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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-A 3100 DISCRETE EMISSIONS REDUCTIONS TRADING PROGRAM

Statutory Authority: RSA 125-J:12,I

PART Env-A 3101 PURPOSE AND SCOPE

Env-A 3101.01 Purpose. The purpose of this chapter is to establish a process whereby sources may generate and use discrete emissions reductions ("DERs") for compliance with certain volatile organic compounds ("VOCs") and nitrogen oxides ("NOx") requirements, while complying with all other applicable requirements of the Act, RSA 125-C, RSA 125-J, the New Hampshire Rules Governing the Control of Air Pollution, permits, and orders.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3101.02 Scope.

(a) Except as provided under part Env-A 3103.07, any source may generate a DER by reducing emissions, in the amount determined under part Env-A 3103.02. DER generators shall certify that DERs are real, properly quantified, and surplus.

(b) Any person may, at any time, transfer, buy, sell, trade, or otherwise convey DERs to another person in any manner in accordance with the laws of New Hampshire.

Source. #6441, EXEMPT, eff 1-21-97

PART Env-A 3102 DEFINITIONS

Env-A 3102.01 "Activity level" means "activity level" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "the amount of activity at a source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output of the source and is not affected by changes in the emissions rate (i.e., mass per unit of activity)."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.02 "Actual emissions rate" means "actual emissions rate" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "the actual rate of emissions of a pollutant from a source. Actual emissions as of a particular date shall equal the average rate, in mass per unit of time or mass per unit of activity, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation at a particular time. A different time period may be used if that is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, types of materials processed, stored, or combusted during the selected time period."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.03 "Allowable emission rate" for the purpose of Env-A 3100 means "allowable emission rate" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any emission limit applicable to a particular source including all Federal and State requirements for the control of tropospheric ozone and the

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requirements of Title IV of the Act, including but not limited to all requirements in:

(a) A SIP;

(b) The inventories contained in any attainment strategy, maintenance demonstration or ROP plan for any NAAQS; as well as;

(c) Source-specific or source-category-specific permits."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.04 "Alternative emission limitation" means "alternative emission limitation" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any emission limit that applies to a specific source that is less stringent than the limit contained in the SIP, generally for similar sources."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.05 "Area source" for the purposes of Env-A 3000 through Env-A 3200 means "area source" as defined in RSA 125-J:1,III, namely "stationary or non-road sources of emissions which are too small or too numerous to be individually included in a stationary source emissions inventory maintained by the division."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.06 "Attainment area" means "attainment area" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any area of the country designated or redesignated by EPA at 40 CFR part 81 in accordance with section 107(d) of the Act as unclassifiable or better than the national ambient air quality standards for ozone," including, Belknap, Cheshire, Sullivan, Carroll, Grafton, and Coos Counties.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.07 "Attainment demonstration" means "attainment demonstration" as defined in RSA 125-J:1,IV, namely a demonstration that "emissions reductions required to satisfy reasonable further progress ("RFP") and attainment of national ambient air quality standards ("NAAQS") under the Act" are sufficient.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.08 "Conformity purposes" means "conformity purposes" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any reductions required to comply with the conformity requirements contained in 40 CFR part 51, subparts T and W, and part 93, subparts A and B."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.09 "Contingency measure" means "contingency measure" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any emission control measure that is adopted into the SIP which shall be implemented whenever there is a failure to meet the ROP requirement in section 185 of the Act or a failure to attain a

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NAAQS as projected in an approved attainment demonstration."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.10 "Curtailment" means "curtailment" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "a temporary or partial reduction in activity level (e.g., hours of operation and process rate)", excluding any "reduction in activity levels for a mobile source that occurs as a result of an activity reduction plan that is the subject of a USEPA emissions quantification protocol."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.11 "Demonstration" means "demonstration" as defined in Webster's Dictionary, namely "a proving" that is approved by the division or EPA.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.12 "Department" means "department" as defined in RSA 125-J:1,IX, namely "the department of environmental services."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.13 "Discrete emission reduction (DER)" means "discrete emission reduction (DER)" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "an emission reduction generated over a discrete period of time, and measured in weight (e.g., tons)."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.14 "Enforceable" means those limitations and conditions on the emission source's:

- (a) Emissions; and
- (b) Operations, including:
  - (1) Operating rates;
  - (2) Hours of operation; or
  - (3) Types of materials either:
    - a. Processed;
    - b. Stored; or
    - c. Combusted, which are incorporated into a federally enforceable document.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.15 "Federally enforceable" means "federally enforceable" as defined in RSA 125-J:1,XVII, namely "all limitations and conditions which are enforceable by EPA, including those:

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(a) Requirements developed pursuant to 40 CFR parts 55 (Outer Continental Shelf Air Regulations), 60 (New Source Performance Standards), 61 (National Emission Standards for Hazardous Air Pollutants) and 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories);

