

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-A 3000 EMISSIONS REDUCTION CREDITS TRADING PROGRAM

Statutory Authority: RSA 125-J:12, I

PART Env-A 3001 PURPOSE AND SCOPE

Env-A 3001.01 Purpose. As required by 40 CFR 51, Subpart U - Economic Incentive Programs, and by RSA 125-J, the purpose of this chapter is to ensure that any emissions reductions greater than required by the Act from the following source types shall be used, to the greatest extent possible, for economic development in New Hampshire:

- (1) Mobile sources;
- (2) Stationary sources;
- (3) Area sources; or
- (4) Off-road sources.

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

Env-A 3001.02 Scope.

(a) Any of the above sources, provided that the following rules are followed and a demonstration in accordance with Env-A 3003.04 is submitted to and approved by the division, may generate ERCs by reducing emissions, in the amount determined under the more stringent of paragraphs Env-A 3004.02(b) or (c). The demonstration shall show that the ERCs are enforceable, permanent, real, properly quantified, and surplus;

- (1) The methods to be used to determine that emissions reductions by all eligible sources are real, surplus, quantifiable, enforceable, and permanent for the life of the emissions reduction credit shall be as specified in Env-A 3004.02(a);
- (2) Public notice and hearing procedures for the certification and revocation of emissions reduction credits shall be as specified in Env-A 3004.03;
- (3) The allowable emissions controls for use in achieving emissions reductions to generate emissions reduction credits, including, but not limited to, early implementation of future emissions controls and seasonal controls shall be as specified in Env-A 3004.07; and
- (4) The criteria for the modification, suspension, and revocation of an emissions reduction credits certificate shall be as specified in Env-A 3005; and

(b) Any person may transfer, buy, sell, trade, or otherwise convey ERCs to another person in any manner in accordance with the laws of New Hampshire, including the following:

- (1) The allowable and prohibited uses of emissions reduction credits shall be as specified in Env-A 3006;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) The emissions reduction credits trading requirements shall be as specified in Env-A 3007, including interstate trading requirements which shall be as specified in Env-A 3007.06; and

(3) The allowable methods for determining compliance shall be as specified in Env-A 3008, including data and information required for monitoring of emissions reduction credits shall be as specified in Env-A 3008.03.

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

PART Env-A 3002 DEFINITIONS

Env-A 3002.01 "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 3002.02 "Actual emission rate" means either:

(a) The tons per year of a pollutant actually emitted from an ERC emission source during calendar year 1990; or

(b) The average tons per year of a pollutant actually emitted from an ERC emission source during any 2-year period which precedes the date of application for emissions reduction credits by no more than 5 years and which the division determines:

(1) Is representative of normal production rates; and

(2) Does not jeopardize any target annual RACT level of statewide aggregate emissions reductions or jeopardize any attainment demonstration under the Act.

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

Env-A 3002.03 "Allowable emission rate" for the purpose of Env-A 3000 means "allowable emissions" as defined in Env-A 101.

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

Env-A 3002.04 "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 3002.05 "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

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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 3002.06 "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 3002.07 "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 3002.08 "Baseline emission rate" means the lesser of a an ERC or DER generating source's actual emission rate or allowable emission rate considering all applicable State and Federal regulations, as certified by the department.

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

Env-A 3002.09 "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 3002.10 "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 3002.11 "Emissions reduction credit certificate" means "emissions reduction credit certificate" as defined in RSA 125-J:1,XIII, namely "the document issued by the department certifying emissions reductions for use consistent with this chapter."

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

Env-A 3002.12 "Emissions reduction credits (ERCs)" mean "ERCs" as defined in RSA 125-J:1,XIV, namely "the actual air pollutant reductions from an ERC emission source that have been certified by the department as:

- (a) Enforceable;
- (b) Permanent;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (c) Quantifiable;
- (d) Real; and
- (e) Surplus."

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

Env-A 3002.13 "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 3002.14 "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:

- (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

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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 3002.15 "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 3002.16 "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 3002.17 "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 with a maintenance plan approved under section 175 of the Act."

