APPENDIX F

Rule to Reduce Interstate Transport of Fine Particles

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Part IV

Environmental Protection Agency

40 CFR Parts 51, 52 et al.

Air Pollution Control—Transport of Emissions of Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 72, 73, 74, 78, 96, and 97

[EPA–HQ–OAR–2004–0076; FRL–8047–5]

RIN 2060–AM99

Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: Today, EPA is taking actions to address the interstate transport of emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) that contribute significantly to nonattainment and maintenance problems with respect to the national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) and 8-hour ozone. As one part of today's action, EPA is providing its final response to a petition submitted to EPA by the State of North Carolina under section 126 of the Clean Air Act (CAA). The petition requests that EPA find that SO_2 and/or NO_X emissions from electric generating units (EGUs) in 13 States are significantly contributing to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in North Carolina, and requested that EPA establish control requirements to prohibit such significant contribution. The EPA is denying the petition because, in today's action, EPA is promulgating Federal implementation plans (FIPs) for all jurisdictions covered by the Clean Air Interstate Rule (CAIR) to address interstate transport.

The FIPs will regulate EGUs in the affected States and achieve the emissions reductions requirements established by the CAIR until States have approved State implementation plans (SIPs) to achieve the reductions. As the control requirement for the FIPs, EPA is adopting the model trading rules that EPA provided in CAIR as a control option for States, with minor changes to account for Federal rather than State implementation.

Today's action also revises CAIR SIP model trading rules in order to address the interaction between the EPA-administered CAIR FIP trading programs being promulgated today and the EPA-administered CAIR State trading programs that will be created by any State that elects to submit a SIP establishing such a trading program to meet the requirements of the CAIR. In addition, EPA is taking final action on our reconsideration of the definition of ''EGU'' as it relates to solid waste incinerators.

Today's action also makes revisions to the Acid Rain Program in order to make the administrative appeals procedures, which currently apply to final determinations by the Administrator under the EPA-administered CAIR State trading programs, also apply to the EPA-administered trading programs under the FIP action. In addition, we are making certain minor revisions to the Acid Rain Program that will apply to all affected units.

DATES: This action is effective on June 27, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0076. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning today's section 126 action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–05, Research Triangle Park, NC 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov*. For general questions concerning today's FIP action, please contact Tom Coda, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01, Research Triangle Park, NC 27711, telephone (919) 541–3037, e-mail at *coda.tom@epa.gov*. For legal questions concerning the section 126 action, please contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5523, e-mail at *silverman.steven@epa.gov*. For legal questions concerning the FIP action, please contact Sonja Rodman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–4097, e-mail at *rodman.sonja@epa.gov*. For questions regarding the cap-and-trade programs and emissions budgets, please contact Meg Victor, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9193, e-mail at *victor.meg@epa.gov*. For questions regarding the revisions to the CAIR and Acid Rain Programs, please contact Dwight Alpern, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.

Category	NAICS code [1]	Examples of potentially regulated entities
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is affected by this action, you should examine the definitions and applicability criteria in §§ 72.2, 72.6, 72.7, 72.8, and 74.2 for purposes of the Acid Rain Program revisions and §§ 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305 for purposes of the FIP action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section under **FOR FURTHER INFORMATION CONTACT.**

II. Availability of Related Information

The EPA has conducted separate rulemakings that contain actions and information related to today's action. The final ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)'' was published on May 12, 2005 (70 FR 25162) (see also proposal at 69 FR 4566, January 30, 2004; supplemental proposal at 69 FR 32684, June 10, 2004; and notice of data availability at 69 FR 47828, August 6, 2004). The EPA subsequently reconsidered several aspects of the final CAIR (see 70 FR 72268; December 2, 2005 and 70 FR 77101; December 29, 2005) and is taking final action on reconsideration in a separate action today. In addition, the EPA issued a proposal to include Delaware and New Jersey in CAIR for $PM_{2.5}$ (70 FR 25408, May 12, 2005) and is finalizing that rulemaking today, also in a separate action. Documents related to the CAIR, including the actions on reconsideration and to include Delaware and New Jersey in CAIR for $PM_{2.5}$, are available for inspection in docket EPA–HQ–OAR–2003–0053 at the address and times given above. The EPA has established a website for the CAIR at *http://www.epa.gov/cleanairinterstaterule* or more simply *http://www.epa.gov/cair/* which also includes information on the section 126 rulemaking. The rulemaking docket for the CAIR contains information and analyses that are relied upon in today's actions. Therefore, EPA is including by reference the entire CAIR record for purposes of the section 126 and FIP rulemakings.

III. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 27, 2006. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B)also provides a mechanism for the EPA to convene a proceeding for reconsideration if the petitioner demonstrates that it was impracticable to raise an objection during the public comment period or if the grounds for such objection arose after the comment period (but within the time for judicial review) and if the objection is of central relevance to the rule. Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration, clearly labeled as such, to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., Washington, DC 20460, with a copy to the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel, Mail Code 2344A, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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I. Background and Summary of Rule

A. Summary of Rule

In this rule, EPA is taking two final actions related to the interstate transport of emissions of NO_X and SO_2 that contribute significantly to nonattainment and maintenance problems with respect to the NAAQS for $PM_{2.5}$ and 8-hour ozone. First, EPA is providing its final response to the petition submitted to EPA by the State of North Carolina under section 126 of the CAA. Second, EPA is promulgating FIPs for all jurisdictions covered by the CAIR. The EPA is also making revisions to the final CAIR to clarify certain provisions, to correct minor errors, and to take final action on reconsideration of the definition of ''EGU'' as it relates to solid waste incinerators. Finally, EPA is making minor revisions to the Title IV Acid Rain Program.

The North Carolina petition requests that EPA establish control requirements for EGUs in 13 States based on findings that these sources are significantly contributing to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in North Carolina. (See Petition, Docket No. EPA–HQ–OAR–2004–0076–0002.)

The EPA's response (as well as the petition itself) is based on extensive analyses conducted for the CAIR (70 FR 25162; May 12, 2005). The EPA is denying the petition in full. For sources in States not shown in the final CAIR to be linked to (that is, to significantly contribute to) nonattainment and maintenance problems in North Carolina, the lack of significant contribution to North Carolina is the basis for this denial. For sources in States that are linked to North Carolina under the CAIR for the $PM_{2.5}$ NAAQS, EPA is denying the petition because, concurrently with the section 126 response, EPA is promulgating FIPs that require elimination of the significant contribution. The FIPs will control the significant transport from sources in States named in the petition as well as from sources in the other CAIR States, in the event that the States do not have timely, approved SIPs meeting the CAIR requirements. The States named in the petition with respect to the $PM_{2.5}$ NAAQS are: Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Of these, Illinois and Michigan are not linked to North Carolina in the final CAIR.

The States named in the petition with respect to the 8-hour ozone NAAQS are: Georgia, Maryland, South Carolina, Tennessee, and Virginia. There are no States linked to North Carolina under the CAIR for the 8-hour ozone NAAQS because North Carolina is projected to be in attainment in the 2010 baseline for the analyses.

As mentioned above, in today's action, EPA is also promulgating FIPs to address interstate transport of NO_X and SO_2 under section 110(a)(2)(D) for all jurisdictions that are covered by the CAIR. In the CAIR, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment of the NAAQS for $PM_{2.5}$ and/or 8-hour ozone in downwind States. The CAIR explains EPA's basis for determining significant contribution to downwind nonattainment and maintenance problems. In that rule, the EPA required the affected upwind States to revise their SIPs to include control measures to reduce emissions of SO_2 and/or NO_X. Sulfur dioxide is a precursor to $PM_{2.5}$ formation, and NO_X is a precursor to both ozone and $PM_{2.5}$ formation.

In an action published on the same day as the final CAIR, EPA proposed to find that Delaware and New Jersey contribute significantly to $PM_{2.5}$ nonattainment and maintenance problems in downwind States considering these States as a single entity (70 FR 25408; May 12, 2005). These States were included in the final CAIR only with respect to their impacts on downwind 8-hour ozone nonattainment and maintenance problems. Today, in a separate action, EPA is issuing the final rule to include Delaware and New Jersey in the CAIR region for $PM_{2.5}$. Therefore, today's FIP rule includes emissions reductions requirements for Delaware and New Jersey to address their significant contribution to nonattainment or maintenance problems for the $PM_{2.5}$ NAAQS.

The FIPs will regulate EGUs in the affected States and achieve the emissions reductions required by the CAIR until States have approved SIPs to achieve the reductions. The CAIR emissions budgets were based on control requirements that are highly cost effective for EGUs.

The EPA intends the CAIR FIPs to address the requirements of section 110(a)(2)(D)(i) to prevent interstate transport that contributes significantly to nonattainment or interferes with maintenance in downwind areas and to provide a Federal backstop for CAIR. In no way should the FIPs for CAIR be viewed as a sign of any concern about States meeting their SIP responsibilities under CAIR. There are no sanctions associated with these FIPs and EPA does not intend for CAIR FIPs to have any negative consequences for the affected States. The EPA is providing FIP approaches that are flexible and intended to provide States options for getting their SIPs in place.

As the control requirement for the FIPs, EPA is adopting the model trading rules that EPA provided in CAIR as a control option for States, with minor changes to account for Federal rather than State implementation. The CAIR FIP NO_X and SO_2 trading programs provide emissions reductions equal to those required under the CAIR in affected States.

These trading programs provide emissions reductions equal to those required under CAIR in the affected States. The CAIR FIP trading programs are integrated with the EPA-administered State CAIR trading programs that are based on the model rules so that sources can trade with one another under the respective emissions caps. The EPA emphasizes that the FIPs do not limit the options available to States to meet the requirements of the CAIR. We do not intend to record NO_X allocations in sources' allowance accounts (or take any other steps to implement FIP requirements that could impact a State's ability to regulate their sources in a different manner) until a year after the CAIR SIP submission deadline.[1] This will allow EPA time to

[1] The CAIR requires affected sources to begin monitoring 1 year before the initial control periods (*i.e.,* sources begin monitoring in 2008 for the NO_X programs and begin monitoring in 2009 for the SO_2 program). Note that EPA will take any necessary actions to implement the monitoring provisions of the FIP trading rules in time for monitoring to begin in 2008. To the extent that a State chooses to

take rulemaking action to approve timely SIPs before implementation of FIP requirements occurs. In addition, States could replace the FIP requirements at a later time.

In today's action, EPA is also making revisions to the CAIR in order to address the interaction of EPA-administered NO_X and SO_2 trading programs under the CAIR and under the FIP action. In addition, EPA is making revisions to the CAIR in order to clarify certain provisions and to correct certain minor errors and taking final action on reconsideration of the definition of ''EGU'' as it relates to solid waste incinerators.

The EPA is also revising the Title IV Acid Rain Program in order to make the administrative appeals procedures (in 40 CFR part 78), which currently apply to final determinations by the Administrator under the EPA-administered State CAIR trading programs, also apply to the EPA-administered trading programs under the FIPs. In addition, EPA is making minor revisions that would apply to all affected units under the Acid Rain Program.

B. General Background on $PM_{2.5}$ and Ozone

1. The $PM_{2.5}$ Problem

In an action published on July 18, 1997, we revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using as the indicator particles with aerodynamic diameters smaller than a nominal 2.5 micrometers, termed $PM_{2.5}$ (62 FR 38652). We established health- and welfare-based (primary and secondary) annual and 24-hour standards for $PM_{2.5}$. The annual standard is 15 micrograms per cubic meter, based on the 3-year average of annual mean $PM_{2.5}$ concentrations. The 24-hour standard is 65 micrograms per cubic meter, based on the 3-year average of the annual 98th percentile of 24-hour concentrations. The annual standard is generally considered the more limiting value.[2]

Fine particles are associated with a number of serious health effects including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. (See EPA, Air Quality Criteria for Particulate Matter (EPA/600/P–99/002bF, October 2004) at 9.2.2.3).) The EPA has estimated that attainment of the current $PM_{2.5}$ standards would prolong tens of thousands of lives and would prevent, each year, tens of thousands of hospital admissions as well as hundreds of thousands of doctor visits, absences from work and school, and respiratory illnesses in children.

Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children. More detailed information on health effects of fine particles can be found on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.*

The secondary or welfare-based $PM_{2.5}$ standards are designed to protect against major environmental effects caused by PM such as visibility impairment, soiling, and materials damage.

As discussed in other sections of this preamble, SO_2 and NO_X emissions both contribute to fine particle concentrations. In addition, NO_X emissions contribute to ozone concentrations, described in the next section.

The $PM_{2.5}$ ambient air quality monitoring for the 2001–2003 period shows that areas violating the standards are located across much of the eastern half of the United States and in parts of California and Montana. The EPA published the $PM_{2.5}$ attainment and nonattainment designations on January 5, 2005 (70 FR 944) and issued supplemental amendments on April 14, 2005 (70 FR 19844).

2. The 8-Hour Ozone Problem

In an action published on July 18, 1997, we promulgated identical revised primary and secondary ozone standards that specified an 8-hour ozone standard of 0.08 parts per million (ppm). Specifically, under the standards, the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.08 ppm. In general, the revised 8-hour standards are more protective of public health and the environment and more stringent than the pre-existing 1-hour ozone standards.

Short-term (1- to 3-hour) and prolonged (6-to 8-hour) exposures to ambient ozone have been linked to a number of adverse health effects. At sufficient concentrations, short-term exposure to ozone can irritate the respiratory system, causing coughing, throat irritation, and chest pain. Ozone can reduce lung function and make it more difficult to breathe deeply. Breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that may require a doctor's attention and the use of additional medication. Increased hospital admissions and emergency room visits for respiratory problems have been associated with ambient ozone exposures. Longer-term ozone exposure can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. A lower quality of life may result if the inflammation occurs repeatedly over a long time period (such as months, years, or a lifetime). There is also recent epidemiological evidence suggesting that there may be a correlation between short-term ozone exposure and premature mortality.

People who are particularly susceptible to the effects of ozone include people with respiratory diseases, such as asthma. Those who are exposed to higher levels of ozone include adults and children who are active outdoors.

In addition to causing adverse health effects, ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests, and other environmental stresses (*e.g.,* harsh weather). In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can also decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of our national parks and recreation areas. More detailed information on health effects of ozone can be found at the following EPA Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

Presently, wide geographic areas, including most of the nation's major population centers, experience ozone levels that violate the NAAQS for 8-hour ozone. These areas include much of the eastern part of the United States and large areas of California. The EPA published the 8-hour ozone attainment and nonattainment designations in the **Federal Register** on April 30, 2004 (69 FR 23858).

control EGUs to meet its CAIR obligations, the monitoring requirements will be identical whether EPA regulations EGUs through the Federal trading programs or the State regulates EGUs through its SIP.

[2] The EPA recently proposed to amend the NAAQS for $PM_{2.5}$ (71 FR 2620; Jan. 17, 2006). The EPA is scheduled to take final action on this proposal by September 27, 2006. These actions are not relevant to this rulemaking because all of the actions herein concern the existing NAAQS.

3. Other Environmental Effects Associated With SO_2 and NO_X Emissions

In addition to the enumerated human health and welfare benefits resulting from reductions in ambient levels of $PM_{2.5}$ and ozone, reductions in NO_X and SO_2 will contribute to substantial visibility improvements in many parts of the eastern United States. Reductions in these pollutants will also reduce acidification and eutrophication of water bodies in the region. In addition, reducing emissions of NO_X and SO_2 from EGUs can be expected to reduce emissions of mercury. Reduced mercury emissions in turn may reduce mercury loadings in lakes and thereby potentially decrease both human and wildlife exposure to fish containing mercury.