(b) Requirements within any applicable SIP, including a generic emissions trading program approved as an economic incentive program;

(c) Requirements in operating permits issued pursuant to 40 CFR part 70 (State Operating Permit Programs), 71 or 72 (Permits Regulation); and

(d) Any permit requirements established:

(1) Pursuant to 40 CFR part 52 (Approval and Promulgation of Implementation Plans) subpart A (General Provisions) Sections 52.10 (Review of New Sources and Modifications) or 52.21 (Prevention of Significant Deterioration) or 40 CFR part 55 (Outer Continental Shelf Air Regulations); or

(2) Under regulations approved pursuant to 40 CFR part 55 or 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) subpart I (Review of New Sources and Modifications), including operating permits issued under an EPA approved program that:

a. Is incorporated into the SIP; and

b. Expressly requires adherence to any permit issued under such program."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.16 "Federally enforceable document" means:

(a) A federally enforceable permit issued by the division or EPA;

(b) An ERC certificate issued by the department pursuant to this chapter after EPA approval of the chapter;

(c) A revision to the state implementation plan ("SIP"); or

(d) Administrative or judicial orders, consent agreements, or enforcement actions.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.17 "Generator source" means "generator source" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any" mobile, area, or stationary "source that generates a DER" or ERC.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.18 "Maintenance area" means "maintenance area" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any area

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with a maintenance plan approved under section 175 of the Act."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.19 "Maintenance plan" means "maintenance plan" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "a revision to the applicable SIP, meeting the requirements of section 175A of the Act."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.20 "Mobile source" for the purposes of Env-A 3000 through Env-A 3200 means "mobile source" as defined in RSA 125-J:1,XVIII, namely "on-road vehicles such as automobiles, trucks and motorcycles, and non-road vehicles such as trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road recreational vehicles and motorcycles and marine vessels."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.21 "Netting" means "netting" as defined in RSA 125-J:1,XIX, namely "the process of determining whether or not a net emissions increase of a state or federally regulated pollutant at an existing major source will result from a proposed physical change or change in the method of operation. Netting is used to determine whether or not prevention of significant deterioration ("PSD") or nonattainment new source review applies to modifications at existing sources."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.22 "Normal source operation" means "normal source operation" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "the average actual activity rate of a source necessary for determining the actual emissions rate for the two years prior to the date necessary for determining actual emissions, unless some other time period is more representative of the operation of the source, and may be either the simple arithmetic mean (sum of emissions for 12 months divided by 12) or the mean plus one standard deviation if sufficient data are available to determine the normal source operation for the shorter time period."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.23 "Offset" means "offset" as defined in RSA 125-J:1,XX, namely "the use of an ERC to compensate for emissions increases of a nonattainment pollutant from a new major stationary source or from a major modification to an existing stationary source subject to the requirements of the Act."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.24 "Ozone season" means "ozone season" as defined in Env-A 1211.01(ah), namely, "the period between May 1 and September 30, inclusive."

Source. #6441, EXEMPT, eff 1-21-97

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Env-A 3102.25 "Permanent" means "permanent" as defined in RSA 125-J:1,XXI, namely "that the emissions reductions implemented for the generation and certification of an ERC must be assured for the life of the corresponding increase through a federally enforceable document."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.26 "Protocol" means "protocol" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "a replicable and workable method to estimate the mass of emissions reductions, or the amount of DERs needed for compliance, that meets USEPA's approval criteria."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.27 "Quantifiable" means "quantifiable" as defined in RSA 125-J:1,XXIV, namely "that the amount and rate of an ERC", or DER, "have been calculated in accordance with the following methods:

- (a) Certified stack testing approved by the division;
- (b) Continuous emissions monitoring;
- (c) Applicable guidance documents issued by EPA", including but not limited to:
  - (1) Control technology guidance documents relating to VOC or NOx RACT;
  - (2) "Guidance to States Developing generic MERC regulations" (February, 1994), including but not limited to:
    - a. "Guidance for the Implementation of Accelerated Retirement of Vehicles Programs" (February, 1993);
    - b. "Guidance for Emission Reduction Credit Generation by Clean Fuel Fleets and Vehicles" (January, 1993); or
    - c. "Employee Commute Options Guidance" (December, 1992);" or
- (d) Any other proposed method approved by the department and EPA."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.28 "Reasonably available control technology" or "RACT" for the purposes of Env-A 3000 through Env-A 3200 means "RACT" as defined in RSA 125-J:1,XXV, namely "the lowest emission limitation that a stationary source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.29 "Real" means "real" as defined in Webster's Dictionary, namely "actual".

Source. #6441, EXEMPT, eff 1-21-97

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Env-A 3102.30 "Shutdown" for the purposes of Env-A 3100 means "shutdown" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "the permanent cessation of the activity that results in emissions at all or part of a source, excluding scrappage of mobile sources."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.31 "Source" for the purposes of Env-A 3100 means "source" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any mobile, area, or stationary source."