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

Env-A 3002.18 "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 3002.19 "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

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-A 3002.20 "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 3002.21 "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 3002.22 "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 3002.23 "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

Env-A 3002.24 "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 3002.25 "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 3002.26 "Public ERCs" mean "public ERCs" as defined in RSA 125-J:1, XXIII, namely "ERCs acquired by the state either through:

- (a) Certification of ERCs on state owned, operated or controlled ERC emission sources;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (b) Transfer;
- (c) Shutdown of stationary sources; or
- (d) Emissions reductions achieved by implementation of applicable state law more stringent than the federal minimum requirements under the Act."

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

Env-A 3002.27 "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 3002.28 "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 3002.29 "Real" means "real" as defined in RSA 125-J:1,XXVI, namely "the reduction in baseline emissions from an ERC emission source released into the air."

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

Env-A 3002.30 "Shutdown" for the purposes of Env-A 3000 means "shutdown" as defined in RSA 125-J:1,XXVII, namely "the cessation of production operations by a person who owns, operates, or controls a device or source."

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

Env-A 3002.31 "Source" for the purposes of Env-A 3000 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 3002.32 "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 3002.33 "Transfer" means "transfer" as defined in RSA 125-J:1,XXXI, namely "the conveyance of an ERC certificate", or DER, "from one person to another person, with or without consideration."

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

Env-A 3002.34 "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 3003 ERC GENERATION

Env-A 3003.01 Limited Authorization.

(a) An ERC certified by the department and issued to a generator source under this chapter shall be a limited authorization to hold and transfer such credits.



NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) ERCs shall not constitute a property right.

(c) ERCs shall only be receivable, holdable, and transferable for so long as the credits are certified by the department.

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

Env-A 3003.02 General Rule for Computation of ERCs. The rate of ERCs shall be the difference between:

(a) The baseline emission rate; and

(b) The rate of allowable emissions after certification.

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

Env-A 3003.03 Applicable Pollutants. Only emissions reductions occurring after December 31, 1990 from the source types listed in Env-A 3001.01 for the following regulated pollutants shall be eligible for ERCs:

(a) Volatile organic compounds ("VOCs");

(b) Oxides of nitrogen ("NOx"); and

(c) Carbon Monoxide ("CO").

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

Env-A 3003.04 Information Required. To apply for an ERC certificate, any person shall submit the following to the division:

(a) For stationary source reductions, a permit application(s) in accordance with Env-A 600;

(b) A demonstration that the emissions reductions are:

(1) Enforceable;

(2) Permanent;

(3) Quantifiable;

(4) Real; and

(5) Surplus.

(c) Such demonstrations shall include the following additional information:

(1) A complete description of the Generator source, including an inventory of all

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

emissions sources, which for stationary sources means all emissions sources that were included in the most recently submitted calculations of emission-based fees in accordance with Env-A 704;

(2) The actual activity level and allowable emission rate of each emission source for the applicable pollutant excluding exempt activities as listed in Env-A 609.03(c);

(3) The proposed baseline year, and the proposed baseline annual, ozone season, and peak day emission rates, including detailed calculations in accordance with the following formula or any other method of calculation approved by the division:

$$\text{Baseline} = ER_A \times PR_A = ER_{H1}XPR_{H1} + ER_{H2}XPR_{H2} + \dots + ER_{H8760}XPR_{H8760}$$

where:

a. ER = the lower of either the actual quantified emission rate or the allowable emission rate, 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;
2. Tons of NOx per million BTU for stationary sources of NOx;
3. Tons of VOC or NOx per 1,000 gallons of fuel burned for area sources;
4. Tons of VOC or NOx per capita for area sources; or
5. Tons of VOC or NOx per vehicle miles traveled (VMT)- for mobile sources; and

b. PR = the actual quantified production rate, expressed as a unit of production per unit of time, examples of which are:

1. Gallons of solids applied per year for stationary sources of VOCs;
2. Million BTU per year for stationary sources of NOx;
3. 1,000 gallons of fuel burned per year for area sources;
4. Number of persons affected per year for area sources; or
5. VMT per year for mobile sources;

c. subscript A = annual average; and

d. subscripts H1, H2 ... H8760 = hourly averages for hours one through 8,760.