C. What Is the Statutory and Regulatory Background for Today's Action?

1. What Is the ''Good Neighbor'' Provision?

Following promulgation of new or revised NAAQS, the CAA requires all areas, regardless of their designation as attainment, nonattainment, or unclassifiable, to submit SIPs containing provisions specified under section 110(a)(2). Among these requirements are those specified by the so-called ''good neighbor'' provision section 110(a)(2)(D) which addresses interstate transport of air pollution.

Section 110(a)(2)(D) requires that a SIP contain adequate provisions—

(i) Prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [any] national primary or secondary ambient air quality standard, or

(II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.

(ii) Insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

Section 126 is discussed in the following section and section II of this preamble explains the relationship between CAA sections 110 and 126 with respect to our final response to the section 126 petition and the CAIR FIPs.

2. What Is the CAA Section 126 Provision?

Subsection (a) of section 126 requires, among other things, that SIPs require major proposed new (or modified) stationary sources to notify nearby States for which the air pollution levels may be affected by the fact that such sources have been permitted to commence construction. Subsection (b) provides:

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)[(i)] [of] this section* * *.

Subsection (c) of section 126 states that—

[I]t shall be a violation of this section and the applicable implementation plan in such State [in which the source is located or intends to locate]—

(1) For any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of section 110(a)(2)(D)[(i)] [3] [of] this section, or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

However, subsection (c) further provides that EPA may permit the continued operation of such major existing sources beyond the 3-month period, if such sources comply with EPA-promulgated emissions limits within 3 years of the date of the finding.

3. What Is EPA's Previous Section 126 Rulemaking?

The EPA has previously taken action under section 126 to address interstate ozone transport (64 FR 28250; May 25, 1999 and 65 FR 2674; January 18, 2000). Because there are many parallels between that earlier action and today's rule, we briefly discuss our earlier action here.

Like the present rulemaking, EPA's previous section 126 rulemaking, dealing with interstate transport of NO_X, occurred essentially in conjunction with an EPA rulemaking dealing with interstate transport of the same pollutants, the NO_X SIP Call (62 FR 60318; November 7, 1997). As in today's rule, EPA concluded that section 126 and section 110(a)(2)(D)(i) are integrally connected (due to the reference to the section 110(a)(2)(D)(i) prohibition found in section 126 (b)). Thus, the interstate transport problem at issue could be addressed under either provision, and once the underlying section 110(a)(2)(D)(i) SIP deficiency is eliminated, there no longer is a basis for EPA to make a positive finding under section 126. (See sections II and III below for a more detailed discussion.) In the earlier rulemaking, we therefore concluded that emissions reductions sufficient to eliminate a section 110(a)(2)(D) SIP deficiency would also be sufficient to satisfy section 126.

The NO_X SIP Call required SIP revisions eliminating the amount of emissions that contribute significantly to nonattainment in downwind States, the amount of emissions reductions corresponding to the quantity of emissions that could be eliminated by the application of highly cost-effective controls on specified sources in each upwind State. The section 126 remedy consequently called for the same set of highly cost-effective controls for the section 126 source categories, based on the record of the NO_X SIP Call. We are adopting this same conceptual approach in today's rulemaking.

There are also parallels between our earlier section 126 action and this action with regard to timing of actions in the section 126 proceeding and in the closely-related interstate transport proceeding under section 110(a)(2)(D)(i). Because a section 126 finding turns on the existence of a section 110(a)(2)(D)(i) deficiency, in the May 1999 Section 126 Rule, we determined which petitions had technical merit, but we stopped short of granting the findings sought by the petitions. Instead, we stated that because we had promulgated the NO_X SIP Call, as long as an upwind State remained on track to comply with that rule, EPA would defer making the section 126 findings (See 64 FR 28271–28272). Later judicial action staying the NO_X SIP Call rule resulted in EPA granting the section 126 petitions at issue, but the new rule retained the basic linkage between section 126 and section 110(a)(2)(D)(i) by providing that EPA would withdraw the section 126 findings upon EPA approval of a SIP satisfying the emission reduction requirements of the NO_X SIP Call rule or upon EPA's promulgation of a FIP that achieved the emissions reductions. [See 65 FR at 2683 and *Appalachian Power* v. *EPA*, 249 F. 3d 1032, 1039 (D.C. Cir., 2001).] Similarly, in our proposal on the North Carolina section 126 petition, we proposed to deny the section 126 petition if we approved SIPs which satisfied the emission reduction requirements of the CAIR, or if we promulgated a FIP which included the emission reduction requirements of the CAIR. (In today's final rule, we are denying the petition because we are promulgating FIPs concurrently with the final section 126 response, which FIPs eliminate the significant

[3] While the text of section 126 refers to section 110(a)(2)(D)(ii), this is a scrivener's error. Congress intended to refer to section 110(a)(2)(D)(i). (See 64 FR 28267.) The EPA's interpretation was upheld in *Appalachian Power Co.* v. *EPA*, 249 F. 3d 1032, 1040–44 (D.C. Cir. 2001).

contribution from upwind sources to North Carolina.)

Finally, in the earlier section 126 rule, EPA adopted as a remedy for section 126 a Federal NO_X cap-and-trade program patterned after the model NO_X cap-and-trade program that EPA developed for States as an option to meet their NO_X SIP Call requirements. See 65 FR 2686. The EPA proposed the same approach for the North Carolina section 126 petition, in the event that EPA granted the petition.

4. What Is the Clean Air Interstate Rule?

The EPA developed the CAIR to address interstate pollution transport with respect to the newly adopted $PM_{2.5}$ and 8-hour ozone NAAQS.

In the CAIR, based on air quality modeling analyses and cost analyses, EPA concluded that SO_2 and NO_X emissions in certain States in the eastern part of the country, through the phenomenon of air pollution transport,[4] contribute significantly to $PM_{2.5}$ and/or 8-hour ozone nonattainment and maintenance problems in downwind States. The CAIR establishes emission reduction requirements for the affected upwind States under CAA section 110(a)(2)(D)(i). The affected States and the District of Columbia have until September 11, 2006 to adopt and submit SIP revisions to achieve these required reductions. The SIP revision must contain measures that will assure that sources in the State reduce their SO_2 and/or NO_X emissions sufficiently to eliminate the amounts of SO_2 and NO_X that contribute significantly to nonattainment downwind. Reducing upwind precursor emissions will assist the downwind $PM_{2.5}$ and 8-hour ozone areas in achieving and maintaining the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local emissions reductions alone. The EPA specified that the CAIR emissions reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 starts in 2015 (covering 2015 and thereafter). The emissions reduction requirements are based on controls that are known to be highly cost effective for EGUs; however, States have the flexibility to determine what measures to adopt to achieve the necessary reductions. In the CAIR, EPA provided model SO_2 and NO_X trading programs for EGUs that States can choose to adopt to meet the emissions reduction requirements in a flexible and highly cost-effective manner.

With the inclusion of Delaware and New Jersey in the CAIR $PM_{2.5}$ region, EPA estimates that the CAIR will reduce SO_2 emissions by 3.6 million tons in 2010 and by 3.9 million tons in 2015; and will reduce annual NO_X emissions by 1.2 million tons in 2009 and by 1.5 million tons in 2015. (These numbers reflect the annual SO_2 and NO_X requirements.) If all these States choose to achieve these reductions through EGU controls, then EGU SO_2 emissions in the affected States would be capped at 3.7 million tons in 2010 and 2.6 million tons in 2015;[5] and EGU annual NO_X emissions would be capped at 1.5 million tons in 2009 and 1.3 million tons in 2015.

Based on the promulgated CAIR (70 FR 25162), EPA estimates that the required SO_2 and NO_X emissions reductions would, by themselves, bring into attainment 52 of the 79 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2010, and 57 of the 74 counties that are otherwise projected to be in nonattainment for $PM_{2.5}$ in 2015. The EPA further estimates that the required NO_X emissions reductions would, by themselves, bring into attainment 3 of the 40 counties that are otherwise projected to be in nonattainment for 8-hour ozone in 2010, and 6 of the 22 counties that are projected to be in nonattainment for 8-hour ozone in 2015. In addition, the CAIR will improve $PM_{2.5}$ and 8-hour ozone air quality in the areas that would remain in nonattainment for those two NAAQS after implementation of the CAIR. Because of CAIR, the States with those remaining nonattainment areas will find it less burdensome and less expensive to reach attainment by adopting additional local controls. The CAIR will also reduce $PM_{2.5}$ and 8-hour ozone levels in attainment areas, providing significant health and environmental benefits in all areas of the eastern United States.

For a more complete description of the CAIR and its impacts, the reader is encouraged to review the preamble to the CAIR.

5. What Are the Findings of Failure To Submit for the Section 110(a)(2)(D) Plans?

In a final rule published on April 25, 2005 (70 FR 21147), we made national findings that States have failed to submit SIPs required under section 110(a)(2)(D) to address interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS.

The April 25, 2005 findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under section 110(c)(1), EPA may issue a FIP any time after such findings are made and must do so unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated. For States affected by CAIR, an approved SIP meeting the CAIR requirements would satisfy the requirement and turn off the FIP clock. As discussed below in section IV, EPA is today promulgating FIPs for States affected by the CAIR. However, EPA intends to withdraw the FIP in a State in coordination with approval of a SIP for the State that meets the CAIR requirements.

The findings do not start a sanctions clock pursuant to section 179 because the findings do not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) and because the action is not a SIP Call pursuant to section 110(k)(5).

6. What Are the Petitions for Reconsideration of the CAIR?

Following publication of the final CAIR, EPA received twelve petitions requesting reconsideration of certain aspects of the final rule. The EPA considered all issues raised in the petitions and decided to reconsider six issues. In the notice of proposed rulemaking for this rule, EPA announced its decision to reconsider one issue: the definition of ''EGU'' as it relates to certain solid waste incineration units. Subsequently, on December 2, 2005 (70 FR 72268), and December 29, 2005 (70 FR 77101), EPA published in the **Federal Register** notices announcing its decisions to reconsider five additional aspects of CAIR and requesting comment on those issues.

As part of this rule, EPA is taking final action on reconsideration of the definition of ''EGU'' as it relates to certain solid waste incineration units. As explained in sections VI.E and VII below, EPA has revised the definition of EGU to establish a specific exemption for certain solid waste incineration units.

In a separate notice signed today, EPA is taking final action on the five

[4] When we use the term ''transport'' we mean to include the transport of both fine particles ($PM_{2.5}$) and their precursor emissions and/or transport of both ozone and its precursor emissions.

[5] It should be noted that the SO_2 trading program provides that sources may bank pre-2010 title IV SO_2 allowances to be used for compliance with CAIR. These provisions encourage sources to make early emission reductions and ease the transition to the CAIR SO_2 program, and as a result, emissions may not reflect the emission caps in any given year.

additional aspects of CAIR for which EPA granted petitions for reconsideration. The EPA also is taking final action today to deny the remaining issues raised in the twelve petitions for reconsideration. These actions are discussed in greater detail in the preamble for the notice of final action on reconsideration, titled ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Reconsideration'' and all related documents are available in the docket for the CAIR (EPA–HQ–OAR–2003–0053).

D. Summary of North Carolina's Section 126 Petition

1. What Sources Does the Petition Target?

The North Carolina petition requests reductions of certain emissions from large EGUs located in 13 States. With respect to the $PM_{2.5}$ NAAQS, the petition requests that EPA find that NO_X and SO_2 emissions from large EGUs in 12 States (Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia) are significantly contributing to nonattainment in, or interfering with maintenance by, North Carolina. With respect to the 8-hour ozone NAAQS, the petition requests that EPA find that NO_X emissions from large EGUs in 5 States (Georgia, Maryland, South Carolina, Tennessee, and Virginia) are significantly contributing to nonattainment in, or interfering with maintenance by, North Carolina (Petition, p.1).

The petition defines the term ''EGUs'' as all facilities meeting the criteria described in the proposal for the CAIR. (*See* 69 FR 4566, 4610; January 30, 2004.) In the proposal for the CAIR, we defined EGUs as ''fossil-fuel fired boilers and turbines serving an electric generator with a nameplate capacity of greater than 25 megawatts (MW) producing electricity for sale.'' (Id.) (See sections VI.E. and VII of today's preamble for clarification of the EGU definition.)

2. What Control Remedy Does the Petition Request?

In its petition, North Carolina states that compliance with the NO_X and SO_2 emissions budgets in the proposal for the CAIR would satisfy the requirements of the petition. These emissions budgets were based on controls that are highly cost effective for EGUs [the highly cost effective control metric being a component of determining which emissions contribute significantly (see *State of Michigan* v. *EPA*, 213 F.3d 663, 674–80 (D.C. Cir., 2000) (upholding consideration of cost as an aspect of significant contribution)]. North Carolina also states that it does not oppose the flexibility discussed by EPA (69 FR at 4622) to allow equivalent reductions from other source categories in given States, so long as those reductions are real and enforceable (Petition, p. 24).

In the CAIR, EPA provided model NO_X and SO_2 cap-and-trade programs for EGUs as control options for States to choose to meet the CAIR emissions reductions requirements. The trading programs allow interstate trading among sources in all States subject to the CAIR that adopt the programs. In its petition, North Carolina said it recognizes the value of allowing sources flexibility to reduce their emissions in the most cost-effective manner consistent with the statute. However, North Carolina expressed concerns about a regional trading program (Petition, pp. 25–28). We address this issue below in sections II and VI.

3. What Is the Technical Support for the Petition?

To support its claim that EGUs outside North Carolina are contributing significantly to nonattainment and maintenance problems in the State, North Carolina relies largely on EPA's technical analyses for the proposed CAIR. Therefore, as discussed above, the petition targets sources in the same States that EPA linked to North Carolina in the proposed CAIR. As corroborative support, North Carolina cites analyses conducted by the Southern Appalachian Mountains Initiative (SAMI) on $PM_{2.5}$ transport, North Carolina's further evaluation of the SAMI's analyses, as well as back trajectory analyses performed by the North Carolina Division of Air Quality from $PM_{2.5}$ monitors in two counties. (See Petition, pp. 13–17.)

E. What Is the Consent Decree on the Section 126 Rulemaking Schedule?

On March 19, 2004, EPA received a petition from the State of North Carolina filed under CAA section 126. Section 126(b) requires EPA to make the requested finding, or to deny the petition, within 60 days of receipt. It also requires EPA to provide a public hearing before acting on the petition. In addition, EPA's action under section 126 is subject to the procedural requirements of section 307(d) of the CAA. [See section 307(d)(2)–(5).] One of these requirements is that EPA conduct notice-and-comment rulemaking. Section 307(d)(10) provides for a time extension, under certain circumstances, for rulemakings subject to that provision. Specifically, it allows statutory deadlines that require promulgation in less than 6 months from proposal to be extended to not more than 6 months from proposal to afford the public and the Agency adequate opportunity to carry out the purposes of section 307(d). In an action published on May 26, 2004 (69 FR 30038), EPA extended the deadline for EPA to take action on the North Carolina petition by the full 6 months, to November 18, 2004.

On February 17, 2005, the State of North Carolina and the citizen's group Environmental Defense filed complaints against EPA seeking to compel EPA to take action on the State's section 126 petition: *State of North Carolina* v. *Johnson*, No. 5:05–CV–112 (E.D. N.C.) and *Environmental Defense* v. *Johnson*, No. 5:05–CV–113 (E.D. N.C.). The EPA, North Carolina, and Environmental Defense filed a proposed consent decree that would establish a schedule for EPA to act on the petitions. Pursuant to CAA section 113(g), the EPA solicited comments on the proposed consent decree, by notice dated March 2, 2005 (70 FR 10089). The comment period closed April 1, 2005 without EPA receiving negative comment. On May 9, 2005, the court entered a slightly modified version of the consent decree.