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.32 "Surplus emissions reductions" mean, in general, any emission reductions that are not otherwise required of a source, and, specifically, mean the emissions reductions achieved from the baseline emission rate exceed the reductions required:

- (a) Under the Act;
- (b) By the SIP, including:
  - (1) Env-A 1204 (VOC RACT); and
  - (2) Env-A 1211 (NOx RACT), which means that the reductions achieved exceed:
    - a. The numerical emission limits required in Env-A 1211; and
    - b. The control technology required in Env-A 1211, which means that no credit shall be granted for the installation of combustion controls (e.g., low NOx burners), regardless of the numerical emission rate achieved by their installation; and
- (c) By any administrative or judicial order, consent agreement, or enforcement action.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3102.33 "User source" means "user source" as defined in the US EPA's proposed Model Open Market Trading Rule (60 FR 39668, August 3, 1995), namely, "any" mobile, area, or stationary "source that seeks to use DERs" or ERCs "to comply with an applicable emission reduction requirement."

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3103 DER GENERATION

#### Env-A 3103.01 Limited Authorization to Emit.

- (a) A DER created under this rule shall be a limited authorization to emit NOx and/or VOC.



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(b) A DER shall not constitute a property right.

(c) Nothing in this rule shall be construed to limit the authority of the division or the United States EPA to terminate or limit such authorization.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.02 General Rule for Computation of DERs. The amount of DERs shall be the difference between:

(a) The amount of VOC or NO<sub>x</sub> emissions that would have been emitted from the source during the generation period calculated by multiplying the actual activity levels during that period by the lower of:

- (1) The lowest applicable allowable emissions rate; or
- (2) The actual emissions rate that would have been emitted based on normal source operation; and

(b) The amount of actual emissions during the generation period based on actual activity levels during that period.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.03 Mathematical Equation for Computation of DERs. The amount of DERs shall be calculated in accordance with the following equation:

$$\text{DERs} = S^A (\text{AL}_A \times \text{ER} - E_A)$$

where:

(a) AL = the activity level during the generation period, expressed as a unit of activity, examples of which are:

- (1) Gallons of solids applied for stationary sources of VOCs;
- (2) Million BTU for stationary sources of NO<sub>x</sub>;
- (3) 1,000 gallons of fuel burned for area sources;
- (4) Number of persons affected for area sources; or
- (5) Vehicle miles traveled (VMT) for mobile sources;

(b) Subscript A = actual;

(c) ER = the lowest allowable or historical actual emission rate that would have been emitted during the generation period, expressed as a mass per unit of production, examples of which are:

- (1) Tons of VOC per gallon of solids applied for stationary sources of VOCs;

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- (2) Tons of NO<sub>x</sub> per million BTU for stationary sources of NO<sub>x</sub>;
  - (3) Tons of VOC or NO<sub>x</sub> per 1,000 gallons of fuel burned for area sources;
  - (4) Tons of VOC or NO<sub>x</sub> per capita for area sources; or
  - (5) Tons of VOC or NO<sub>x</sub> per VMT - for mobile sources;
- (d) E = the amount (typically expressed in tons) of emissions; and
- (e) n = the number of units comprising the source.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.04 Sources Subject to Emissions Caps.

(a) For the purposes of Env-A 3103.02(a)(1) and Env-A 3103.03, the term "allowable emissions rate" includes a source's allowable amount of total emissions for the generation period, as may be specified in that source's federally enforceable operating permit, in the SIP, or included with respect to that source in the attainment demonstration or maintenance plan (or the emissions inventory that forms the basis for such demonstration or plan).

(b) For sources subject to emissions caps, if the generation period differs from the period of the emissions cap, then the allowable emissions rate for the generation period shall be adjusted to reflect the proportion of the generation period to the period of the emissions cap.

(c) Amounts determined under paragraph (b) of this section, shall be adjusted to the extent necessary to exclude emission reductions resulting from shutdowns or curtailments.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.05 Sources Subject to Multiple Emissions Limitations. If a source is subject to multiple emissions limitations, the amount of DERs shall be determined by reference to the emissions limitation that results in the least amount of DERs.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.06 Protocols. The amount of DERs shall be calculated using quantification protocols that meet the requirements of part Env-A 3107.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.07 Limitations on Generation. A DER shall not be formed by emissions reductions of activities or source categories identified in this section:

- (a) Shutdowns;
- (b) Curtailments;
- (c) Modification or discontinuation of any activity that is otherwise in violation of any

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Federal, State or local law;

(d) Emissions reductions required to comply with any provision under the Act for control of tropospheric ozone and Title IV of the Act, including but not limited to:

(1) Administrative and judicial orders issued pursuant to enforcement actions;

(2) Any provision of a Federal implementation plan; and

(3) Requirements for reasonable further progress or attainment of the ozone NAAQS that are adopted into the New Hampshire Rules Governing the Control of Air Pollution, including but not limited to the reductions required by Env-A 1204 ("VOC RACT") and Env-A 1211 ("NO<sub>x</sub> RACT").