(4) The proposed allowable annual, ozone season, and peak day emission rates;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (5) An evaluation of applicability of current and known potential future regulations to determine that the proposed reduction is surplus;
  - (6) A complete description of the method of achieving the reduction, including a complete description of any control equipment involved;
  - (7) A proposed schedule of implementation, including commitment dates for the following (if applicable):
    - a. Completion of engineering for any controls to be installed prior to the issuance of the ERC certificate;
    - b. Submission of permit application(s);
    - c. Awarding of contract;
    - d. Initiation of construction;
    - e. Completion of construction;
    - f. Initial and periodic quantification of emissions or a proposed uncertainty factor to account for the lack thereof;
    - g. Submission of emissions reports; and
    - h. Final achievement of the proposed allowable emission rate; and
  - (8) Any other information necessary to support the demonstration; and
- (d) A statement signed by a responsible official under penalty of law attesting that:
- (1) The reductions were calculated in accordance with Env-A 3003.02;
  - (2) The reductions were not generated in whole or in part from actions prohibited by law; and
  - (3) The Generator source is not in violation of any emissions limitation of a permit issued by the division or EPA, any consent agreement or court order, any NAAQS, except for ground level ozone, nor any ambient air limit (AAL) for toxics.

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

PART Env-A 3004 CERTIFICATION OF EMISSIONS REDUCTION CREDITS

Env-A 3004.01 Certification of ERCs. The department shall certify ERCs upon verification by the department that the emissions reductions are real, surplus, quantifiable, enforceable, and permanent, and that the Generator source is not in violation of any emissions limitation of a permit issued by the division or EPA, any consent agreement or any court order, or any NAAQS, except for ground level ozone, or AAL.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

Env-A 3004.02 Verification Procedures. The department shall verify that the reductions are:

- (a) "Quantifiable", by requiring the Generator source to:
  - (1) Conduct certified stack testing in accordance with Env-A 800;
  - (2) Install continuous emissions monitoring in accordance with Env-A 800;
  - (3) Comply with applicable control technology guidance documents issued by EPA;  
or
  - (4) Comply with any other method approved by the department and EPA.
- (b) "Real", by subtracting the proposed quantifiable allowable emission rate from the quantifiable baseline emission rate and obtaining a positive result;
- (c) "Surplus", by subtracting the proposed quantifiable allowable emission rate from the current allowable emission rate and obtaining a positive result;
- (d) "Enforceable", by incorporating limitations on the Generator source's emissions and operations into a federally enforceable document; and
- (e) "Permanent", by incorporating limitations on the life of the ERC into a federally enforceable document.

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

Env-A 3004.03 Public Notice Procedures. Prior to issuing an ERC certificate to any person having certified ERCs, the department shall follow the same procedures for public notice and hearing as the department follows for issuing permits in accordance with Env-A 621.

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

Env-A 3004.04 Issuance of an ERC Certificate. The department shall issue the certificate in the name of:

- (a) The permit holder for a permitted stationary source; or
- (b) The person who applied for the certified ERCs for an area source, a mobile source, or a stationary source which is exempt from permitting requirements pursuant to RSA 125-C.

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

Env-A 3004.05 Certificate Content. The department shall record on the certificate the total amount of ERCs certified to a generator source, together with any conditions required to ensure that such ERCs remain real, surplus, quantifiable, enforceable, and permanent for the life of the ERC, including conditions enabling the department to continue to verify the reductions in

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

accordance with the verification procedures in Env-A 3004.02.

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

Env-A 3004.06 Permitting Requirements. For every permitted Generator source, the department shall follow the procedures for amending permits in accordance with Env-A 600, and shall record the total amount of certified ERCs, together with any conditions required to ensure that such ERCs remain real, surplus, quantifiable, enforceable, and permanent for the life of the ERC, on an amended permit issued for the Generator source by the division or by EPA.

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

Env-A 3004.07 Certification Eligibility. All emissions reductions obtained from Generator sources shall be eligible for certification, regardless of whether the reductions were generated from emissions previously regulated under permits issued by the division or EPA, provided that:

- (a) The department determines that the reductions are real, surplus, quantifiable, enforceable and permanent; and
- (b) Such reductions are certified in accordance with this Chapter.

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

Env-A 3004.08 Basis for Certification. Emissions reductions shall be certified for use on a calendar year basis. In accordance with Env-A 3004.05, however, additional conditions with shorter bases may be incorporated into an ERC certificate in order to make it a federally enforceable document.