The schedule in the consent decree required EPA to sign a proposal to grant or deny the petition by August 1, 2005, a date EPA met. (See 70 FR 49746.) The consent decree also required EPA to hold a public hearing on the proposal during the week of September 12 in North Carolina, and EPA held hearings in Research Triangle Park, North Carolina and Washington, DC during that week. The EPA must also take final action to grant or deny the petition by March 15, 2006, and is doing so in this rule. With the signature of today's final response to the petition, EPA has thus fulfilled all the deadlines and provisions of the consent decree.

II. What Is EPA's Legal and Analytical Approach for the Section 126 Petition?

For the $PM_{2.5}$ NAAQS, EPA proposed to deny the petition with respect to sources in any State having an approved SIP meeting the CAIR emissions reductions requirements, and with respect to sources in any State for which EPA promulgated a FIP with those same emission reductions requirements. In either case, there would no longer be a violation of the prohibition in section 110(a)(2)(D)(i). Since a violation of that prohibition is a condition precedent for granting a section 126 petition, EPA

necessarily would deny the petition. (*See* 70 FR at 49716–49717.)

A number of commenters disagreed with EPA's approach. In their view, section 126 guarantees a particular result: reductions of emissions from designated upwind sources linked to North Carolina nonattainment or maintenance problems, which reductions are to occur within three years.

In the commenters' view, if an approved SIP or a FIP does not provide this result within the three year time frame stated in section 126(c), then EPA must grant the petition. Thus, the argument goes, EPA must find that certain sources significantly contribute to nonattainment problems in North Carolina regardless of whether there is a current violation of the section 110(a)(2)(D)(i) prohibition. The commenters maintain that the statute, case-law, and past EPA practice all compel their interpretation.

EPA disagrees. In our view, section 126 provides a mechanism forcing EPA to act, but does not force adoption of controls beyond those necessary to remove the underlying SIP deficiency which violates the prohibition of section 110(a)(2)(D)(i). In essence, section 126 provides States a means to force EPA to take action to reduce specific emissions when EPA has not taken the actions required by section 110(a)(2)(D)(i) to address significant contribution to downwind receptors, but does not force further action. It follows, therefore, that once EPA has taken action to eliminate the SIP deficiencies by approving SIPs which implement CAIR (*i.e.,* which eliminate the significant contribution), or itself promulgates a CAIR FIP for states with SIP deficiencies, there is no longer a cause of action under section 126.[6]

This interpretation is consistent with the text of the statute, which links action under section 126 inextricably with the existence of an underlying section 110(a)(2)(D)(i) SIP deficiency: ''[a]ny State * * * may petition the Administrator for a finding that any major source or group of stationary sources emits * * * any air pollutant *in violation of the prohibition of section 110(a)(2)(D)[(i)]*[7] *o[f] this section*'' (emphasis added). Case law likewise makes clear that EPA's determination of whether or not to grant a section 126 petition turns on whether SIPs are in violation of section 110(a)(2)(D)(i). *Appalachian Power* v. *EPA*, 249 F.3d 1032, 1045–46 (D.C. Cir. 2001). Similarly, in the rulemaking dealing with a section 126 petition in circumstances most analogous to those here (EPA's response to the Northeastern states' petition regarding interstate transport of ozone precursors, issued roughly contemporaneously with the NO_X SIP Call), EPA stated that it ''interprets section 126 to provide that a source is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind [S]tate'' (64 FR at 28272; May 25, 1999). Thus, ''[a]n upwind State and EPA may remedy this excessive interstate transport of air pollutants through adoption and approval of a SIP revision barring the emission of such pollutants. Alternatively, a downwind State and EPA may remedy this excessive interstate transport of air pollutants through the State petitioning EPA under section 126 and EPA regulating the sources directly'' (65 FR 2680; January 18, 2000).

Commenters argued, however, that the reference in section 126(b) and (c) to ''the prohibition of section 110(a)(2)(D)[(i)]'' must be to the functional prohibition in section 110(a)(2)(D)(i), by which they mean a cessation of emissions that contribute significantly to nonattainment in a downwind state. Under this reading, a remedy under section 126 must entail emission reductions, not merely SIP revisions. EPA agrees that the prohibition referred to is the functional prohibition on significant contribution to downwind states, and therefore, for example, EPA cannot defer granting a section 126 petition merely because a state is under a legal obligation to revise its SIP. *Appalachian Power,* 249 F.3d at 1044. However, adoption of a SIP implementing CAIR (or EPA enacting a CAIR FIP) addresses the functional prohibition of section 110(a)(2)(D)(i) by eliminating the SIP deficiency triggering the prohibition through requirements on sources to eliminate the significant contribution to downwind receptors. Moreover, to the extent the commenters are maintaining that the 'functional prohibition in section 110(a)(2)(D)(i)' refers to some specific environmental result, such as North Carolina coming into attainment (see Comments of North Carolina Attorney General at 17), we disagree. EPA interprets ''significant contribution'' in the CAIR and in this proceeding to include both an emission component and a feasibility/cost-effectiveness component, so that what is prohibited are specific levels of emissions which can feasibly be reduced in a highly cost-effective manner. See also 65 FR at 2677 (applying cost effectiveness component of the significant contribution standard in granting a section 126 petition). Adoption of a CAIR SIP (or EPA adopting a CAIR FIP) fully addresses this prohibition.

In the same vein, other commenters argued that sections 110(a)(2)(D) and 126 are independent provisions, and that EPA is vitiating that independence by substituting a section 110 remedy for the section 126 remedy, the implication again being that section 126 commands an environmental result which must be effectuated once the section 110(a)(2)(D) prohibition is violated. EPA disagrees with the premise of the comment. Although the two provisions unquestionably may be applied independently, they are also closely linked in that a violation of the prohibition in section 110(a)(2)(D)(i) is a condition precedent for action under section 126 and, critically, that significant contribution is construed identically for purposes of both provisions (since the identical term naturally is interpreted as meaning the same thing in the two linked provisions). See *Appalachian Power,* 249 F. 3d at 1049–50. If EPA or a State has adopted provisions that eliminate the significant contribution to downwind states, then there simply is no violation of the section 110(a)(2)(D) prohibition. Moreover, since we interpret significant contribution to mean the same thing under both provisions, relief under section 126 to eliminate significant contribution must in any case mean eliminating those emissions which can feasibly be controlled in a highly cost-effective manner as defined in the CAIR. Put another way, requiring additional reductions would result in eliminating emissions which do not contribute significantly, an action beyond the scope of section 126.

Commenters further argued that relief under section 126 must occur within 3 years and therefore that the CAIR emission reductions do not satisfy

[6] This analysis assumes that the facts underlying CAIR remain unchanged. If a Petition were to present new information showing, for example, that there is a different level of contribution than EPA analyzed in CAIR, compliance with CAIR would not automatically be determinative regarding whether upwind sources are emitting in violation of the section 110 (a)(2)(D)(i) prohibition. See 64 FR at 28274 n. 15 and *Appalachian Power,* 249 F.3d at 1067 (later developments can be the basis for another section 126 petition).

[7] As noted earlier, the statutory text refers to subsection (ii) of section 110(a)(2)(D), but this is a scrivener's error. *Appalachian Power,* 249 F.3d 1032, 1040–44.

section 126 because although those reductions commence within 3 years they are phased in over a longer time. These comments assume that EPA must make the section 126 findings, however, in which case sources covered by the petition would indeed have to eliminate significant contribution within 3 years. But as just explained, a condition precedent to making section 126 findings is the existence of an underlying SIP deficiency, which EPA has chosen to address directly through action under section 110(a)(2)(D). Moreover, this choice is appropriate. As a result of today's action, not only will there be an approved SIP or a CAIR FIP in place requiring emission reductions which eliminate the significant contribution to North Carolina, but these reductions occur within 3 years, commencing in 2009 when NO_X controls (a $PM_{2.5}$ precursor) are required (70 FR at 49718). This is similar to EPA's decisions in the parallel NO_X SIP Call/section 126 rulemakings where EPA initially deferred making section 126 findings because there would be approved SIPs in place requiring elimination of significant contribution to downwind States with emission reductions to commence (although not be concluded) within the 3-year period (64 FR at 28275).[8] When the NO_X SIP Call rule was judicially stayed, it was no longer appropriate to defer making the section 126 findings because there were no longer ''explicit and expeditious deadlines for compliance with the NO_X SIP Call'' (65 FR 2680). Here, the certainty of SIP submissions (or action under a CAIR FIP) coupled with explicit and certain compliance deadlines calling for emissions reductions commencing in the same timeframe as the section 126 3-year window make it appropriate for EPA to utilize the section 110(a)(2)(D) remedy.

We note further that in arguing that EPA must order all emissions reductions from designated sources which contribute to North Carolina $PM_{2.5}$ nonattainment to occur within 3 years, commenters again ignore the feasibility/cost-effectiveness prong of the significant contribution test. EPA has found that the CAIR emissions reductions are highly cost effective based on the compliance schedule established in that rule, and further found that that compliance schedule is needed for reasons of technical feasibility (70 FR at 25195–25229). Requiring those reductions to occur on a more rapid timeframe would thus require considerably more than merely eliminating significant contribution, and so would exceed the scope of section 126. Moreover, commenters presented no independent analysis showing that emission reductions from the designated sources could be obtained cost-effectively (or even feasibly) within 3 years.[9]

Commenters also argued that because a SIP (or the CAIR FIP) could (or in the case of the FIP, would) reflect a trading component, such a scheme would not satisfy section 126. The legal argument is that section 126 requires emission reductions to come from designated sources, a result not possible to guarantee under a trading regime. More basically, commenters stated that under a trading regime there was no certainty that there would be reduction of emissions to North Carolina, so that at the least, trading should be limited to sources designated in the petition as contributing significantly to nonattainment in North Carolina. These arguments again assume that EPA must grant the petition, which is not our view so long as the underlying SIP deficiencies are rectified, as explained above. The arguments also do not address the critical point that availability of trading options are part of the basis for EPA's findings that reductions are highly cost effective, and hence are an element of the finding that emissions contribute significantly to nonattainment.[10] The approach here is also consistent with the one EPA adopted initially in the NO_X SIP Call/section 126 rulemaking, where EPA deferred granting section 126 petitions based on the existence of the NO_X SIP Call remedy, which included a trading scheme across the entire region. 63 FR at 56309–320; see generally 64 FR at 28307–309 (appropriateness of trading as a section 126 remedy). Indeed, as noted earlier, EPA adopted a trading scheme when granting that earlier section 126 petition. See 65 FR at 2686; see also *Appalachian Power,* 249 F. 3d at 1039 noting that EPA's section 126 rule included a cap-and-trade program. Further discussion of issues relating to the trading regime are found in section VI.B of this preamble.

Some commenters also challenged EPA's basis for proposing to deny the petition with respect to ozone. EPA did so because no area in North Carolina is projected to be in nonattainment with the ozone 8-hour NAAQS in the CAIR base case and therefore upwind states would (by definition) not be contributing significantly to North Carolina nonattainment (70 FR at 25162). Commenters argued that EPA is obligated to consider current conditions, and not base findings on future conditions, because some areas in North Carolina are presently in nonattainment. They base this argument on the use of the present tense in section 126(b) (''emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)[(i)]''), plus equitable consideration of the need to address existing pollution problems.

EPA disagrees. With respect to the statutory language, both section 126(b) and 110(a)(2)(D)(i) do not specify the time by which EPA must evaluate significance of contribution. Indeed, section 110(a)(2)(D)(i) is written exclusively in the future tense, and the reference to ''emits or would emit'' in section 126(b) is naturally read as making clear that controls can apply to both existing and new sources. See *Appalachian Power,* 249 F. 3d at 1056–57. Moreover, it makes sense for significant contribution determinations to be based on conditions at the time at which potential controls are contemplated. Suppose, for example, that due to future rules (a clutch of effective mobile source controls, for example) it can reliably be predicted that an area will be in attainment although it is not so presently. We do not believe that the statute mandates immediate assessment of interstate contribution to address a nonattainment problem that will no longer exist at the time controls on the interstate emissions would be implemented. EPA thus has consistently adopted this future-looking approach when assessing interstate transport, and believes it reasonable to continue doing so here. See 63 FR at 57375 (adopting this approach in NO_X SIP Call).

[8] Commenters asserted that all emissions reductions under the SIP Call would have occurred within the three-year period, but this is not the case. The date for achieving the budgets provided by the SIP Call (*i.e.,* the full panoply of annual emission reductions) was 2007, six years from the rule's promulgation date. See 63 FR at 57450.

[9] The petitioner (in its comments on the proposal) stated that ''[c]ontrols for sources contributing to nonattainment in North Carolina would be cost effective. EPA concluded as much in the Proposed CAIR Rule * * *. There is nothing in the Final CAIR Rule that indicates that adding North Carolina to the list of downwind states would 'break the bank' on cost effectiveness.' '' Comments of North Carolina Attorney General at p. 30 n. 16. This statement does not address whether controls on upwind souces would be cost effective (or feasible) in timeframes more rapid than those found to be cost effective and feasible in the CAIR.

[10] Indeed, the Petition relies on EPA's analysis of what constitutes significant contribution, which, as just noted, includes an assumption that sources participate in a trading scheme to achieve highly cost-effective emission reductions. The Petition presents no independent analysis of what would constitute a significant contribution in the absence of a trading program. It is thus illogical for the Petition to argue that sources must eliminate all significant contribution (of which trading is a necessary element) but must do so without a trading program.

Finally, commenters argued that EPA had ignored the statutory requirement in section 110(a)(2)(D)(i) (incorporated within section 126(b) and (c)) to prohibit interstate transport that ''interefere[s] with maintenance'' by North Carolina of the 8-hour ozone NAAQS. They further stated that a number of North Carolina counties projected to attain the ozone NAAQS are modeled to do so by narrow margins that should be deemed to fall within the interfere with maintenance test based on modeling uncertainties and historic ozone variability patterns in the counties in question.

EPA stated in the CAIR rule that it would apply the interfere with maintenance provision in section 110(a)(2)(D) in conjunction with the significant contribution to nonattainment provision and so did not use the maintenance prong to separately identify upwind States subject to CAIR (70 FR at 25193). EPA did this so as not to give the interfere with maintenance requirement greater weight than the significant contribution requirement, thus avoiding giving greater weight to the potentially lesser environmental effect. (See CAIR Response to Comments Response at p. 63.) EPA's reading also promotes a reasonable balance between controls on upwind states and in-state controls, an important objective in applying the section 110 and 126 interstate transport provisions. (See 70 FR at 25193.) Suppose, for example, that a downwind area is projected to attain by the effective date of potential section 110(a)(2)(D) (or section 126(b)) controls, so that those controls are unnecessary to prevent significant contribution to nonattainment. Applying controls on upwind sources in these circumstances not only could be environmentally unnecessary, but could even create a perverse incentive for downwind states to increase local emissions.[11]

We note further that even if (against our view) the interference with maintenance standard were to be applied in cases where there is no evidence of significant contribution to nonattainment, EPA would still interpret the standard as requiring consideration of cost and technical feasibility since EPA already considers these factors as aspects of significant contribution, and it would make little sense to interpret the interfere with maintenance language (the lesser environmental effect) as allowing reductions without considering those same factors. See also 63 FR 57370 (interfere with maintenance must also reflect significant contribution to be cognizable under section 110 remedies for interstate transport. Moreover, given that maintenance addresses the less significant environmental effect, EPA would likely require that emission reductions be no less highly cost effective than those which significantly contribute to nonattainment, and might require that reductions be even more highly cost effective. It is thus difficult to see that further emission reductions than those already required under CAIR would be warranted.