(e) Emission reductions of hazardous air pollutants, as defined in section 112 of the Act, from application of a standard promulgated under section 112 of the Act.

(f) Reductions credited or used under any other emissions trading program, including any mobile source averaging, banking, and trading program.

(g) Emission reductions occurring at a source which received an alternative emission limitation to meet a State RACT requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued.

(h) Emission reductions generated prior to the start of the ozone season in 1995.

(i) Any source subject to a RACT limit pursuant to the Act, Env-A 1204, or Env-A 1211, but with respect to which the State has not determined the RACT limit, until the State determines RACT through a permit or RACT Order.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3103.08 Notice and Certification of Generation.

(a) For sources generating DERs prior to the effective date of this rule, the owner or operator of a generator source shall provide a Notice and Certification of Generation to the division no later than 90 days after the effective date of this rule.

(b) For sources generating DERs after the effective date of this rule, the owner or operator of a generator source shall provide a Notice and Certification of Generation to the division:

(1) No later than 90 days after the DER generation activity was completed,

(2) One year after the first day of the generation period (and at least annually thereafter if longer than one year), or

(3) Prior to the first day of the use period, whichever is sooner.

(c) The Notice and Certification of Generation shall be publicly available pursuant to part Env-A 3106.02.

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- (d) The Notice and Certification of Generation shall include the following information:
- (1) For stationary source reductions, identifying information, including:
    - a. The name and address of the generator source, and
    - b. The name of the owner and/or operator of the generator source.
  - (2) For mobile source related reductions, identifying information as required in the applicable protocol, identified under (6) below, or described in USEPA guidance on protocols, including but not limited to:
    - a. "Guidance to States Developing generic Emission Reduction Credits from Mobile Sources (MERC) regulations" (February, 1994);
    - b. "Guidance for the Implementation of Accelerated Retirement of Vehicles Programs" (February, 1993);
    - c. "Guidance for Emission Reduction Credit Generation by Clean Fuel Fleets and Vehicles" (January, 1993); or
    - d. "Employee Commute Options Guidance" (December, 1992);".
  - (3) The generation period.
  - (4) A brief description of the generation activity.
  - (5) The amount of DERs generated during the ozone season and the amount of DERs generated during other parts of the year.
  - (6) The protocols that were used to calculate and document the DERs.
  - (7) A list of all the generator source's applicable allowable emission rates.
  - (8) A statement that the reductions were calculated in accordance with section Env-A 3103.02.
  - (9) A statement that the DERs were not generated in whole or in part from actions prohibited pursuant to section Env-A 3103.07.
  - (10) For each source subject to either New Hampshire's toxic air pollutant rules under Env-A 1300 or Env-A 1400 or subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amounts of toxic air pollutants, as defined in Env-A 1300 or Env-A 1400, and hazardous air pollutants, as defined below, emitted to the air as the result of the generation of the DER, except this provision shall not apply for DERs generated by NOx emissions reductions and for DERs generated by VOC emissions reductions if the emissions of each and every toxic or hazardous air pollutant do not increase and no new toxic or hazardous air pollutant is emitted and the generator source is in compliance with the ambient air limits (AALs) established by Env-A 1300 or Env-A

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1400.

- a. A pollutant shall be reported under this paragraph, only if it:
  - i. Has an AAL established by Env-A 1300 or Env-A 1400; or
  - ii. Is listed both in 40 CFR 372.65 and section 112(b) of the Act, and it is a chemical which the source is reporting or expects to report under 40 CFR part 372 for the calendar year in which the DER was generated.
- b. Any quantity of a pollutant that the generator source knows, in accordance with the requirements in 40 CFR 372.30(b), is emitted as the result of the DER generation shall be reported.
- c. The notice shall include:
  - i. The name and CAS number (if applicable) of each chemical reported under this paragraph;
  - ii. If the chemical identity is claimed trade secret under 40 CFR 372, a generic name for the chemical as reported under 40 CFR 372.85(b)(11);
  - iii. A mixture, as defined in 40 CFR 372.3, component identity if the chemical identity is not known; and
  - iv. An estimate, in pounds, of total air emissions for the source for each chemical reported under this paragraph for the relevant time period of DER generation. Releases of less than 1,000 pounds may be indicated in ranges.

(e) Any Notice and Certification of Generation submitted pursuant to this section shall contain certification under penalty of law by a responsible official of the generator source of truth, accuracy and completeness. This certification shall state that:

- (1) Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete; and
- (2) The generator source is in compliance with all NAAQS, except for ground level ozone, and all AALs for toxics.