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

Env-A 3004.09 Minimum Amount of Reductions. The minimum amount of emissions reductions eligible for certification shall be one ton per calendar year, per pollutant. Emissions reductions of less than one ton per calendar year, per pollutant may be aggregated in order to achieve the minimum one ton certification requirement.

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

Env-A 3004.10 Certification Ratio. ERCs shall be certified in a ratio of one ton per calendar year of credit for one ton per calendar year of reduction for each applicable pollutant.

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

### PART Env-A 3005 REVOCATION OF EMISSIONS REDUCTION CREDITS

Env-A 3005.01 Suspension, Modification, or Revocation. The director shall suspend, modify, or revoke any ERC certificate issued under this chapter, or any portion thereof, upon finding, following a hearing, that:

- (a) The certificate holder has committed a violation of this chapter, or any rule, order,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

permit, or certificate condition in force and applicable to it;

(b) The certificate contains a material mistake;

(c) The certificate, or its terms or conditions, were established and issued on the basis of inaccurate information; or

(d) The certificate issued must be revised to assure that the reductions represented thereon are and remain real, surplus, quantifiable, enforceable and permanent, and in compliance with all terms or conditions issued thereto.

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

PART Env-A 3006 USE OF EMISSIONS REDUCTION CREDITS

Env-A 3006.01 List of Issued Certificates and Escrow Accounts. The department shall:

(a) Maintain a list of ERC certificates which have been issued and a list of all escrow accounts established, the balance of tons of each account, and the amount of monies held within each account;

(b) Publish the lists on January 1, and July 1 of every year;

(c) Send a copy of the list to the governor and council;

(d) Update the list on a monthly basis no later than the 10th day of the month; and

(e) Make the updated list available upon request under RSA 91-A.

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

Env-A 3006.02 Transfer of ERCs. An ERC certificate and the ERCs represented thereon shall be transferable among and between persons and the state upon 7 days prior written notice to the department. Any person and the state shall be able to transfer any amount of ERCs at any time during the calendar year as provided in this chapter.

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

Env-A 3006.03 Procedures for Use. Procedures for use shall be as follows:

(a) Any ERC certificate shall become void upon the use of the ERCs represented thereon unless consent to use the certificate is requested in writing from the department and consent is granted in advance of said use;

(b) The request shall include the following:

(1) The cost of the ERCs;

(2) If the user source is a stationary source, a permit application(s) in accordance with Env-A 600;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The proposed dates on which the ERCs:
  - a. Were or will be acquired; and
  - b. Will be used;
- (4) The applicable state and federal requirements with which the ERCs will be used for compliance;
- (5) A demonstration that the proposed amount of ERCs to be used are equal to or greater than the difference between the user source's current quantifiable emission rate and the applicable state and federal requirements with which the ERCs will be used for compliance;
- (6) Such demonstrations shall exclude any information recorded on the permit application(s) required under (2), above, but shall include the following additional information:

- a. A complete description of the User source, including an inventory of all emissions sources, which for stationary sources means all emissions sources that were included in the most recently submitted calculations of emission-based fees in accordance with Env-A 704;
- b. The maximum capacity of each emission source;
- c. The proposed amount of ERCs to be used and the proposed annual, ozone season, and peak day emission rates, including detailed calculations in accordance with the following formula or any other method of calculation approved by the division:

$$\text{Use} \geq \frac{\text{CQER}_A - \text{PFAER}_A}{8760}$$
$$\geq S \frac{\text{CQER}_H - \text{PFAER}_H}{H'1}$$

where:

- 1. CQER = the current quantifiable emission rate, expressed as a mass per unit of time; and
- 2. PFAER = the projected future allowable emission rate, expressed as a unit of mass per unit of time;
- 3. subscript A = annual average; and
- 4. subscripts H1, H2 ... H8760 = hourly averages for hours one through 8,760.