III. What Is EPA's Final Action on the Section 126 Petition?

In determining whether emissions from EGUs in the States named in the North Carolina section 126 petition contribute significantly to 8-hour ozone and/or $PM_{2.5}$ nonattainment and maintenance problems in North Carolina, EPA is relying on the conclusions drawn in the final CAIR. As discussed in section I above, North Carolina based its petition in large part on the analyses for the proposed CAIR—identifying EGUs in the same upwind States that EPA proposed to link to North Carolina. The EPA conducted new modeling analyses using updated emissions inventories for the final CAIR. The EPA also applied a different value for the threshold contribution level for the air quality portion of the significant contribution determination for $PM_{2.5}$ in the final CAIR. Therefore, the upwind State-to-downwind State linkages differed in the final CAIR from the proposal.

A. What Is EPA's Final Action With Respect to the 8-Hour Ozone NAAQS?

In its petition, North Carolina requested that EPA make findings that large EGUs in Georgia, Maryland, South Carolina, Tennessee, and Virginia contribute significantly to nonattainment in, or interfere with maintenance by, North Carolina with respect to the 8-hour ozone NAAQS. In the proposed CAIR, EPA linked these States to 8-hour ozone air quality problems in Mecklenburg County, North Carolina. In the final CAIR, EPA's updated analyses project all of North Carolina to be in attainment for 8-hour ozone in the CAIR 2010 base case. Therefore, EPA did not link any upwind States to North Carolina with respect to the 8-hour ozone NAAQS in the final CAIR (*See* CAIR preamble, Table VI–9 at 70 FR at 25249). Consequently, EPA is denying the section 126 petition with respect to the 8-hour ozone NAAQS.

B. What Is EPA's Final Action With Respect to the $PM_{2.5}$ NAAQS?

In its petition, North Carolina also requested that EPA make findings that large EGUs in Alabama, Georgia, Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia contribute significantly to nonattainment in, or interfere with maintenance by, North Carolina with respect to the $PM_{2.5}$ NAAQS. In the proposed CAIR, these 12 States were linked to $PM_{2.5}$ nonattainment problems in North Carolina. In the final CAIR, as noted, EPA used different, updated modeling and also applied a 0.2 (μ/m^3 contribution threshold level rather than the proposed 0.15 (μ/m^3 for the air quality portion of the significant contribution determination (70 FR 25190–25191). Based on the updated modeling and the 0.2 (μ/m^3 contribution threshold level, EPA determined in CAIR that only the following 10 States are significantly contributing to $PM_{2.5}$ air quality problems in North Carolina: Alabama, Georgia, Indiana, Kentucky, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia (see preamble Table VI–8; 70 FR at 25248–25249). This means for purposes of section 126(b) that sources within these States for which EPA determined highly cost-effective controls are available are also contributing significantly to $PM_{2.5}$ nonattainment problems in North Carolina.

In determining what action to take in response to the $PM_{2.5}$ portion of the section 126 petition, EPA is taking into consideration the CAIR FIPs that are being promulgated today in conjunction

[11] In this case, the three North Carolina counties mentioned in comments as warranting upwind reductions to maintain attainment status, are not only projected to be in attainment in 2010 in both the base case and the CAIR case (considering emission reductions occurring under CAIR to prevent significant contribution) and the 2015 base case and CAIR case. In fact, in 2015, these counties (Mecklenburg, Rowan, and Wake) are projected to be attaining by comfortable margins. CAIR Modeling TSD App. E Table E–1 (projected levels of 75.0 ppb, 74.1 ppb, and 70.8 ppb respectively in the 2015 CAIR case, which are all below the levels (3–5 ppb) EPA considered to raise maintenance concerns in the CAIR. These projections do not consider the effect of local controls other than those already enacted. Projected levels in the 2015 base case, *i.e.* without CAIR and without further local controls, are likewise comfortably below the levels which could raise likely possibility of returning to nonattainment. (It is reasonable to defer consideration of maintenance issues until 2015 in this anlaysis because the CAIR remedy is in two parts. There thus will be further emission controls of NO_X between 2010 and 2015 as a result of CAIR which could subsume any controls adopted for maintenance reasons.) EPA thus in any case does not beleive that further reductions from upwind sources is needed to maintain the 8-hour ozone standard in these counties, and that such emission reductions would not reasonably balance upwind and local controls. See also Response to Comment Document addressing these factual issues.

with the section 126 action (see section IV below). The FIP action establishes control requirements for each of the States affected by the CAIR in order to achieve the emissions reductions required to address interstate transport.

In the proposal for the section 126 action, for EGUs in States linked to North Carolina in CAIR (and therefore, for which EPA proposed a FIP), EPA proposed in the alternative (1) to deny the petition if EPA issued the final FIPs to address the interstate transport no later than the final section 126 response or (2) to grant the petition and make section 126 findings if EPA did not promulgate the FIPs prior to or concurrently with the final section 126 response. Because the FIPs would fully address the $PM_{2.5}$-related interstate transport problem identified in CAIR and thus eliminate the section 110(a)(2)(D) violation, there would no longer be a basis for the section 126 findings. In today's action, EPA is finalizing the CAIR FIPs. Therefore, EPA is denying the section 126 petition for EGUs in States linked to North Carolina for $PM_{2.5}$.

For EGUs located in Illinois and Michigan, which are not linked to North Carolina in the final CAIR with respect to the $PM_{2.5}$ NAAQS (70 FR 25247–25248), EPA is also denying the petition.

IV. What Is the Federal Implementation Plan for the CAIR?

A. What Is the Legal Framework for the FIPs?

Section 110(c)(1) of the CAA requires the Administrator to promulgate a FIP within 2 years of: (1) Finding that a State has failed to make a required submittal, (2) finding that a submittal received does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or (3) disapproving a SIP submittal in whole or in part. The EPA may issue a FIP any time after making one of these findings or the Agency may issue a SIP disapproval. However, EPA is relieved of the obligation to promulgate the FIP if a SIP revision correcting the deficiency identified is approved by EPA before such a FIP is promulgated.

As discussed in paragraph I.D.5, in a final rule signed the same day as CAIR, EPA found that States have failed to submit SIPs to satisfy the interstate transport requirement under section 110(a)(2)(D)(i) of the CAA for the $PM_{2.5}$ and 8-hour ozone NAAQS (70 FR 21147). These findings started the 2-year clock for the promulgation of a FIP. They did not start a ''sanctions clock'' as there are no mandatory sanctions associated with the FIP or the finding of State failure to submit SIPs to satisfy 110(a)(2)(D)(i).

The EPA's authority to act when it has identified deficiencies in SIPs is derived from multiple sources. First, EPA may promulgate any measure which it is permitted to issue pursuant to pre-existing independent statutory authority—for example, the provisions of title II. That is, EPA may promulgate any measure which it has authority to issue in a non-FIP context, without reliance on section 110(c). Second, EPA may invoke section 110(c)'s general FIP authority and act in accordance with this provision, and the CAA more broadly, to cure a SIP deficiency. Third, under section 110(c), the courts have held that EPA may exercise all authority that the State may exercise under the CAA.

The first type of authority, EPA's general authority, is independent of section 110(c). It is not dependent on or altered by finding a deficiency in a SIP.

The second type of authority, EPA's general authority under section 110(c), is essentially remedial. The EPA has broad power under that section to cure a defective State plan. Thus, in promulgating a FIP, EPA may exercise its own, independent regulatory authority in accordance with section 110(c), and the CAA more broadly. When EPA has promulgated a FIP, courts have not required explicit authority for specific measures: ''We are inclined to construe Congress' broad grant of power to the EPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation.'' (*South Terminal Corp.* v. *EPA,* 504 F.2d 646, 669. (1st Cir., 1974)).

Third, the same authority that is exercised by the States under the CAA in connection with the adoption, implementation, and enforcement of a SIP may be assumed to be available to the EPA when the agency issues a FIP, after determining that a State has not adopted a satisfactory SIP. As the Ninth Circuit has held, when EPA acts in place of the State pursuant to a FIP under section 110(c), EPA ''stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA,'' (*Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, at 1541 9th Cir., 1993). The First Circuit, in an early FIP case, agreed:

> * * * the Administrator must promulgate promptly regulations setting forth an implementation plan for a State should the State itself fail to propose a satisfactory one. The statutory scheme would be unworkable were it read as giving to EPA when promulgating an implementation plan for a State, less than those necessary measures allowed by Congress to a State to accomplish Federal clean air goals. We do not adopt any such crippling interpretation.
>
> *South Terminal Corporation* v. *EPA,* 504 F.2d 668 (1st Cir., 1974).

In the case of Federally-recognized Indian Tribes, as we explained in the CAIR, (70 FR 25167–25168) Tribes are subject to section 110(a)(2)(D), but are not required to submit implementation plans. The EPA is required to promulgate FIPs for Indian country as necessary or appropriate to protect air quality. See 40 CFR 49.11(a). Presently, there are no emissions sources in Indian country within the region affected by CAIR which would make a FIP necessary or appropriate. In the event of the planned construction of such a source within Indian country in the 28-State region subject to CAIR, EPA will work with the relevant Tribal government to regulate the source through a Tribal or Federal implementation plan. In the case of an EGU, the EPA anticipates that the Tribal implementation plan (TIP) or FIP would involve the participation of the EGU in the EPA administered cap-and-trade program. The EPA will also work with the Tribe and affected States to determine how allowances allocated to the Indian country source will affect State allowance allocations. Because any FIPs for Indian country will necessarily be tailored to the specific circumstances, today's action contains no such FIP. The reader is referred to the CAIR for a more detailed discussion of the potential impact of the CAIR in Indian country (70 FR 25167–25168, 25315).

B. What Is the Timing and Scope of the CAIR FIP Actions?

As described in the CAIR, EPA views seriously its responsibility to address the issue of regional transport. Decreases in NO_X and SO_2 emissions are needed in the States identified in the CAIR to enable downwind States to develop and implement plans to achieve and maintain the $PM_{2.5}$ and 8-hour ozone NAAQS. The CAIR identified the amount of emissions reductions necessary for each State identified in the CAIR to meet their section 110(a)(2)(D) interstate transport obligations. Implementation of these reductions is necessary to help downwind States to achieve the NAAQS in order to provide clean air for their residents.

Therefore, EPA is promulgating FIPs today in conjunction with the action responding to North Carolina's section 126 petition concerning transport of

$PM_{2.5}$ and 8-hour ozone. The EPA is promulgating these FIPs at the same time as its response to North Carolina's section 126 petition, which is required to be finalized no later than March 15, 2006 in accordance with a judicially-enforceable consent decree. The EPA believes it is appropriate to coordinate these two actions because they both address interstate transport, both apply to EGUs, and because the States of concern in the section 126 petition are a geographical subset of the States covered by CAIR. Promulgating the CAIR FIPs at this time provides a backstop of Federal controls for all States covered by CAIR for $PM_{2.5}$ and/or 8-hour ozone, not just those States that significantly contribute to North Carolina for $PM_{2.5}$. This provides a level playing field, giving assurance to all the affected downwind States that the upwind emissions reductions required under CAIR will be achieved on time. Further, EPA believes that the CAIR reductions are best implemented as a unified program. The EPA believes that States will submit SIP revisions implementing the CAIR reductions in their States in a unified manner, and that this reduces workload for the States and provides sources with more certainty. Finally, promulgating the 8-hour ozone FIP as well as the $PM_{2.5}$ FIP as early as possible gives States more flexibility to take advantage of the abbreviated SIP option discussed below and in section VI.C. This could further reduce workload for States to meet the requirements of CAIR. In today's action, EPA is not promulgating FIPs for any States not covered by CAIR.

The Agency is taking this action to provide a Federal backstop for CAIR where all States may not be able to develop and submit timely, approvable SIP revisions. In no way should the FIP for CAIR be viewed as a sign of any concern about States ultimately making the emission reductions required under CAIR. There are no sanctions associated with today's rule, and EPA does not intend CAIR FIPs to have any negative consequences for the affected States. To the contrary, EPA is finalizing FIP approaches that are flexible and allow States a full opportunity to get their SIP revisions in place, with minimal disruption in transitioning from Federal to State implementation.

Moving quickly to promulgate a FIP is consistent with Congress' intent that attaining the standard occurs in these downwind nonattainment areas ''as expeditiously as practicable'' (sections 181(a) and 172(a)(2)(B)). The FIP will help ensure that all emissions reductions required by CAIR, and the associated environmental benefits, will be achieved by the CAIR deadlines. In addition, the FIP will ensure that sources in all States covered by CAIR, regardless of whether they were included in the North Carolina section 126 petition, will be required to achieve emissions reductions at the same time.

By finalizing the FIP well before the deadline for States to submit their CAIR SIPs, EPA is providing States an additional option for complying with the requirements of CAIR. States planning to adopt the model trading programs contained in the CAIR rule, can accept the FIP and significantly reduce the State resources needed to establish a program to implement the CAIR. Since there are no punitive consequences for States associated with the FIP or the finding of failure to submit SIPs to satisfy section 110(a)(2)(D)(i), some States could avoid much of the time and expense of revising their SIPs to comply with CAIR. Some States, particularly those subject to the NO_X SIP Call, may need to prepare minor SIP revisions regardless of whether they accept the FIP implementing the requirements of CAIR; yet the time and expense involved would be significantly reduced.

The EPA is finalizing, with certain changes described in section VI.C, the approach that a State can choose to modify the application of the CAIR FIP through abbreviated SIP revisions. The abbreviated SIP revisions approach covers specific elements of the FIP trading programs without submitting full SIP revisions to meet the requirements of CAIR. By accepting such abbreviated SIP revisions, EPA is providing additional options for States to comply with CAIR. A State can choose to retain control of these specific elements of the trading programs, without submitting a full SIP revision to meet the requirements of CAIR. As there are no sanctions associated with the FIP, EPA anticipates that some States will prefer to avoid spending the time and money necessary to submit a full SIP revision.

The Agency will accept abbreviated SIP revisions for any or all of the following four specific elements of the FIP trading programs: (1) Provisions for otherwise unaffected units to opt-in to the FIP trading programs, (2) allocating annual and/or ozone season NO_X, (3) allocating allowances from the annual NO_X Compliance Supplement Pool (CSP), and (4) including NO_X SIP Call trading sources that are not EGUs under CAIR in the Federal CAIR ozone season NO_X cap-and-trade program. Upon approval of any such SIP revisions, EPA anticipates that the corresponding portions of the FIP for that State would be replaced or their application to sources would be modified.

In offering a framework for abbreviated SIP revisions, the Agency anticipates that many States will wish to retain control over the allocation of allowances. Additionally, the Agency recognizes that States may wish to meet their NO_X SIP Call obligations by allowing NO_X budget units (that is, units in the NO_X SIP Call trading program) that are not EGUs under CAIR to participate in the CAIR ozone season trading program.

In its proposal, the EPA invited comment on the option for States to submit abbreviated SIPs covering specific elements of the Federal trading programs. A more complete discussion of the proposed abbreviated SIP provisions and the comments received is found in section VI of today's preamble.