Source. #6441, EXEMPT, eff 1-21-97

PART Env-A 3104 DER USE

Env-A 3104.01 Governmental Approvals. No prior Federal, State, or local governmental approval shall be necessary for the use of DERs, except:

- (a) For DERs that shall be used for NSR offsets, State approval pursuant to Env-A 618 shall be required; and
- (b) Unique serial numbers shall be assigned by the division to each ton of DERs prior to

use.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.02 Time of Acquisition. DERs shall not be used unless they are acquired by the user source before the compliance period for which the specific DERs are to be used, except in cases where that use is required by the department as part of a compliance plan and that compliance plan stipulates that at the time of use, DER users shall permanently retire additional DERs dedicated to that particular use, such that the amount of DERs required to demonstrate compliance shall equal the source's calculated need divided by an appropriate noncompliance penalty adjustment factor (for example, 0.8).

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.03 Time of Use. DERs are available for use after the State has received the Notice and Certification of Generation pursuant to part Env-A 3103.08.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.04 Sufficiency. The user source shall hold sufficient DERs to cover its compliance obligation at all times.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.05 Permits.

(a) For sources subject to Env-A 600, the temporary permit when issued, or the operating permit when revised pursuant to that Chapter, shall include in the list of compliance options the option of using DERs for compliance purposes.

(b) The Notices of Intent to Use DERs and Notice and Certification of Use shall be attached to the user source's operating permit, if applicable.

(c) The Notice and Certification of Use shall be attached to the generator source's operating permit, if applicable.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.06 Environmental Contribution. At the time of use, DER users shall permanently retire ten percent of all DERs dedicated to that particular use, such that the amount of DERs required to demonstrate compliance shall equal the source's calculated need divided by 0.9. This environmental contribution shall be taken before any noncompliance penalty adjustment factor is applied under Env-A 3104.02, such that the amount of DERs required to demonstrate compliance shall equal (the source's calculated need divided by 0.9) divided by the appropriate noncompliance penalty adjustment factor.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.07 Compliance Calculation. The amount of DERs needed to demonstrate compliance shall be the difference between:

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(a) The actual emissions expressed in tons or the alternative limit under which the source will operate, and

(b) The allowable emissions based on actual activity levels expressed in tons.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.08 Notice of Intent to Use DERs.

(a) DERs may be used only if the owner or operator of the user source submits to the division a Notice of Intent to Use DERs.

(b) The Notice of Intent to Use DERs shall be submitted at least 30 days before the intended use period begins, and at least annually if the use period is greater than one year.

(c) The Notice of Intent to Use DERs shall be made publicly available pursuant to section Env-A 3106.02.

(d) The Notice of Intent to Use DERs shall include the following information:

(1) The name and location of the user.

(2) The name and identification number of the emissions unit, the permit number (if applicable), and the applicable pollutant (VOC or NOx).

(3) The applicable requirements and state requirements that the DERs will be used to comply with and the intended use period.

(4) A copy of the Notice and Certification of Generation submitted by the generator source to the State.

(5) The protocols that will be used to document the amount of DERs needed to demonstrate compliance.

(6) For each source subject to either New Hampshire's toxic air pollutant rules under Env-A 1300 or Env-A 1400 or subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amounts of toxic air pollutants, as defined in Env-A 1300 or Env-A 1400, and hazardous air pollutants, as defined below, expected to be emitted to the air as the result of the use of the DERs to meet the otherwise applicable requirements, except this provision shall not apply for DERs used to meet NOx requirements.

a. A pollutant shall be reported under this paragraph, only if it:

i. Has an AAL established by Env-A 1300 or Env-A 1400; or

ii. Is listed both in 40 CFR 372.65 and section 112(b) of the Act, and it is a chemical which the source is reporting or expects to report under 40 CFR part 372 for the calendar year in which the DER was generated.

b. Any quantity of a pollutant that the user source knows, in accordance with

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the requirements in 40 CFR 372.30(b), will be emitted as the result of the DER use shall be reported. The estimated amount shall include expected emissions increases (if any) and any expected forgone emission reductions due to use of the DERs instead of non-DER compliance with otherwise applicable requirements.

c. The Notice required under this section shall contain the same information as required under the Notice and Certification of Generation pursuant to subparagraph Env-A 3103.08(d)(10)c.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.09 Notice and Certification of Use.

(a) The owner or operator of a user source shall submit to the division a Notice and Certification of Use that contains the information described in paragraph (d) of this section within 90 days after the end of the use period or one year after the beginning of the use period, whichever is sooner.

(b) The owner or operator of a user source shall provide the required information for each increment of DERs used over a time period not to exceed one year, except that all notices after the initial notice may incorporate required information contained in the initial notice by reference, if that information has not changed.

(c) The Notice and Certification of Use shall be made publicly available in accordance with section Env-A 3106.02.