- (7) The emissions quantification protocols that were used to calculate the amount of ERCs required to demonstrate compliance and documentation for the compliance calculation;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(8) A statement signed by a responsible official under penalty of law attesting that due diligence was made to verify that the ERCs were not previously used, or were not generated as a result of actions prohibited under this regulation or other provisions of law;

(9) A statement by a responsible official under penalty of law attesting that the ERCs will not be used in a manner prohibited under this regulation or other provisions of law, including that the ERCs will not be used to violate any NAAQS, except for ground level ozone, or AAL, based on reasonable inquiry, which shall include either review of a previously performed ambient air impact analysis or conductance of a new ambient air impact analysis to ascertain compliance with the NAAQS, except for ground level ozone, for criteria pollutants and compliance with Env-A 1300 or Env-A 1400 for toxic air pollutants; and

(10) Any other information necessary to support the demonstration; and

(d) Pending the department's issuance of a written approval of the use of the credits, the person to whom the ERCs are transferred shall abide by all conditions of all federally enforceable permits and certificates administratively amended in accordance with Env-A 612, or such permits and certificates shall be rendered null and void.

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

Env-A 3006.04 Allowable Use. Stationary sources may use ERCs, upon division approval, to satisfy any requirement under the Act or RSA 125-C for:

- (a) Offsets;
- (b) RACT;
- (c) Bubbling; and
- (d) RESERVED.

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

Env-A 3006.06 Prohibited Use. Stationary sources shall not use ERCs to meet the standards or the requirements of:

- (a) Federal New Source Performance Standards (NSPS);
- (b) National Emission Standards for Hazardous Air Pollutants (NESHAPS);
- (c) The requirements for Lowest Achievable Emission Rates (LAER);
- (d) The requirements for Best Available Control Technology (BACT);
- (e) The requirements for Maximum Available Control Technology (MACT);
- (f) Any National Ambient Air Quality Standard (NAAQS) for criteria pollutants, except



NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

ground level ozone;

(g) Any Prevention of Significant Deterioration (PSD) increment;

(h) Any reduction required as the result of any state or federal enforcement action, consent agreement, or court order;

(i) Emission reductions achieved by sources which received an alternative emission limitation in accordance with 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;

(j) Any Ambient Air Limit (AAL) for toxic pollutants; or

(k) Any reduction required during an ozone season, unless the ERC was generated during an ozone season.

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

Env-A 3006.07 ERCs for Offsets.

(a) ERCs used in satisfying any offset requirement under the Act or RSA 125-C, and the regulations and rules, including but not limited to Env-A 618, promulgated thereunder, respectively, shall be transferred on a permanent basis and shall have been obtained in accordance with the Act and RSA 125-J and the regulations and rules promulgated thereunder.

(b) In addition to the complying with the requirements of Env-A 3007.05, 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

Env-A 3006.08 ERCs for RACT. ERCs used in satisfying any RACT requirement under the Act or RSA 125-C, and the regulations and rules promulgated thereunder, respectively, shall be transferred on a temporary or permanent basis.

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

Env-A 3006.09 Holding of ERCs. ERCs held for future use in any calendar year shall not be aggregated for any purpose with ERCs certified for use in any other calendar year. Banking is not allowed. For example, if a generator source installs controls that achieve a 10 ton/year reduction, but the credits are not used until 3 years from the certification date, the credit is still only 10 tons/year, and it is not 30 tons plus 10 tons/year.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

Env-A 3006.10 ERCs from Shutdowns. ERCs which have been certified to, or emissions reductions which are eligible for certification to, a generator source which shuts down its production operations shall be public emissions credits and shall revert to the state for use consistent with this chapter, except where such ERCs are to be used at other stationary sources within the state by the person or persons who owned, operated and controlled the Generator source that was shutdown.

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

Env-A 3006.11 Use of ERCs from Shutdowns. User sources intending to use ERCs in accordance with Env-A 3006.10 shall comply with the following procedures:

- (a) Any ERCs shall become public emissions credits and shall revert to the state unless written consent to hold the ERCs is requested in writing and obtained from the department;
- (b) Such written consent shall be requested:
  - (1) Within 120 days following the shutdown (or the effective date of this rule, whichever is later);
  - (2) At least 30 days before the intended use period begins; and
  - (3) At least annually, if the intended use period will not begin prior to one year after the most recent request;
- (c) Pending the department's determination on the request for approval of the holding of ERCs, the User source shall not use the ERCs; and
- (d) The request shall contain all of the information, as set forth in Env-A 3003.04, required to qualify for receipt of a credit.
- (e) The request shall contain a demonstration that the proposed reductions are in excess of shifting demand. This demonstration shall include either:
  - (1) A signed statement that the Generator source shall not shift production, and correspondingly increase emissions, to other sources located either within or outside New Hampshire; or
  - (2) A signed statement specifying the amount and location of the shifted production, and corresponding emissions increase, to other sources located either within or outside New Hampshire.