Thus, the FIP will increase the options available for a State to comply with CAIR. Through the CAIR rulemaking actions, EPA has provided States with a great deal of data and analyses concerning air quality and control costs, as well as a determination whether upwind sources contribute significantly to downwind nonattainment under section 110(a)(2)(D). The EPA recognizes that States would face great difficulties in developing transport SIPs to meet the requirements of section 110(a)(2)(D) without these data and policies. Indeed, EPA acknowledged in the CAIR that the Agency's extensive analyses and data, including the multi-year operation of a federally-funded monitoring system (and the considerable information generated through that system) was a necessary element in the Agency's conclusion that it was appropriate to impose such requirements on States (70 FR 25267).

States have 18 months from the signature date of the CAIR, or until September 11, 2006, to develop, adopt, and submit revisions to their SIPs that meet the requirements of CAIR. The EPA will withdraw the FIP once EPA approves a SIP that meets the CAIR requirements in that State.

Having the FIP in place early provides for a transition to a CAIR trading program with the greatest continuity, administrative ease, and cost savings for States that would otherwise develop a program identical to the model trading programs. The EPA's goal is to have approvable programs in place that meet the requirements of the CAIR whether they are in the form of a SIP or a FIP. By finalizing a FIP today, EPA in no way precludes a State from developing its own SIP to either adopt the trading

rules with any discretionary elements allowed by the CAIR or from meeting the State emissions budget through different measures of the State's choosing. The EPA has considered the timing of each element of the FIP process to make sure to preserve each State's freedom to develop and implement SIPs. In this way, EPA has enhanced each State's options for complying with the requirements of the CAIR while ensuring that all the emissions reductions and environmental benefits of the CAIR are realized.

C. What Are the FIP Control Measures?

In contrast to the SIP process—where selection and implementation of control measures is the primary responsibility of the State—in the case of a FIP, it is EPA's responsibility to select the control measures for sources and assure compliance with those measures. Thus, while the FIP is designed by EPA to achieve the same total emissions reductions described in the CAIR, the specific control measures assigned in the FIP may be different from what a State might choose.

In selecting the control measures for the FIP, EPA is adopting the same measures used in the CAIR for calculating the required emissions reductions. In the CAIR, EPA is requiring States to achieve specified levels of emissions reductions based on levels that are achievable through implementation of highly cost-effective controls on EGUs. See the discussion in section IV of the CAIR, ''What Amounts of SO_2 and NO_X Emissions Did EPA Determine Should Be Reduced?'' The EPA is including by reference the technical basis and supporting rationale for EPA's conclusions as to the highly cost-effective strategy developed for the CAIR.

The SO_2 and NO_X cap-and-trade programs for the FIP are discussed below in section VI. The unit NO_X allocations will be provided in a later action and will meet the State EGU budgets that are established in the CAIR for States that choose to meet the required emissions reductions by controlling EGUs only.

D. When and How Will EPA Remove the FIP Requirements if EPA Approves a SIP To Meet the CAIR?

As discussed previously, EPA is finalizing the FIP today concurrently with EPA's response to the section 126 petition from North Carolina. The EPA intends to withdraw the FIP in a State in coordination with EPA's approval of a SIP for that State that meets the CAIR requirements. It is EPA's preference that States regulate sources to control the interstate transport; therefore, EPA will work with States to help ensure that the FIP would not need to be implemented.

The EPA intends to withdraw the FIP requirements as soon as practical after receiving approvable CAIR SIP revisions. The EPA will work with States to ensure a timely withdrawal of the FIP and recording of State NO_X allocations in source accounts (for States choosing to allocate NO_X allowances). A more detailed discussion of the timing for recording allocations is found in section VI.F.1 of this preamble.

V. Emission Reduction Requirements for the CAIR FIP

A. Introduction

In the CAIR (70 FR 25162), EPA determined that SO_2 and NO_X emissions from sources in the District of Columbia and the following 23 States contribute significantly to downwind $PM_{2.5}$ nonattainment: Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

In a separate rulemaking signed the same day as this action, EPA finds that SO_2 and NO_X emissions from sources in Delaware and New Jersey also contribute significantly to downwind $PM_{2.5}$ nonattainment.

In the CAIR, the Agency also determined that the District of Columbia and the following 25 States contribute significantly to downwind 8-hour ozone nonattainment: Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

The EPA established CAIR annual SO_2 and NO_X emission reduction requirements for States that contribute significantly to downwind $PM_{2.5}$ nonattainment and established NO_X ozone season emission-reduction requirements for States that contribute significantly to downwind 8-hour ozone nonattainment. The CAIR requires upwind States to revise their SIPs to include control measures to reduce emissions of SO_2 and/or NO_X to meet the requirements in CAIR (SO_2 is a precursor to $PM_{2.5}$ formation, and NO_X is a precursor to both ozone and $PM_{2.5}$ formation).

The CAIR requires that the emission reductions be implemented in two phases. The first phase of CAIR NO_X reductions starts in 2009 (covering 2009–2014) and the first phase of CAIR SO_2 reductions starts in 2010 (covering 2010–2014); the second phase of CAIR reductions for both NO_X and SO_2 starts in 2015, covering 2015 and thereafter.

In CAIR, EPA determined the extent of reductions required to eliminate significant contribution (*i.e.*, to remove the section 110(a)(2)(D) violation). EPA interprets significant contribution as a specific level of emissions that can be feasibly reduced in a highly cost-effective manner. The required reductions are expressed as statewide budgets of SO_2 and NO_X emissions. Regionwide emissions trading programs for large EGUs (within the constraints of the emissions caps based on these statewide emission budgets [12]) provide one option for eliminating significant contribution and thus also eliminating the section 110(a)(2)(D) violation. The violation is eliminated once a State adopts a SIP containing the CAIR trading programs (or a SIP containing other emission reduction options meeting the requirements specified in CAIR), or EPA promulgates a FIP to achieve those same reductions. The CAIR includes model rules for regionwide EGU SO_2 annual, NO_X annual, and NO_X ozone season emission cap-and-trade programs. States can choose to adopt these model rules (the CAIR SIP model trading rules) to obtain the required reductions in a flexible and cost-effective manner.

Today, EPA is finalizing FIPs that implement the emission reduction requirements of the CAIR in all States covered by CAIR. The Agency is promulgating today's FIPs to provide a federal backstop for CAIR.

EPA decided to adopt, as the FIP for each State in the CAIR region, the SIP model trading programs in the final CAIR, modified slightly to allow for federal instead of State implementation.[13] The specific requirements of the FIP trading programs are explained in greater detail in section VI below.

The CAIR FIPs will require SO_2 annual and NO_X annual emission

[12] It should be noted that the SO_2 trading program provides that sources may bank pre-2010 title IV SO_2 allowances to be used for compliance with CAIR. These provisions encourage sources to make early emission reductions and ease the transition to the CAIR SO_2 program, and as a result, emissions may not reflect the emission caps in any given year.

[13] Today's action includes revisions to the CAIR SIP model rules as described in section VII in this preamble. For the FIP trading programs the Agency adopts the SIP model rules as finalized today and modified for federal implementation.

reductions from EGUs in States contributing significantly to $PM_{2.5}$ nonattainment and NO_X ozone season emission reductions from EGUs in States contributing significantly to ozone nonattainment through participation in the regionwide cap-and-trade programs. The requirements of these trading programs were developed in the SIP model trading rules. The SIP model trading rules provide flexibility to the implementing organization only in certain specific areas. In adopting these model trading programs as FIPs, the Agency adopts the requirements of the model trading rules. As the implementing organization, therefore, it has only the same flexibility that is available to States that choose to implement the model trading programs.

The CAIR FIP trading programs will achieve the emission reductions required by CAIR by the deadlines established in that rule, with the same highly cost-effective EGU control measures forming the basis for the emission budgets. The regionwide emission reduction requirements, State emission budgets and trading rules that are the basis for today's FIPs were established in the final CAIR rule. They were developed through a process that involved significant public participation. In the CAIR rulemaking, EPA determined that the CAIR emission reduction requirements can be met in a highly cost-effective manner using regionwide SO_2 and NO_X cap-and-trade programs for large EGUs (70 FR 25195–25229). The incentives provided by such regionwide cap-and-trade programs encourage economically efficient compliance over the entire region.

The applicability provisions of the FIPs promulgated in today's final rule, which cover large EGUs, are identical to the applicability provisions in the CAIR SIP model rules including the revisions finalized today. *See* sections VI.E and VII in today's preamble for detailed discussion of applicability. The FIPs and the CAIR SIP model rules apply to large EGUs because EPA determined that their emissions can be reduced through the application of highly cost-effective controls (70 FR 25195–25229).

During development of the CAIR, the Agency considered the interactions between the existing title IV Acid Rain Program and the new CAIR (*see* the preamble to the final CAIR for discussion, 70 FR 25290). As explained in CAIR, ''In the absence of an approach for taking account of the title IV program, a new program (*i.e.,* the CAIR) that imposes a significantly tighter cap on SO_2 emissions for a region encompassing most of the sources and most of the SO_2 emissions covered by title IV would likely result in a significant excess in the supply of title IV allowances, a collapse of the price of title IV allowances, disruption of operation of the title IV allowance market and the title IV SO_2 cap-and-trade system, and the potential for increased SO_2 emissions.'' These impacts would undermine the efficacy of the title IV program and could erode confidence in emissions trading programs in general. For these same reasons, today's FIP SO_2 trading program is integrated with the title IV program (*see* discussion of FIP SO_2 trading program in section VI, below). EPA was petitioned for and granted reconsideration of CAIR on claims that inequities result from applying the SO_2 allocation methodology (which is based on title IV allocations). In the notice of final action on reconsideration, signed the same day as this action, EPA decided not to alter the approach taken in the final CAIR (*see* further discussion of reconsideration in section VI.G, below).

Today's FIPs implement the CAIR emission reduction requirements by adopting the CAIR SIP model trading rules; the FIPs do not develop new emission reduction requirements or trading programs. For these reasons, the Agency did not re-open in the FIP rulemaking any elements of the reduction requirements and trading programs (except for the elements such as NO_X allocations and opt-ins where States had flexibility) that were determined in the CAIR NFR and that were not modified by today's rule. By adopting as FIPs the CAIR SIP model trading programs, the Agency intends to implement the requirements of CAIR in a highly cost-effective manner and to ease the transition for sources that might initially be covered by the FIP programs and subsequently be covered by SIP programs that also adopt the model trading rules.

The Agency is promulgating these FIPs to provide a Federal backstop for CAIR. In no way should the FIPs be viewed as a sign of any concern about States ultimately making the emission reductions required under CAIR. There are no sanctions associated with today's rule, and EPA does not intend CAIR FIPs to have any negative consequences for the affected States. To the contrary, EPA is finalizing FIP approaches that are flexible and allow States a full opportunity to get their SIP revisions in place, with minimal disruption in transitioning from Federal to State implementation.

B. Regionwide SO_2 and NO_X Caps

Today's final rule provides a federal backstop for achieving the CAIR emission reduction requirements. Today's rule does not establish those reduction requirements, which were established in the CAIR rulemaking.

In the preamble to the CAIR NFR, the Agency explained how it determined regionwide SO_2 and NO_X emissions caps. See section IV in the CAIR NFR preamble (70 FR 25195–25229). The EPA also summarized the process for determining the regionwide CAIR SO_2 and NO_X emissions caps in the preamble to the proposed CAIR FIP (70 FR 49722). The CAIR FIP proposal did not reopen for public comment EPA's determination of the CAIR regionwide caps or the caps themselves. The EPA received a few comments on the CAIR regionwide caps during the public comment process on the proposed FIP. Those comments are not within the scope of today's final rule. As discussed above, in today's FIP rule the Agency is implementing the emission reduction requirements (including regionwide SO_2 and NO_X caps) that EPA developed in the CAIR rulemaking through a process that included extensive public participation.

The CAIR regionwide caps (including the States of Delaware and New Jersey) are: for SO_2, 3.7 million tons and 2.6 million tons in 2010 and 2015, respectively; for NO_X annual, 1.5 million tons and 1.3 million tons in 2009 and 2015, respectively; for NO_X ozone season, 0.6 million and 0.5 million tons in 2009 and 2015, respectively.

C. State SO_2 Emission Budgets

In the preamble to the final CAIR, the EPA explained how it determined CAIR State annual SO_2 emission budgets (*see* section V.A.1.a of the CAIR NFR preamble, 70 FR 25229–25230; *see also* the rulemaking, signed the same day as this action, to include Delaware and New Jersey in CAIR for $PM_{2.5}$). The EPA also summarized the process for determining CAIR State SO_2 budgets in the preamble to the proposed FIP (70 FR 49723). The CAIR FIP proposal did not reopen for public comment EPA's determination of the CAIR State SO_2 budgets or the budgets themselves. As discussed above, in today's FIP rule, the Agency is implementing the emission reduction requirements (including State SO_2 emission budgets) that EPA developed in the CAIR rulemaking through a process that included extensive public participation.

Today's final FIP rule will achieve the required SO_2 emission reductions

through a regionwide SO_2 cap-and-trade program for EGUs. As discussed further in section VI, below, the CAIR FIP SO_2 cap-and-trade program will rely on title IV allowances, which sources will retire at specified ratios generally greater than 1-to-1 for compliance with the CAIR FIP SO_2 program. Congress has already allocated title IV SO_2 allowances to sources in perpetuity. State SO_2 emissions budgets would not affect the distribution of SO_2 allowances for the CAIR FIP SO_2 trading program (because SO_2 allowances are already allocated to sources) and are not directly relevant for today's final FIP rule.

After EPA finalized CAIR, the Agency was petitioned for and granted reconsideration on claims that inequities result from applying the CAIR SIP model rule SO_2 allocation methodology (which is based on existing title IV allocations). The Agency announced its decision to reconsider this issue in a **Federal Register** action dated December 2, 2005 (70 FR 72268) and is taking final action on the reconsideration in a separate action signed the same day as this action. EPA decided not to alter the approach taken in the final CAIR (*see* further discussion of reconsideration in section VI.G, below).

A few commenters on the proposed CAIR FIP expressed concern with the use of title IV to establish State SO_2 emission budgets. The FIP State SO_2 budgets and the FIP unit SO_2 allocations are both based on existing title IV allocations. The EPA responds to comments on the budgets and allocations for the FIP together in section VI.G, below.

The Agency is finalizing its proposed approach regarding SO_2 budgets for the CAIR FIP SO_2 trading programs.

D. State NO_X Annual and NO_X Ozone Season Emission Budgets

In the preamble to the final CAIR, the EPA explained how it determined CAIR State NO_X annual and NO_X ozone season emission budgets (*see* section V.A.1.a of the CAIR NFR preamble, 70 FR 25230–25233; *see also* the rulemaking, signed the same day as this action, to include Delaware and New Jersey in CAIR for $PM_{2.5}$).

The EPA also summarized the process for determining CAIR State NO_X annual and NO_X ozone season budgets in the preamble to the proposed FIP (70 FR 49723). The CAIR FIP proposal did not reopen for public comment EPA's determination of the CAIR State NO_X annual and NO_X ozone season budgets or the budgets themselves. As discussed above, in today's FIP rule the Agency is implementing the emission reduction requirements (including State NO_X annual and NO_X ozone season emission budgets) that EPA developed in the CAIR rulemaking through a process that included extensive public participation.

After EPA finalized CAIR, the Agency was petitioned for and granted reconsideration on the use of fuel adjustment factors in determining CAIR State NO_X annual and NO_X ozone season emission budgets. The EPA announced its decision to reconsider this issue in a **Federal Register** notice dated December 2, 2005 (70 FR 72268) and is taking final action on the reconsideration in a separate action signed the same day as this action. EPA decided not to alter the approach taken in the final CAIR.