(d) The initial Notice and Certification of Use shall include the following information:

- (1) The cost of the DERs;
- (2) The name and location of the owner or operator of the user source.
- (3) The date(s) on which the DERs were acquired.
- (4) The amount of DERs used and the associated serial numbers assigned by the division.
- (5) The use period.
- (6) The applicable requirements and state requirements that the DERs were used to comply with.
- (7) The protocols that were used to calculate the amount of DERs required to demonstrate compliance and documentation for the compliance calculation under section Env-A 3104.07.
- (8) A statement that due diligence was made to verify that the DERs were not previously used, not generated as a result of actions prohibited under this regulation or other provisions of law.



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(9) A statement that the DERs were not used in a manner prohibited under this regulation or other provisions of law.

(10) A copy of the relevant Notice and Certification of Generation.

(11) For each source subject to either New Hampshire's toxic air pollutant rules in accordance with Env-A 1300 or Env-A 1400 or subject to reporting toxic chemical releases for the Community Right-to-Know provisions under 40 CFR part 372, the estimated amounts of toxic air pollutants, as defined in Env-A 1300 or Env-A 1400, and hazardous air pollutants, as defined in Env-A 3103.08(d)(10)a.ii., emitted to the air as the result of the use of the DER to meet otherwise applicable requirements, except this provision shall not apply for DERs used to meet NOx requirements.

a. The estimated amount shall include emissions increases (if any) and any forgone emission reductions due to use of DERs instead of non-DER compliance with otherwise applicable requirements.

b. The Notice required under this section shall contain the same information as required under the Notice and Certification of Generation pursuant to subparagraph Env-A 3103.08(d)(10)c.

(e) Any Notice and Certification of Use submitted pursuant to this regulation shall contain certification under penalty of law by a responsible official of truth, accuracy and completeness. This certification shall state that:

(1) Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete; and

(2) The user source is in compliance with all NAAQS, except for ground level ozone, and all AALs for toxics.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.10 Use Limitations. DERs shall not be used:

(a) Before acquisition by the user of the DERs;

(b) For netting or other means to avoid the applicability of NSR requirements;

(c) For NSR offsets or conformity purposes unless the requirements of part Env-A 3108 are met;

(d) To meet Act requirements for:

(1) New source performance standards (NSPS) under section 111;

(2) Lowest achievable emission rate (LAER) standards under section 173(a)(2);

(3) Best available control technology (BACT) standards under section 165(a)(4);

(4) Hazardous air pollutant (HAP) standards under section 112, including the

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requirements for Maximum Available Control Technology (MACT);

- (5) Standards for solid waste combustion under section 129;
- (6) Requirements for a vehicle inspection and maintenance program under sections 182(b)(4) or (c)(3);
- (7) Requirements for an employer trip reduction program under section 182(d)(1)(B);
- (8) Ozone control standards set under section 183;
- (9) Clean fueled fleet requirements under section 246;
- (10) Motor vehicle emissions standards under section 202;
- (11) Standards for nonroad vehicles under section 213;
- (12) Requirements for reformulated gasoline under section 211(k); or
- (13) Requirements for Reid vapor pressure standards under section 211(h) and (i);

(e) State motor vehicle emission standards;

(f) NO<sub>x</sub> reductions shall not be exchanged for VOC increases, in a ratio other than 1:1, except when adequate prior analyses have been performed by the state which indicate that the nature of trades meeting specific criteria was consistent with expected lower ozone concentrations, in accordance with the following general criteria:

- (1) Lower ozone concentrations shall be expected where the interpollutant trading involves excess NO<sub>x</sub> emission reductions in locations where ozone is limited by available NO<sub>x</sub>;
- (2) These prior analyses may be performed by the State(s) or by others in support of one or more SIP's;
- (3) Although a user may perform modeling analyses to support each proposed use of specific DERs, this shall not be required;
- (4) In the event a user and generator were in different States, review responsibility shall be consistent with the policy on interstate trades; and
- (5) Where such interpollutant trades are permitted by States, the distance and direction considerations pursuant to Env-A 3105 shall apply;

(g) To meet requirements during an ozone season unless the DER was generated during an ozone season; or

(h) To meet requirements contained in Title IV of the Act.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3104.11 Delayed Trading.

(a) In the event that sufficient amounts of DERs are not available for use by a user source

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required by the department to use DERs to satisfy past-due RACT requirements, that source shall submit an initial report of the unavailability of usable credits within 60 days of notification of the requirement, and periodically (not less than annually) thereafter, to the department and to EPA.

(b) The department and EPA shall review each report and issue a determination of either approval or disapproval of a delay in the requirement to use DERs. Prior to issuing the determination, the department shall follow the same procedures for public notice and hearing as the department follows for issuing permits in accordance with Env-A 205.

(c) The length of the delay and the amount of additional DERs required shall be specified by the department and EPA in the determination.