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

Env-A 3006.12 Public Emissions Credits. Public emissions credits obtained by the state pursuant to this chapter shall be used or held for use by the governor and council for meeting any requirement of the SIP, any attainment demonstration under the Act, or for transfer to new or

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

existing stationary sources in the state which require offsets under the Act. In determining the use or transfer of public credits, the governor and council shall consider the following criteria:

- (a) Whether the credits will result in job retention, which shall be the highest priority;
- (b) Whether the credits will be used for economic development in New Hampshire;
- (c) Whether a prospective company offers the best prospects for long-term growth and job creation;
- (d) Current New Hampshire businesses shall be given priority over businesses relocating to New Hampshire;
- (e) The market value of the credits; and
- (f) No less than 75% of public emissions credits generated in serious nonattainment areas shall be applied to requirements applicable in serious nonattainment areas.

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

Env-A 3006.13 Use of Funds. Funds from the sale of public emissions credits shall be placed in a special account within the air resources permit fund. No less than 50% of these funds shall be used by the governor and council for the acquisition and generation of ERCs for future economic development. The remainder of the funds may be used by the state for the administrative costs associated with implementing the program.

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

Env-A 3006.14 Use of ERCs by Utilities. The use of ERCs by a utility as defined in RSA 362:2 shall be subject to such additional conditions as ordered pursuant to applicable law by the public utilities commission.

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

Env-A 3006.15 RESERVED

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

### PART Env-A 3007 TRADING OF EMISSIONS REDUCTION CREDITS

Env-A 3007.01 ERCs from RACT Sources. ERCs generated by Generator sources subject to RACT which are transferred to stationary sources subject to RACT shall be transferred in the ratio of 1:1.

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

Env-A 3007.02 ERCs from non-RACT Sources. ERCs generated by Generator sources not subject to RACT which are transferred to stationary sources for use in satisfying any requirement under the Act or RSA 125-C shall be transferred in accordance with the offset ratios for nonattainment areas as provided in the Act.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

Env-A 3007.03 Substitution of NO<sub>x</sub> for VOCs Reductions. ERCs certified for reductions of nitrogen oxides (NO<sub>x</sub>), shall be eligible to satisfy any applicable requirements for volatile organic compounds (VOCs). Substitution of NO<sub>x</sub> for VOCs reductions shall be in a ratio of 1:1, or an alternative ratio approved by the division and EPA. Such proposed substitution shall be consistent with the modeling analyses contained in the SIP; and each proposed substitution shall be required to be supported by a modeling analysis specific to such use that demonstrates that the proposed substitution does not violate any applicable requirement of the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) or Env-A 1300 or Env-A 1400.

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

Env-A 3007.04 Ratios. The ratios provided in Env-A 3007.01, Env-A 3007.02, and Env-A 3007.03 are established solely for the purpose of transferring ERCs between Generator sources and user sources and do not modify, amend or supercede any offset requirements of the Act.

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

Env-A 3007.05 Geographic Scope of Trading.

(a) NO<sub>x</sub> ERCs. NO<sub>x</sub> ERCs may be used, in accordance with the ratios provided in Env-A 3007.01, Env-A 3007.02, and Env-A 3007.03, anywhere within New Hampshire 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; and

(b) VOC ERCs. VOC ERCs may be used in accordance with the ratios provided in Env-A 3007.01, Env-A 3007.02, and Env-A 3007.03:

(1) Anywhere within New Hampshire if they were generated in New Hampshire, with no additional ratio applied; 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 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 3007.06 Interstate Trading. ERCs may be used in New Hampshire even if generated in another state. To facilitate such uses, the authorized representatives of the two States

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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 ERC generation, 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, 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 ERCs 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

### Env-A 3007.07 Delayed Trading.

(a) In the event that sufficient amounts of ERCs are not available for use by a user source required by the department to use ERCs 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 ERCs. 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 ERCs required shall be specified by the department and EPA in the determination.

