA 125-O:3; RSA 125-O:4; RSA 125-O:6, I; RSA 125-O:7; RSA 125-O:8, I
Env-A 2901, Env-A 2902, Env-A 2904, Env-A 2907 - Env-A 2913	RSA 125-O:6, I
Env-A 2903	RSA 125-O:2
Env-A 2903.03	RSA 125-O:4, IV(b)
Env-A 2903.04	RSA 125-O:2, I & IX
Env-A 2904.01	RSA 125-O:3, III(a)
Env-A 2904.02	RSA 125-O:3, III(b)
Env-A 2904.04	RSA 125-O:4, IV(a)(2)
Env-A 2904.05	RSA 125-O:8, I(b)
Env-A 2904.06	RSA 125-O:4, IV(a)(2), (3), & (4)
Env-A 2905	RSA 125-O:3, III
Env-A 2906	RSA 125-O:3, II & III; RSA 125-O:4, IV; RSA 125-O:5
Env-A 2907	RSA 125-O:6, I; RSA 125-O:8, I
Env-A 2907.01	RSA 125-O:8, I(c)
Env-A 2908	RSA 125-O:6, I; RSA 125-O:8, I
Env-A 2908.01	RSA 125-O:4, IV intro
Env-A 2909	RSA 125-O:6, I; RSA 125-O:8, I
Env-A 2909.01	RSA 125-O:4, IV intro; RSA 125-O:8, I(b)
Env-A 2910	RSA 125-O:8, III
Env-A 2910.02	RSA 125-O:7

APPENDIX B: STATUTORY DEFINITIONS

RSA 125-O:2 Definitions. – In this chapter:

- I. “Affected sources” means existing fossil fuel burning steam electric power plant units in this state, specifically Merrimack Units 1 and 2 in Bow; Schiller Units 4, 5, and 6 in Portsmouth; and Newington Unit 1 in Newington, excluding any of these units that may be repowered.
- II. “Allowance” means a limited authorization to emit one ton of SO₂, one ton of NO_x, one pound of mercury, or one ton of CO₂ during a specified year.
- II. “Commissioner” means the commissioner of the department of environmental services.
- IV. “Department” means the department of environmental services.
- V. “Discrete emission reduction” or “DER” means an emission reduction generated over a discrete period of time, and measured in weight (e.g., tons).
- VI. “Ozone transport region” means the ozone transport region as established by section 184(a) of the Clean Air Act, 42 U.S.C. section 7511c.
- VII. “Person” means any individual, partnership, firm or co-partnership, association, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any political subdivision of the state, the United States or political subdivisions or agencies thereof, or any other entity recognized by law as subject to rights and duties.
- VIII. “Renewable energy” means energy derived from hydro, geothermal, wind, solar thermal, photovoltaic, biomass, methane waste, tidal, or other source approved by the department.
- IX. “Repowered unit” means an affected source that has installed qualifying repowering technology as defined by 40 C.F.R. part 72, or has replaced a unit by a new unit, provided the new replacement unit:
 - (a) Is on the same or contiguous property as the replaced unit, regardless of owner;

- (b) Has a maximum power output rate equal to or greater than the maximum power output rate of the replaced unit; and
- (c) Is designed to control, or is equipped with best available technology to control, emissions of multiple pollutants simultaneously, and in conformity with the emissions rates and reductions used to establish RSA 125-O:3.

APPENDIX C: ENV-A 2910.02 AS EFFECTIVE MAY 13, 2003

Env-A 2910.02 Requirements for Installation, Certification, and Data Accounting. No later than 10 days after the effective date of this chapter, the owner or operator of each affected source shall:

- (a) Install all monitoring systems required under this part for monitoring mass emissions, including all systems required to monitor emission rate, concentration, heat input, net electrical output, and flow, in accordance with 40 CFR 75;
- (b) Successfully complete all certification tests required and meet all other provisions of this part and 40 CFR 75 applicable to the monitoring systems under paragraph (a), above; and
- (c) Record and report data from the monitoring systems under paragraph (a), above.