Source. #6441, EXEMPT, eff 1-21-97

### Env-A 3104.12 Escrow Accounts.

(a) The commissioner, in consultation with the treasurer of the state of New Hampshire, may establish non-interest-bearing escrow accounts to facilitate the acquisition of DERs.

(b) RESERVED

(c) Escrow accounts may only be used to satisfy past-due RACT requirements, and the balance, in tons, in any such escrow account shall annually decline by at least 20 percent of the original amount.

(d) The balance of any such escrow account shall be kept in tons, and the balance of each such account shall be increased by one percent at the end of each month by the user source.

(e) The commissioner shall require that, at the end of each month, monies shall be held within each such escrow account equal to at least 110 percent of the current market price per ton of DERs times the balance, in tons of that escrow account.

Source. #6441, EXEMPT, eff 1-21-97

## PART Env-A 3105 GEOGRAPHIC SCOPE OF TRADING

### Env-A 3105.01 Geographic Scope.

(a) NO<sub>x</sub> DERs may be used anywhere within New Hampshire, subject to Env-A 3105.02 and Env-A 3108, if they were generated in New England, except in areas that receive a NO<sub>x</sub> waiver from EPA pursuant to section 182(f) of the Act, with no additional ratio applied.

(b) VOC DERs may only be used, subject to Env-A 3105.02 and Env-A 3108,:

(1) Anywhere within New Hampshire if they were generated in New Hampshire; or

(2) In:

a. The New Hampshire portion of the Serious Nonattainment Boston-Lawrence-Worcester Consolidated Metropolitan Statistical Area only if they were generated in the Serious Nonattainment Boston-Lawrence-Worcester

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Consolidated Metropolitan Statistical Area;

b. In Coos, Grafton, or Carroll Counties if they were generated within New England and outside of New Hampshire; or

c. In Belknap, Cheshire, or Sullivan Counties if they were generated within New England, outside of New Hampshire, and inside a nonattainment area.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3105.02 Interstate Trading. DERs may be used in New Hampshire even if generated in another state. To facilitate such uses, the authorized representatives of the two States may approve a binding interstate agreement that is approved by USEPA. Such agreement shall contain at least the following provisions:

(a) Upon request by the authorized representative of New Hampshire, the authority of the State where the generator source is located agrees to provide all relevant information concerning the generator source and the DER generation including, but not limited to, emission limitations and permits issued to the generator source, if any, as well as the Notice and Certification of Generation or other such supporting documentation, in a timely manner;

(b) Upon request by the state where the generator source is located, the State of New Hampshire agrees to provide all relevant information, including the Notice of Intent to Use DERs and the Notice and Certification of Use or other such supporting documentation, in a timely manner;

(c) Upon request, the authority of the State where the generator source is located agrees to notify the State of New Hampshire as to whether the DERs have been used previously;

(d) The authorities of the States where the user and generator sources are located agree to enforce the applicable requirements and their individual State requirements as modified by any valid emissions trades; and

(e) The State of New Hampshire shall determine that the traded reductions were included in the attainment/RFP inventory of the State where the generator source is located and were surplus. Upon such a determination, the State of New Hampshire shall deduct the traded reductions from its attainment/RFP inventory. A separate inventory of actual emissions shall be maintained for modeling purposes.

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3106 RECORDKEEPING AND PUBLIC AVAILABILITY

Env-A 3106.01 Recordkeeping.

(a) The generator source shall maintain records that adequately document the protocol and specific data by which a DER is quantified.

(b) Generator sources shall transfer copies of all such documentation to any transferee at the time that ownership of a DER is transferred.

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(c) The user source shall maintain records that document the protocol and specific data by which the amount of DERs needed for compliance was determined.

(d) The user source shall maintain all relevant documentation for a minimum of five years after a DER is used for compliance.

(e) Any person wishing to destroy records shall request approval from the director in accordance with Env-A 901.09.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3106.02 Public availability. All information, as described in (a) and (b) below, submitted to the State for compliance with this rule shall be available to the public under RSA 91-A, and this information shall not be considered confidential business information.

(a) The division shall make all notices submitted by sources pursuant to this rule available for public review.

(1) For sources with operating permits, the division shall attach copies of these notices to the copy of the operating permit retained in the State offices; and

(2) For sources that do not have operating permits, the division shall make these notices available in a similar manner to Env-A 205; and

(b) The sources shall make all documentation under Env-A 3106.01 that supports the notices submitted to the State available to the public.

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3107 PROTOCOL DEVELOPMENT AND APPROVAL

Env-A 3107.01 General Rule. To quantify the amount of DERs generated and the amount needed for compliance, sources shall use quantification protocols in accordance with the requirements of this part.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3107.02 Quantification Protocols.

(a) If an EPA-approved quantification protocol exists for a given application, it may be used.