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

### Env-A 3007.08 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 ERCs.

(b) RESERVED

(c) Escrow accounts may only be used to satisfy past-due RACT requirements, and the

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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.

(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 ERCs times the balance, in tons of that escrow account.

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

APPENDIX

PART Env-A 3008 INSPECTION, MONITORING AND RECONCILIATION

Env-A 3008.01 Inspection. For the purpose of determining compliance with this chapter, any rule adopted by the division relative to this chapter or an ERC certificate issued under this chapter, an employee or authorized representative of the division, the department, or EPA shall be allowed to, upon presentation of appropriate credentials and at least once every 3 years or at any other reasonable time:

(a) Enter any facility containing a generator or user source;

(b) Inspect and photograph Generator or user sources which produce or control air pollution and air contaminants, and obtain samples of materials processed in, and generated from, the Generator or user source; and

(c) Inspect and copy records, information or test results relating to:

(1) Air pollution;

(2) Air contaminants;

(3) Generator or user sources which produce or control air pollution and air contaminants;

(4) ERCs which have been applied for by a generator source; or

(5) ERCs which have been issued by the department.

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

Env-A 3008.02 Recordkeeping. The director shall require persons certifying and using ERCs to collect, maintain, and submit data, in accordance with Env-A 900, necessary to ensure that ERCs are, and remain, in compliance with all requirements of this chapter and the Act, and with the conditions of the ERC certificates issued hereunder.

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

Env-A 3008.03 Monitoring. In order to demonstrate that the amount and rate of ERCs are quantifiable, by definition, Generator sources and any person to whom ERCs are transferred to shall comply with the testing and monitoring requirements specified in Env-A 800, applicable

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

control technology guidance documents issued by EPA, or any other method approved by the department and EPA.

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

Env-A 3008.04 Reconciliation. The user of any ERCs shall obtain additional ERCs upon a determination by the department by the above inspection and monitoring procedures that actual emissions are higher than the projected emissions using the certified ERCs. The amount of additional ERCs required shall be specified by the department in a notice of violation and an order of abatement and shall be, at a minimum, equal to the difference between the actual and projected emissions.

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

Env-A 3008.05 Program Audits. Trades shall be tracked and audited, individually, by the division at the time of each inspection conducted in accordance with Env-A 3008.01. Post-audit reports shall be submitted to EPA and shall include the following:

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

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

### PART Env-A 3009 ENFORCEMENT

Env-A 3009.01 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 Generator and user source shall comply whenever the director finds that a person who has been issued an ERC has violated:

- (a) The provisions of this chapter;
- (b) Any rules in force hereunder; or
- (c) Any condition of an ERC certificate issued hereunder, including such conditions incorporated into permits issued by the division or EPA.

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

Env-A 3009.02 Injunctions. Any violation of Env-A 3009.01(a), Env-A 3009.01(b), or Env-A 3009.01(c) shall be subject to enforcement by injunction, including mandatory injunction,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

issued by the superior court upon application by the attorney general.

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

PART Env-A 3010 PENALTIES

Env-A 3010.01 Civil Penalties. Any person who commits the following shall be subject to a civil penalty not to exceed \$25,000 for each violation and each day of continuing violation:

- (a) A violation of Env-A 3009.01(a), Env-A 3009.01(b), or Env-A 3009.01(c); or
- (b) An omission of material information in connection with the certification of ERCs; or
- (c) Any false statement or representation in connection with the certification of ERCs.

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

Env-A 3010.02 Misdemeanors and Felonies. Any person who knowingly or willfully commits a violation of Env-A 3009.01(a), Env-A 3009.01(b), or Env-A 3009.01(c) shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

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

Env-A 3010.03 Imprisonment and Fines. In addition to any sentence of imprisonment, probation, or conditional discharge, any person found guilty of any violation pursuant to Env-A 3010.02, notwithstanding RSA 651:2, shall be fined not more than \$25,000 for each violation and each day of continuing violation.

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

Env-A 3010.04 Length of Violation. For purposes of this regulation, the maximum number of days of violation associated with improper ERC use or insufficient ERC quantity shall be the number of consecutive days with insufficient ERC quantity after taking into account ERCs used to offset excess emissions on a consecutive day basis.

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