A commenter on the proposed CAIR FIP raised concerns regarding the use of fuel adjustment factors in determining State NO_X emission budgets. Concerns raised by the commenter with respect to EPA's use of fuel adjustment factors in determining State emission budgets are the same issues that the Agency is addressing in the context of the CAIR reconsideration process. The Agency's responses to this commenter on the use of fuel adjustment factors in setting FIP State NO_X emission budgets are addressed in the CAIR reconsideration notice. See the December 2, 2005 **Federal Register** notice announcing the reconsideration (70 FR 72268) as well the notice of final action on reconsideration signed the same day as this action.

Some commenters addressed the use of fuel adjustment factors in the proposed FIP methodology for unit-by-unit NO_X allocations. The Agency's responses regarding the use of fuel adjustment factors in the NO_X allocation methodology are discussed in section VI.F in this preamble.

The State annual and ozone season EGU NO_X budgets for today's final CAIR FIP trading programs are the same as the budgets in the final CAIR. For each State affected by the FIP NO_X trading programs, the State NO_X budgets are the total amount of allowances [14] that the Agency will allocate to sources in the State or that States will allocate using an abbreviated SIP revision. *See* section VI.F, below, for EPA's methodology and schedule for allocating NO_X allowances to affected sources.

Table V–1 shows the State NO_X emission budgets for the final FIP NO_X cap-and-trade program. These are the same State NO_X budgets as in the final CAIR (*see* Table V–2 in the CAIR NFR preamble (70 FR 25231); *see also* the rulemaking, signed the same day as this action, to include Delaware and New Jersey in CAIR for $PM_{2.5}$).

[14] As in CAIR, a NO_X annual allowance will authorize the emission of a ton of NO_X during a calendar year, and a NO_X ozone season allowance will authorize the emission of a ton of NO_X during an ozone season.

TABLE V–1.—CAIR FIP NO_X ANNUAL ELECTRIC GENERATING UNITS BUDGETS

[tons]

State	State NO_X annual budget 2009–2014	State NO_X annual budget 2015 and thereafter
Alabama	69,020	57,517
Delaware	4,166	3,472
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New Jersey	12,670	10,558
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
CAIR Region Total	1,521,707	1,268,091

Table V–2 shows the State NO_X ozone season emission budgets for the final CAIR FIP NO_X ozone season cap-and-trade program. These are the same State NO_X ozone season budgets as in the final CAIR (*see* Table V–4 in the CAIR NFR preamble (70 FR 25233).

TABLE V–2.—CAIR FIP NO_X OZONE SEASON ELECTRICITY GENERATING UNIT BUDGETS

[tons]

State *	State NO_X ozone season budget 2009–2014	State NO_X ozone season budget 2015 and thereafter
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926

TABLE V–2.—CAIR FIP NO_X OZONE SEASON ELECTRICITY GENERATING UNIT BUDGETS—Continued

[tons]

State *	State NO_X ozone season budget 2009–2014	State NO_X ozone season budget 2015 and thereafter
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989
CAIR Region Total	567,744	484,506

* For States that have lower EGU budgets under the NO_X SIP Call than their 2009 CAIR budget, table V–2 includes their SIP Call budget. For Connecticut, the NO_X SIP Call budget is also used for 2015 and beyond.

E. State NO_X Annual Compliance Supplement Pool

The CAIR established State Compliance Supplement Pools (CSP) of NO_X annual allowances of vintage 2009. In the FIP NPR, the Agency proposed to include in the CAIR FIP NO_X trading program the same State CSP amounts as were established in CAIR.

The Agency received several comments on its proposal to include the CAIR CSPs in the CAIR FIP NO_X trading program. The EPA responds to comments on inclusion of the CAIR CSPs in the FIP program, as well as comments on EPA's proposed method for distributing CSP allowances to sources, in section VI.I in today's preamble, below.

The Agency is finalizing its proposal to include the CAIR CSPs in the FIP trading programs. Table V–3 shows the State CSP amounts for the final CAIR FIP NO_X trading program. These are the same CSP amounts as shown in the CAIR NFR preamble (*see* Table V–3 in the CAIR NFR at 70 FR 25232; *see also* the rulemaking, signed the same day as this action, to include Delaware and New Jersey in CAIR for $PM_{2.5}$).

The CSPs provide, for each affected State, a pool of CAIR NO_X annual allowances from which EPA, or a State using an abbreviated SIP revision, can distribute allowances for use in complying with the CAIR FIP NO_X annual trading program (*see* section VI.I in today's preamble for further discussion regarding distribution of CSP allowances).

TABLE V–3.—CAIR FIP NO_X ANNUAL COMPLIANCE SUPPLEMENT POOL

[tons]

State	Compliance supplement pool
Alabama	10,166
Delaware	843
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New Jersey	660
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898
Total	199,997

VI. CAIR FIP NO_X and SO_2 Cap-and-Trade Programs for EGUs

A. Purpose of CAIR FIP NO_X and SO_2 Cap-and-Trade Programs and Relationship to the CAIR

In today's action, EPA is finalizing CAIR FIP NO_X and SO_2 cap-and-trade programs for EGUs as the Implementation Plan remedy for CAIR. The Agency is finalizing 3 separate CAIR FIP cap-and-trade programs: (1) SO_2 annual; (2) NO_X annual; and (3) NO_X ozone season. The EPA decided to adopt, as the FIP for each State in the CAIR region, the model cap-and-trade programs in the final CAIR, modified slightly to allow for Federal instead of State implementation. [15] Emissions cap-and-trade programs are a proven method for achieving highly cost-effective emissions reductions while providing regulated sources of emissions with flexibility in adopting compliance strategies. The incentives provided by regionwide cap-and-trade programs encourage economically efficient compliance over the entire region. The specific elements of the 3 trading programs in the FIP were developed by EPA, with significant public participation, during the CAIR development process.

Participation in the new CAIR FIP NO_X and SO_2 cap-and-trade programs is mandatory for all sources covered by the final CAIR FIP. *See* section VI.E in today's preamble for discussion of affected sources (applicability). Regulatory text for today's new CAIR FIP NO_X and SO_2 cap-and-trade programs will be located in part 97 in title 40 of the CFR.

The CAIR established State EGU emissions budgets that each State will use to determine its required emissions reductions. Today's final CAIR FIP cap-and-trade programs set specific rules for EGUs to decrease NO_X and SO_2 emissions sufficiently to achieve emission reductions that are required under CAIR. As explained above in section IV, EPA will withdraw a State's FIP in coordination with approval of a SIP implementing the requirements of CAIR.

States may choose to meet their emission reduction obligations under CAIR by adopting, as part of their SIPs, the model cap-and-trade rules set forth in the CAIR and participating in the EPA administered trading programs. Any such participation will be fully integrated with the CAIR FIP NO_X and SO_2 cap-and-trade programs that are finalized in today's action.

In order to be eligible to participate in an emissions cap-and-trade program, the Agency believes that there are two principal criteria that sources must meet, as stated in the supplemental proposal for the NO_X SIP Call (62 FR 25923). The first criterion requires that sources be able to account accurately and consistently for all of their emissions to ensure the trading program goal of maintaining emissions within a cap. Emissions monitoring must be accurate and consistent among all sources so that each allowance turned in, represents its assigned amount of emissions. The second criterion for participation in a trading program is the ability to identify a responsible party for each regulated source who would be accountable for demonstrating and ensuring compliance with the program's provisions. The EPA believes that today's rule meets those criteria. The Agency also believes that, because

[15] Today's action includes revisions to the CAIR SIP model rules as described in section VII in this preamble. For the FIP trading programs the Agency adopts the SIP model rules as finalized today and modified for federal implementation.

today's rule contains the same mandatory program elements as are in the part 96 CAIR SIP model trading programs and is designed to meet the same environmental goals and caps sources at the same levels as those model trading programs, it is appropriate to integrate today's CAIR FIP with the CAIR SIP trading programs.

Sources subject to trading programs under the FIP and sources in States choosing to participate in the EPA-administered CAIR SIP trading programs will be able to trade allowances with one another under common emissions caps across participating States. Integration of the trading programs reduces the possibility of inconsistent or conflicting deadlines or requirements, increases the potential cost savings for sources, and streamlines program administration. Unnecessary inconsistency in trading programs could hamper sources' ability to plan and achieve the needed reductions as cost effectively as possible. In addition, if a State submits and EPA approves a SIP revision including the CAIR SIP model trading programs after EPA establishes trading programs under today's FIP, disruptions to sources that shift from regulation under a FIP to regulation under a SIP will be minimized due to the consistency between the respective CAIR SIP and FIP programs.

The EPA establishes (in part 97) the geographic boundaries of the common trading programs as those States that submit SIP revisions in response to the CAIR implementing the EPA-administered trading programs or that are subject to FIPs. The EPA will administer these common trading programs in collaboration with affected States.

For the final CAIR FIP NO_X and SO_2 cap-and-trade programs, EPA adopted the CAIR model trading programs with slight revisions to allow for Federal implementation. The FIP trading programs are thus virtually identical to the CAIR SIP model trading programs. The CAIR FIP cap-and-trade programs include all of the mandatory elements that States are required to include in their SIPs in order to participate in the EPA-administered cap-and-trade programs for CAIR.

The Agency is finalizing, with certain changes described in section VI.C, the proposal to provide States that are subject to today's CAIR FIP requirements with the option to submit abbreviated SIP revisions covering specific elements of the FIP trading programs without submitting full SIP revisions to meet the requirements of CAIR. *See* section VI.C in this preamble for further discussion of abbreviated SIP revisions.

B. Relationship of Emissions Trading Programs to Section 126 Relief

In section II of today's preamble, EPA responds to commenters who argued that, because a CAIR SIP could or the CAIR FIP would reflect a trading component, such an implementation plan would not satisfy section 126 as a matter of law. As explained in section II, these arguments assume that the Agency must grant the petition, which is not EPA's view so long as the underlying SIP deficiencies are rectified.

Although EPA is denying the section 126 petition as discussed elsewhere in today's preamble, based on modeling projections the Agency believes that sources in States upwind of North Carolina will reduce emissions under the CAIR trading regime.

As discussed in the FIP NPR (70 FR 49737), EPA believes that upwind sources in States that were found to contribute significantly to North Carolina nonattainment will in fact reduce emissions of $PM_{2.5}$ precursors under the CAIR trading regime. The Agency explained that its Integrated Planning Model (IPM) [16] analysis conducted for the CAIR NFR—which assumes emissions trading—projects decreases in annual SO_2 and NO_X emissions under CAIR compared to the Base Case (*i.e.,* compared to projections without CAIR) in both 2010 and 2015 for each of the States found in the CAIR NFR analysis to contribute significantly to nonattainment of the $PM_{2.5}$ NAAQS in North Carolina.

The EPA further explained that the Agency's CAIR modeling—which, again, assumes interstate emissions trading—projects that under CAIR by 2010, with the projected emission reductions, there will be no remaining $PM_{2.5}$ nonattainment counties in North Carolina. Thus, the emission reductions under CAIR are projected to be sufficient to eliminate $PM_{2.5}$ nonattainment in North Carolina and, necessarily, no States will contribute to nonattainment.[17] This discussion of the Agency's analysis of CAIR is informational and is not intended to reopen or reconsider any issue related to that analysis.

As discussed in section II in today's preamble, some commenters argued that relief under section 126 must occur within 3 years and therefore that the CAIR emission reductions do not satisfy section 126 because although those reductions commence within 3 years they are phased in over a longer time. We respond to legal arguments in section II, above.

In any case, the EPA believes that many emission sources in States upwind of North Carolina will install NO_X and/or SO_2 emission control technology before 2009. As explained above, EPA modeling projects that North Carolina will come into attainment of the $PM_{2.5}$ standards by 2010 under CAIR, including trading programs. Much of the emission reductions that will bring North Carolina counties into attainment with the $PM_{2.5}$ standards will result from use of selective catalytic reduction (SCR) for NO_X control and flue gas desulphurization (FGD) for SO_2 control on units in upwind States. For the following reasons, EPA believes that many of these controls will be installed before 2009.

Early emission reductions occur for several reasons. Today's CAIR FIP trading rules and the CAIR SIP model trading rules include incentives for early emission reductions. For example, sources may bank title IV SO_2 allowances into the CAIR FIP or CAIR SIP SO_2 trading programs (*see* section VI.I, below, for further discussion of incentives for early reductions). Another reason why sources may reduce emissions early is the need to stagger control installations at plants where multiple units will be retrofitted to avoid operational disruptions.

As discussed elsewhere in today's preamble, the 10 States that EPA determined in CAIR contribute to North Carolina's nonattainment of the $PM_{2.5}$ standards are Alabama, Georgia, Indiana, Kentucky, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Table VI–1, below, summarizes for these 10 States the total coal-fired electric generating capacity expected to be on-line by the end of 2006 as well as the portion of that capacity expected to be controlled with SCR or FGD.[18] In addition, the table

[16] The IPM is a multiregional, dynamic, deterministic linear programming model of the U.S. electric power sector. The Agency uses IPM to examine costs and, more broadly, analyze the projected impact of environmental policies on the electric power sector in the 48 contiguous States and the District of Columbia.

[17] IPM emissions modeling conducted for the final CAIR is in the CAIR docket EPA–HQ–OAR–2003–0053; air quality modeling results are in the Air Quality Modeling Technical Support Document for the Final Clean Air Interstate Rule, March 2005, Appendix F; *see also* Table VI–10 to the preamble of the CAIR final rule at 70 FR 25251.

[18] Generating capacity through the end of 2006 (with capacity greater than 25 MWe) based on EPA's v.2.1.9 NEEDS database (2004). Capacity expected to be controlled with SCR or FGD by the end of 2006 based on research EPA conducted on planned control retrofits on coal-fired units.

summarizes for the 10 States the generating capacity that EPA expects to be controlled with SCR or FGD through the end of 2008 based on research that the Agency conducted for today's action.[19] The table also summarizes for the 10 States the generating capacity that EPA projects will be controlled with SCR or FGD by the end of 2010 based on IPM modeling projections.[20] As Table VI–1 indicates, many of the emission controls that EPA's modeling projects will be installed by the end of 2010 are actually likely to be installed before 2009.

TABLE VI–1.—SCR AND FGD SUMMARY FOR 10 STATES CONTRIBUTING TO NORTH CAROLINA'S NONATTAINMENT OF THE $PM_{2.5}$ STANDARDS

Total generating capacity by end of 2006	Expected capacity with emission controls by end of 2006	Expected capacity with emission controls by end of 2008	Projected capacity with emission controls by end of 2010 under CAIR
132 GW (466 units)	SCR: 67 GW (126 units) FGD: 48 GW (111 units)	SCR: 70 GW (130 units) FGD: 64 GW (137 units)	SCR: 82 GW (184 units) FGD: 73 GW (167 units)

EPA believes that even more controls may be installed before 2009 than were identified in the Agency's research. It is reasonable to suppose that, once CAIR SIP revisions are submitted and approved, additional plans for control retrofits will be adopted due to SIP revisions.

Some commenters supported the use of trading programs in connection with a section 126 remedy and some did not. A commenter, using South Carolina as an example, questioned why emissions can be above State budget amounts through allowance trading. This commenter points out that EPA's IPM modeling for CAIR projects emissions in South Carolina above the State's 2015 SO_2 emissions budget 5 years after 2015 and asserts that emissions over the State budget ''will still contribute to attainment problems in North Carolina.'' However, as explained above, based on modeling for CAIR—which assumes interstate emissions trading—by 2010 there will be no remaining $PM_{2.5}$ nonattainment counties in North Carolina. In other words, the EGU emission reductions projected by IPM to occur under the CAIR trading regimes *are* the amounts that are projected to be sufficient to bring North Carolina into attainment in 2010, regardless of whether for some States emissions are projected to be above the State EGU emissions budgets.