(b) If a credit generator wishes to deviate to some extent from an approved protocol, or develop a new protocol, the generator shall do so in accordance with guidance set forth by USEPA, and USEPA approval need not be obtained in advance, however, USEPA reserves the right to reject the protocol and any resulting credits whether or not the protocol was followed.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3107.03 Protocol Methods. Protocols shall contain methods that are credible, practicable, enforceable, and replicable and shall include each of the following elements:

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- (a) A description of the calculation methods used for determining the reductions achieved by the emissions controls as implemented;
- (b) Estimates of the accuracy of the appropriate USEPA test method, if available, not to exceed some given value;
- (c) A description of the recordkeeping program that permits verification of production, materials used, and use of control equipment;
- (d) The USEPA test methods where available; and
- (e) A requirement for complete, verifiable records on production, materials used and use of control equipment.
- (f) Quantification uncertainty adjustment factors applied to the calculated amount of DERs to correct for any inaccuracies estimated in (b), above.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3107.04 Protocol Content. A protocol may contain the following:

- (a) Emission quantification methods contained in an applicable Federally approved operating permit; or
- (b) Emission quantification methods approved in the applicable SIP.

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3108 DER USE FOR NSR & CONFORMITY PURPOSES

Env-A 3108.01 General Rule. All DERs used to:

- (a) Meet NSR offset requirements shall comply with the requirements of section 173 of the Act and 40 CFR 51.165(a) including the requirements of Env-A 3108.02.
- (b) Meet conformity requirements shall comply with 40 CFR part 51, subparts T and W and part 93 subparts A and B.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3108.02 Specific Requirements for NSR.

- (a) The State shall approve the use of specific DERs that cover at a minimum 1 year of operation of the new or modified source in the NSR permit.
- (b) The NSR permit shall contain an enforceable requirement that the source obtain at least one additional year of offsets before continuing operation in each subsequent year.
- (c) The NSR permit shall contain an enforceable commitment that before receiving any operating permit or permit renewal, the operating permit shall contain an enforceable condition

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that the source shall obtain offsets for each subsequent year before continuing to operate in each subsequent year.

(d) In addition to the complying with the requirements of Env-A 3105, pursuant to subsection 173(c)(1) of the Act, "the owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under" Title I Part D of the Act "for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the NAAQS" for ozone "in the nonattainment area in which the source is located".

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3109 PROGRAM AUDITS

Env-A 3109.01 Program Audits. Beginning no later than 1999 and at least every 3 years thereafter (coinciding with the periodic inventory submittals required under section 182 of the Act), the division shall audit this program to evaluate at a minimum, the following program elements:

- (a) Amount and timing of emission reductions (e.g., DERs used compared to DERs generated in a given year or ozone season);
- (b) Compliance by generators and users;
- (c) The effect of the program on temporal and spatial assumptions in the attainment demonstration, and Reasonable further progress plans;
- (d) The effects of remedial measures, if applicable, implemented as a result of previous audit findings.
- (e) The effects on toxic emissions from operation of this rule.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3109.02 Remedial Measures. As determined by the division, the division shall institute remedial measures to the extent necessary.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3109.03 Audit Results. The audit data and results shall be completed, submitted to USEPA, and available for public inspection within one year after the audit begins.

Source. #6441, EXEMPT, eff 1-21-97

### PART Env-A 3110 ENFORCEMENT

Env-A 3110.01 Compliance Burden.

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(a) The DER user source shall be responsible for assuring that the generation and use of DERs comply with this rule.

(b) The DER user source (not the enforcing authority) bears the burden of proving that DERs used are valid and sufficient and that the DER use meets all applicable requirements of this rule.

(c) The DER user source shall be responsible for compliance with its underlying obligations.

(d) In the event of enforcement against the user source for non-compliance, it shall not be a defense for the purpose of determining civil liability that the user source relied in good faith upon the generator source's representations.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3110.02 Violation Day Definition for User Source Excess Emissions.

(a) Section 113(b) of the Act authorizes a maximum civil penalty of \$25,000 per day for each violation.

(b) For purposes of this regulation, the maximum number of days of violation associated with improper DER use or insufficient DER quantity shall be the number of consecutive days with insufficient DER quantity after taking into account DERs used to offset excess emissions (converted to units of mass) on a consecutive day basis.

(c) If a user is unable to document actual emissions rate on a daily basis, the maximum number of days of violation shall include every day since the beginning of the use period during which there was insufficient DERs.

(d) Failure to keep adequate records, as required by Env-A 3106, shall be equivalent to a lack of creditable DERs.

Source. #6441, EXEMPT, eff 1-21-97

Env-A 3110.03 Violations. The director shall issue a notice of violation and an order of abatement, which may be appealed in accordance with Env-A 200, establishing a compliance schedule with which the user source shall comply whenever the director finds that enforcement against the user source for non-compliance is warranted.

Source. #6441, EXEMPT, eff 1-21-97



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