C. Abbreviated SIP Revisions Covering Elements of the CAIR FIP Cap-and-Trade Programs

In the FIP NPR (70 FR 49720, 49727–49739), the Agency proposed to provide States that are covered by CAIR with the option to submit abbreviated SIP revisions covering specific elements of the CAIR FIP trading programs without submitting full SIP revisions to meet the requirements of CAIR. By proposing to accept such abbreviated SIP revisions, the Agency intended to increase the options available for States to comply with CAIR. A State could choose to retain control of these specific elements of the trading programs without submitting a full SIP revision.

As proposed, a State would submit an abbreviated SIP revision that would modify the application of certain elements of the FIP in order to better meet the needs of the State. The EPA proposed that a State could choose to modify the application of the FIP through abbreviated SIP revisions that would do any or all of the following:

- Make applicable, to the State, provisions in the FIP for otherwise unaffected units to opt into the FIP trading programs,
- Allow the State, rather than EPA, to allocate NO_X annual and/or NO_X ozone season allowances,
- Allow the State, rather than EPA, to allocate allowances from the NO_X annual Compliance Supplement Pool (CSP), and
- Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season cap-and-trade program.

As there are no sanctions or penalties for leaving the CAIR FIP trading programs in place, EPA anticipates that some States may prefer to avoid spending the time and money necessary to submit a full SIP revision and may just modify the application of certain parts of the FIP.

The final CAIR (70 FR 25162) requires States to submit SIP revisions complying with the CAIR requirements to the Agency by September 11, 2006 and to submit the initial set of NO_X allocations by October 31, 2006.

In the CAIR FIP NPR, the Agency proposed that States choosing to submit abbreviated SIP revisions addressing the specific elements identified in the proposal would be required to submit such revisions to EPA by March 31, 2007, and—if choosing to address NO_X allocations in an abbreviated SIP revision—would be required to submit the initial set of NO_X allocations by September 30, 2007 (70 FR 49731).[21] The EPA proposed allowing States to submit abbreviated SIP revisions later than full revisions because the Agency anticipates that it will be able to complete the approval process more quickly for abbreviated revisions due to their narrower scope.

The Agency proposed to include appendices in part 97 that will be amended in the future to list any States for which the Administrator approves abbreviated SIP revisions covering opt-ins, allocation of NO_X allowances, distribution of CSP allowances, or inclusion of non-CAIR NO_X SIP Call trading sources in the CAIR FIP NO_X ozone season trading program.

The Agency received a number of comments on its proposal to allow submission of abbreviated SIP revisions for CAIR. Several commenters supported the abbreviated SIP revision approach. A commenter states that the approach provides States added flexibility, helps facilitate eventual transitions from a FIP-implemented to a State-implemented CAIR, and provides

[19] This includes expected capacity (greater than 25 MWe) with control retrofits through the end of 2008 based on EPA research of planned control retrofits on coal-fired units. Research included searching the Internet for company announcements regarding contracts for control retrofits. For 2007 and 2008 retrofits EPA focused its research on units with capacity greater than 100 MWe; if smaller units were included, we might have identified additional planned retrofits.

[20] These 2010 projections are from IPM modeling conducted for the final CAIR and include units with capacity greater than 25 MWe (IPM version 2.1.9, 2004).

[21] The proposed regulatory text at § 51.123 (70 FR 49746) would require States using the abbreviated SIP revision approach for NO_X allocations to notify EPA of such allocations by September 30, 2007 for 2009, 2010 and 2011. Through an inadvertent error, the preamble listed a different date—the preamble indicated that the proposed deadline for such allocations would be October 31, 2007 (70 FR 49731). The Agency intended the proposed date to be September 30, 2007 as indicated in the regulatory text.

sources with better certainty regarding key operational elements (such as NO_X allocations) over the initial years of the program. Commenters generally supported the choice of specific elements that EPA proposed to allow States to control using abbreviated SIP revisions.

Several commenters argued against the Agency's proposed submission deadline for abbreviated SIP revisions. Commenters who argued against the proposed submission deadline generally did so in relation to the timing for NO_X allocations. The EPA discusses the schedule for determining and recording NO_X allocations in detail in the NO_X allocations section in today's preamble (section VI.F, below) and responds in that section to commenters' concerns regarding submission deadlines for abbreviated SIP revisions in relation to NO_X allocation timing.

One commenter that did not support the proposal for abbreviated SIP revisions suggested that allowing such revisions to be submitted later than the deadline for a full SIP revision sets a poor procedural precedent. The Agency disagrees. The proposal to allow abbreviated SIP revisions for CAIR is based on the unique circumstances in this case and does not set precedent for other different circumstances.

The EPA is finalizing, with certain changes described below, the approach that a State can choose to modify the application of the CAIR FIP through abbreviated SIP revisions that do any or all of the following:

- Make applicable, to the State, provisions in the FIP for otherwise unaffected units to opt into the FIP trading programs,
- Allow the State, rather than EPA, to allocate annual and/or ozone season NO_X allowances,
- Allow the State, rather than EPA, to allocate allowances from the annual NO_X Compliance Supplement Pool (CSP), and
- Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season cap-and-trade program.

Thus a State could choose, through its abbreviated SIP revision, to bring its NO_X SIP Call trading sources that are not EGUs under CAIR from the NO_X SIP Call trading program into the CAIR NO_X ozone season trading program.

With regard to the provision allowing an abbreviated SIP revision to provide for State allocation of annual and/or ozone season NO_X allowances, EPA is revising that provision to give States the same flexibility concerning such allocations as States have in a full SIP revision. In a full SIP revision, States have the option of allocating allowances to CAIR units or to other entities (such as renewable energy facilities) or of auctioning allowances. The States must submit the CAIR unit allocations to the Administrator by specified deadlines so that the allowances can be recorded in the allowance tracking system, but the requirements for a full SIP revision do not address what happens if the State fails to meet these deadlines. In contrast, under the proposed provision for an abbreviated SIP revision allowing for State allowance allocations, a State's allocation provisions must provide that, if a State does not inform the Administrator of the allocations to CAIR units by the specified deadlines, the Administrator will assume that the units get the same allocations for the year as in the prior year and will record such unit allocations. (EPA notes that the deadline for submitting the initial set of allocations is changed, as described below, from the proposed deadline of September 30, 2007 to April 30, 2007.)

The difficulty with the proposed approach is that it assumes that the State is distributing (not auctioning) allowances and is providing them to CAIR units (not to other entities). In order to clarify that States have the same flexibility in allocating in abbreviated SIP revisions and full SIP revisions, EPA is removing the abbreviated SIP revision language concerning the Administrator's actions in the event a State fails to inform in a timely manner the Administrator of the allocations. However, it should be noted that the provisions for both abbreviated SIP revisions and full SIP revisions set deadlines for State submission of allocations to the Administrator for recordation and that, in reviewing such SIP revisions, EPA intends to ensure that the SIP revisions are consistent with those deadlines.

With regard to the provision allowing an abbreviated SIP revision to provide for State allocation of the CSP, EPA is revising that provision to give States the same flexibility with regard to CSP allocations as States have in a full SIP revision. Under § 51.123(e)(4)(iii), States may use in a full SIP revision one or both of the mechanisms described for CSP allocation, one based on early reductions and one based on need. Under the proposed provision for an abbreviated SIP revision concerning State CSP allocations, a State must use the allocation methods detailed in either § 96.143 or § 97.143. In order that an abbreviated SIP revision provides States the same flexibility as a full SIP revision, EPA is revising the abbreviated SIP revision language to give States the options of using the § 96.143 or § 97.143 provisions or the provisions under § 51.123(e)(4).

The EPA will include appendices in part 97 that will be amended in the future to list any States for which the Administrator approves abbreviated SIP revisions covering any of the 4 specific elements listed above. The EPA anticipates coordinating such amendments of the appendices with the Administrator's final decision to approve such SIP revisions.

D. Overall Structure of the CAIR FIP Cap-and-Trade Programs

In the CAIR NFR, the Agency provided SIP model rules for the CAIR NO_X annual, CAIR NO_X ozone season, and CAIR SO_2 annual trading programs that States can use to meet the emission reduction requirements in the CAIR (in part 96). For the final CAIR FIP cap-and-trade programs, EPA decided to adopt the CAIR SIP model rules with minor changes to allow for Federal implementation.

The emission reductions mandated by today's final rule will be achieved from EGUs (*see* sections VI.E and VII, below, for discussion of applicability provisions).

The CAIR FIP cap-and-trade programs rely on the detailed unit-level emissions monitoring and reporting procedures of part 75 and consistent allowance management practices. All affected sources are required to monitor and report their emissions using part 75. Source information management, emissions data reporting, and allowance trading will be accomplished using on-line systems similar to those currently used for the Acid Rain SO_X and NO_X SIP Call trading programs.

The penalty provisions for excess emissions under today's FIP trading programs were also adopted from the CAIR model trading rules. As discussed in section VII in today's preamble, the Agency revised the excess emission penalties in the CAIR SO_2 trading program to clarify the penalties for units that have excess emissions under both the Acid Rain Program and the CAIR SO_2 trading program. The penalty provisions adopted for the final FIP thus are the excess emissions penalty provisions in the CAIR with the revised CAIR SO_2 trading program penalties.

1. SO_2 Annual Program

The final CAIR FIP SO_2 cap-and-trade program requires affected sources to hold SO_2 allowances sufficient to cover their emissions for each control period. For the FIP SO_2 program, EPA decided to adopt the CAIR model SO_2 trading rule (with minor changes to allow for Federal implementation) which is based

on the existing Acid Rain Program and relies on title IV SO_2 allowances.

As in the CAIR SIP SO_2 model trading program, the SO_2 reductions for the CAIR FIP SO_2 trading program will be achieved by requiring sources to retire, in most cases, more than one title IV allowance for each ton of SO_2 emissions.[22] Sources can use pre-2010 title IV SO_2 allowances for compliance with the CAIR FIP SO_2 cap-and-trade program at a 1-to-1 ratio (*i.e.,* SO_2 allowances of vintage 2009 and earlier will offset one ton of SO_2 emissions). Allowances of vintages 2010 through 2014 will offset 0.5 tons of emissions (*i.e.,* such allowances will need to be retired at a ratio of 2-to-1 for CAIR compliance, in other words 2 allowances for every ton of emissions). Allowances of vintages 2015 and beyond will offset 0.35 tons of emissions (*i.e.,* such allowances will need to be retired at a ratio of 2.86-to-1, in other words 2.86 allowances for every ton of emissions). The emission value of an SO_2 allowance is independent of the year in which it is used, but rather is be based on its vintage (*i.e.,* the year for which the allowance is issued). These SO_2 allowance retirement ratios are the retirement ratios in the CAIR NFR, which EPA adopted in the CAIR FIP SO_2 trading program (*see* discussion in section VII in the CAIR NFR preamble at 70 FR 25255–25273, as well as in section IX at 70 FR 25290–25291).

The Agency uses the single term, ''CAIR SO_2 allowance, '' to refer to an SO_2 allowance under a CAIR SIP using the model trading rule or CAIR FIP.[23] A CAIR SO_2 allowance can be used for compliance with the SO_2 allowance-holding requirement in a CAIR SIP or CAIR FIP SO_2 trading program. Sources in States governed by either of these SO_2 trading programs can trade CAIR SO_2 allowances with each other.

2. NO_X Annual Program

The final CAIR FIP NO_X annual cap-and-trade program requires affected sources to hold NO_X annual allowances sufficient to cover their emissions for each control period. For the FIP NO_X trading program, EPA adopted the CAIR SIP model NO_X trading program with minor revisions to allow for Federal implementation. The FIP NO_X program relies on CAIR NO_X annual allowances that will be allocated to affected units by the EPA (*see* section VI.F in today's preamble for discussion of the methodology and schedule for allocating NO_X allowances) or allocated by States using abbreviated SIP revisions. A NO_X annual allowance authorizes the emission of one ton of NO_X.

The Agency is finalizing the proposed Compliance Supplement Pool (CSP) of allowances that will be allocated to sources and can be used for compliance with the CAIR FIP NO_X annual cap-and-trade program. *See* sections V and VI.I in today's preamble for further discussion of the CSP.

NO_X ozone season allowances issued under the NO_X SIP Call or under the CAIR FIP NO_X ozone season trading program can't be used for compliance with the CAIR FIP NO_X annual reduction requirement. (Pre-2009 NO_X ozone season allowances issued under the NO_X SIP Call can be banked into the CAIR FIP NO_X ozone season program; *see* discussion of FIP NO_X ozone season program, below.)

The Agency uses the single term, ''CAIR NO_X allowance,'' to refer to a NO_X allowance issued under a CAIR SIP using the model trading rule or CAIR FIP. A CAIR NO_X allowance can be used for compliance in a CAIR SIP or CAIR FIP NO_X annual trading program. Sources in States governed by either of these NO_X annual trading programs can trade CAIR NO_X allowances with each other.

3. NO_X Ozone Season Program

The final CAIR FIP NO_X ozone season cap-and-trade program requires affected sources to hold CAIR NO_X ozone season allowances sufficient to cover their emissions for each control period. For the ozone season program, the control period extends from May 1 through September 30 for each year of the program. For this trading program also, EPA adopted the trading program from the CAIR SIP model NO_X ozone season trading rule with minor modifications to allow for Federal implementation. Under the FIP program, a NO_X ozone season allowance authorizes the emission of one ton of NO_X during the ozone season.

The FIP program relies on CAIR NO_X ozone season allowances that will be allocated to affected sources by the EPA (*see* section VI.F in today's preamble for discussion of the methodology and schedule for allocating NO_X allowances) or allocated by States using abbreviated SIP revisions. In addition, pre-2009 NO_X SIP Call allowances can be banked into the CAIR FIP NO_X ozone season program and used by affected sources for compliance with that program. NO_X allowances issued under the CAIR FIP NO_X annual program can't be used for compliance with the CAIR FIP NO_X ozone season reduction requirement.

As discussed in the CAIR NFR and the CAIR FIP NPR, certain emission sources that do not meet the applicability requirements of CAIR are included in the existing EPA-administered NO_X Budget Trading Program under the NO_X SIP Call. (The types of NO_X Budget Trading Program units that are not EGUs under CAIR include industrial boilers and turbines, cement kilns, and small EGUs.) As explained in the CAIR NFR and CAIR FIP NPR, EPA will no longer administer the NO_X SIP Call ozone season cap-and-trade program for ozone seasons after 2008; however, NO_X SIP Call requirements will remain in place. The CAIR NFR provides that States that choose to participate in the CAIR EPA-administered NO_X ozone season cap-and-trade program may choose whether or not to bring their non-CAIR NO_X SIP Call trading sources into the CAIR ozone season trading program, through their SIP revisions. Bringing the non-CAIR NO_X SIP Call trading sources into the CAIR ozone season program is one way to continue to meet NO_X SIP Call requirements. *See* section VII in the CAIR NFR (70 FR 25255–25273) and section IX.A. (70 FR 25289–25290).

As discussed above, the Agency is finalizing its proposal that States may choose to submit an abbreviated SIP revision to bring their non-CAIR NO_X SIP Call trading sources into the CAIR FIP NO_X ozone season cap-and-trade program. The abbreviated SIP revision may increase a State's NO_X ozone season trading budget under the CAIR FIP NO_X ozone season cap-and-trade program by an amount equal to the portion of the State's NO_X SIP Call State trading budget that is attributed to such units.

The Agency uses the single term, ''CAIR NO_X Ozone Season allowance,'' to refer to a NO_X ozone season allowance issued under a CAIR SIP using the model trading rule or CAIR FIP. A CAIR NO_X ozone season allowance could be used for compliance in a CAIR SIP or CAIR FIP NO_X ozone season trading program. Sources in States governed by either of these NO_X ozone season trading programs can trade CAIR NO_X Ozone Season allowances with each other.

[22] Allowances of pre-2010 vintage will be retired at a ratio of one allowance per ton of emissions. For allowances of later vintages, more than one allowance will be retired per ton of emissions.

[23] A CAIR SO_2 allowance is generally a tilte IV SO_2 allowance; the only exception is where a State adopts the provisions allowing units not otherwise covered by the CAIR SO_2 trading program to opt in and allocates allowances (which are not title IV allowances) to such units. For purposes of compliance with the EPA-administered CAIR SIP SO_2 trading program or with the CAIR FIP SO_2 trading program in today's rule, the value of SO_2 allowances are discounted based on the allowance vintage year, as explained above.

E. Sources Subject to the CAIR FIP Cap-and-Trade Programs

Under the proposed CAIR FIP cap-and-trade programs, only EGUs were subject to the proposed rules. The proposed applicability provisions are, by design, identical to the provisions for applicability the CAIR SIP model trading programs and incorporated the FIP NPR revisions to the applicability provisions of the final CAIR SIP model trading rules. The revisions to CAIR SIP model rule applicability include exemptions for (1) municipal solid waste incinerators and (2) existing units that have not served a generator since before November 15, 1990. Incorporating these exemptions into the applicability provisions in both the CAIR SIP and CAIR FIP trading programs provides clarity and aligns the provisions more closely with the provisions in the title IV Acid Rain Program. A detailed discussion of the rationales for including these exemptions may be found in section VII of the CAIR FIP NPR. (See section VIII.C. in the CAIR NFR preamble for applicability discussion at 70 FR 25276–25278 and section VII in today's preamble for additional discussion of changes to the CAIR EGU definition).

Public comment on the proposed applicability provisions of the CAIR FIP trading programs primarily expressed interest in additional exemptions for waste coal-fired units, biomass-fired units, and low emissions units. These are discussed in detail below.

Applicability in the Final CAIR FIP. Today's action finalizes that, in any jurisdiction for which a final CAIR FIP is promulgated, units will be subject to the CAIR FIP trading programs (*i.e.,* to the CAIR FIP SO_2, NO_X annual, or NO_X ozone season programs, as appropriate) if they are stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Certain cogeneration units or solid waste incinerators are exempt from the CAIR FIP and are described below.

Cogeneration Unit Exemption. As in the CAIR NFR, certain cogeneration units are exempt from the CAIR FIP trading programs. Cogeneration units include units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy and meeting certain operating and efficiency standards. The program has different applicability provisions for non-cogeneration units and cogeneration units. Any cogeneration unit, serving (since the later of November 15, 1990 or the start-up of the unit), a generator with a nameplate capacity of greater than 25 MW and supplying more than ⅓ potential electric output capacity and more than 219,000 MW-hrs annually to any utility power distribution system for sale, will be subject to the requirements of the CAIR FIP trading rules. Otherwise, the unit will qualify for an exemption under the FIP rules. This cogeneration unit exemption is identical to the exemption in the CAIR NFR, as revised by today's action. Section VIII.C.3. of the CAIR NFR preamble describes the cogeneration unit exemption and discusses the specific elements of how units would qualify and remain qualified for the exemption (70 FR 25276–25278).

Solid Waste Incinerator Exemption. Today's action includes an exemption for certain solid waste incinerators in both the CAIR and CAIR FIP cap-and-trade programs. Specifically, a solid waste incineration unit commencing operation before January 1, 1985, for which the average annual fuel consumption of non-fossil fuels during 1985–1987 exceeded 80 percent and during any 3 consecutive calendar years after 1990 the average annual fuel consumption of non-fossil fuels exceeds 80 percent, is not subject to either the CAIR or CAIR FIP cap-and-trade programs. (Section VII of the preamble for today's rule provides additional discussion.)

Individual Unit Opt-ins. Today's action includes provisions for individual units to opt-in to the CAIR FIP trading programs. These units, when they opt-in, become ''affected'' by the CAIR FIP trading program and, as a result, must comply with allowance holding requirements, monitor and report emissions, and receive CAIR allowances.

The opt-in provisions of the CAIR FIP trading programs would become applicable to sources in a given State only if the State chooses to submit an abbreviated SIP revision that would provide for the inclusion of opt-ins in the CAIR FIP trading programs. The EPA considered requiring all States to have opt-in provisions in the proposed CAIR FIP trading programs. By not requiring opt-in provisions in all States covered by the proposed FIP trading programs, the Agency seeks to preserve the States' flexibility to decide whether to allow opt-in units. In addition, the EPA believes that including opt-in provisions only in States that have elected to include them in an abbreviated SIP revision avoids the possibility of ''stranding'' some opt-in units. More specifically, this requirement avoids a situation where a unit might make investments based upon assumption that it will opt-in to a CAIR FIP trading program only to be stranded if the CAIR FIP program was later supplanted by EPA approving a CAIR SIP submitted by the State that did not include opt-in provisions.

If States choose to submit abbreviated SIP revisions to provide for the inclusion of opt-ins in the CAIR FIP trading programs, the SIP revisions must include the opt-in provisions that are provided in the CAIR final rule. See section VIII.G. of the CAIR NFR preamble for discussion of opt-in provisions (70 FR 25286–25288).

Waste Coal-Fired Units Under CAIR FIP. The EPA received comments requesting an exemption for waste coal-fired units from both the CAIR and CAIR FIP SO_2 annual programs. Some commenters claimed that their costs to comply with the programs are excessively high. The economics of a waste coal-fired unit are different depending upon whether the unit has a fixed price power purchase agreement in place or whether it is selling electricity on the wholesale market.

Units that had power purchase agreements with fixed prices in place on November 15, 1990, are exempt from title IV and do not receive title IV allowances. The commenters state that, while their agreements are in effect, these units are not able to pass through cost increases, such as the cost of compliance with CAIR, except where specific escalations are provided (*e.g.,* compensation for increases in fuel costs or inflation).

While under the agreements and exempt from title IV, the units can opt into the title IV program and receive allowances as opt-in units. Commenters claim that the title IV opt-in provisions could allocate allowances to them at levels below their projected emissions because the years on which title IV bases the allocations are early in the units operation and might under-represent the unit's typical heat input. The commenters add that it is not cost effective for the units to reduce SO_2 emissions by installing advanced emission controls because the units already achieve significant reductions and have fixed price contracts that do not allow them to pass through control costs.

The second scenario is the period beginning when the units' power purchase agreements expire and the units lose their title IV exemption. As title IV affected units, they lose their

title IV opt-in status and can no longer receive title IV allowances under the title IV opt-in provisions. These units are no longer locked into their power purchase contracts and are free to participate in the wholesale electricity markets. The commenters contend that reducing emissions—even when they are free to pass through the cost of compliance—is not cost-effective, because most waste coal-fired facilities already operate at lower SO_2 emission rates than many other sources. This, however, belies the real issue, since under a trading program, sources have multiple compliance options including installing emission controls, switching fuels or purchasing allowances. If a source's control costs are above the marginal cost of control in the region, the unit is likely to comply by purchasing allowances, thereby reducing their cost of control to the market price.

In general, information regarding the cost of generation, electricity markets, and cost of controlling emissions may be found through publicly available sources. This information is used, and in some cases developed, by EPA in its regulatory efforts (*e.g.,* IPM modeling results, technical support documents (TSD) examining the cost and feasibility of control options). However, information regarding specific terms of the contracts, such as found in the power purchase agreements of the waste coal-fired units, is generally proprietary and is claimed to vary widely from contract to contract. Although complete information on contracts (*e.g.,* the fixed price for electricity, price escalators) could have been provided in order to perform a thorough analysis, commenters provided EPA with some limited information (much of it after the public comment period closed) that did not support the commenters' case for the broad closure of waste coal-fired units as a category of sources. In addition, commenters presented some limited analysis of the ratio of their estimated cost of compliance with CAIR to their projected revenue. Again, EPA's evaluation of this limited analysis showed that it did not support the commenters claims that they would not be economically viable. (The results of EPA's evaluation of the commenters' analysis are discussed later in this section.) Because the unit-specific information provided by the commenters was limited, EPA conducted an analysis using generally available information to evaluate the potential impact of the cost of complying with CAIR for a typical CFB combusting waste coal. This analysis shows that the typical waste coal-fired unit would remain economically viable under CAIR. (The results of this analysis are discussed later in this section.)

EPA understands that waste coal-fired facilities have not received a title IV SO_2 allowance allocation because they have been exempt from title IV under the IPP exemption. Title IV's IPP exemption applies to units that had power purchase agreements with fixed prices in place on November 15, 1990, and includes units other than waste coal-fired facilities. Congress limited this exemption to only those units with power purchase commitments in effect, thereby acknowledging that once the unit was freed from its power purchase commitment, it was free to pass through compliance costs to its customers. The unit may lose this exemption even before the full-term of the contract if the power purchase commitment changes after November 15, 1990, in a way that allows the cost of compliance with the Acid Rain Program to be shifted to the purchaser. For example, expiration or termination of the power purchase commitment or modification so that the price is increased (*e.g.,* changed to a market price) results in loss of the exemption. The purpose of the exemption is to protect IPP facilities subject to contract prices that were set before passage of the CAA Amendments of 1990 (including the Acid Rain Program in title IV) and that did not allow pass through of the costs of Acid Rain Program compliance. Congress has limited the exemption to apply to the Acid Rain Program and did not mandate the Agency with maintaining the exemption in future programs. EPA believes that this exemption was aimed at easing the transition of such facilities into the Acid Rain Program and that there is no basis for maintaining this exemption for every subsequent cap-and-trade program.

Waste coal-fired units are designed and operated for the purpose of generating electricity for sale. As a result, they are reasonably treated as part of the power generation sector, which comprises the category of sources the CAIR and CAIR FIP trading programs aimed at regulating. For this reason, EPA modeling for CAIR included waste coal-fired EGUs as part of the power sector, which was shown to collectively be able to make highly cost-effective SO_2 and NO_X emission reductions. The marginal cost of control and the average cost of control, shown to be highly cost-effective, reflect a range of power sector control costs that include costs from sources such as waste coal-fired units. Notably, the model considers where control will be least expensive and that some units will purchase allowances in the determination of which units are projected to dispatch. EPA modeling shows that waste coal-fired units continue to be dispatched even when the cost of complying with CAIR is part of the unit's production costs. Commenters did not provide any basis for changing EPA's treatment of waste coal-fired units in the modeling or for challenging EPA's modeling results.

EPA agrees that these units do not have large SO_2 emissions. These units may emit based on a reduction in SO_2 from sulfur content in the fuel of approximately 90 percent, or in some cases greater, reductions in SO_2 from sulfur content of the fuel.[24] However, many continue to emit at rates above those recently achieved by coal-fired units with advanced SO_2 controls (*i.e.,* scrubbers). Nevertheless, because these units tend to be relatively small and have lower total emissions, they would be required to purchase significantly fewer allowances than other, potentially higher emitting, sources that also may not have received SO_2 allowances under title IV.

However, EPA does not believe that the CAIR SO_2 annual requirements would impose an undue or inequitable ''economic burden'' on waste coal-fired units that would ''threaten the viability'' of all, or even many, of these units. EPA considered the potential impacts for both the periods of the concern identified by the commenter: (1) When the power purchase agreement is in place and the unit is exempt from title IV; and (2) after the power purchase agreement has expired and the unit is title IV affected.

For the period in which the waste coal-fired unit has a power purchase contract in place, EPA examined the analysis presented by the commenters in support of their argument that CAIR compliance costs would threaten their economic viability. EPA believes the commenters' analysis substantially overestimated the potential compliance costs of CAIR and the CAIR FIP (by inaccurately accounting for the future projected cost of emitting one ton of SO_2, underestimating access to title IV SO_2 allowances through the title IV opt-in provisions, and inaccuracies in other analytical assumptions) and, when more realistic assumptions are correctly applied, these units are much better off. (Section VI.A of the CAIR FIP Response to Comment Document presents the results of this analysis.)

[24] Reduction in SO_2 from CFB units are EPA estimates based upon the design of the facilities.

As mentioned above, while waste coal-fired units have a valid power purchase agreement (and, subsequently, an exemption from title IV), they may choose to opt-in to the title IV program and receive SO_2 allowances. The title IV opt-in provisions provide units with SO_2 allowances based upon their heat input (*i.e.*, the average of their annual heat input for the years 1985 through 1987 or their first 3 whole years of operation) and their emission rate (*i.e.*, the lesser of their actual emission rate during the first baseline year or, their lowest permitted emission limit in year they apply that will be effective that year or any time after). As a result, these units could receive SO_2 allowances sufficient to authorize all of their future, annual emissions under the title IV program. Other units, that may operate more than they did during the baseline years, may receive SO_2 allowances from the title IV opt-in provisions at levels lower than their future emissions. Assuming the waste coal-fired units made no additional reduction in SO_2 emissions, this same opt-in allocation level would authorize half of their emissions, and require them to purchase SO_2 allowances equal to half of their emissions, under the first phase of CAIR or the CAIR FIP.[25] Considering that waste coal-fired CFB units generally achieve greater than 90 percent SO_2 emission reductions, the unit would purchase SO_2 allowances equal 5 percent of this total, uncontrolled emissions. The retirement ratio for the second phase of CAIR or the CAIR FIP would result in the sources purchasing SO_2 allowances equivalent to 7 percent of this uncontrolled emissions level (*i.e.*, two thirds of the remaining 10 percent of the uncontrolled emissions). From the evidence that EPA has been provided, the commenters have not demonstrated that purchasing allowances equal to approximately 5 percent or 7 percent of uncontrolled emissions in the phases 1 and 2 of the CAIR FIP (and CAIR), respectively, would result in the units not being economically viable.

The commenters concerns about the economic viability of waste coal-fired units continue for periods of time when the power purchase agreements have expired (*i.e.*, the units have lost the exemption from title IV) and the units are free to participate in the electricity markets. EPA addressed this concern by conducting additional analysis using generally available information to evaluate the potential impact of the cost of complying with CAIR for a typical CFB combusting waste coal. More specifically, EPA examined how the potential cost to operate a typical waste coal-fired CFB unit (in $/MWh) compares to the potential price it would receive on the electricity market. This analysis estimated the potential cost of producing electricity for a waste coal-fired CFB (including the cost of complying with CAIR) to be significantly less than the EPA projected wholesale price and the forecasted price of electricity. In general, waste coal-fired facilities will continue to be profitable, even when factoring in the cost of complying with CAIR.

EPA also notes that, upon the expiration of the power purchase agreements, waste coal-fired units will participate in the electricity markets and be required to comply with all applicable emission control programs, including the title IV Acid Rain Program, just as other coal-fired facilities. Some of these coal-fired units have installed emission control equipment, emit SO_2 at lower rates than the waste coal-fired units, and are complying with title IV while they compete in the electricity markets. Additionally, new units continue to come online and are economically viable even though they must acquire title IV SO_2 allowances on the market.

In addition, commenters mentioned that waste coal-fired facilities provide benefits outside of air emissions, such as assisting in the mitigation of waste coal impacts on the land. EPA notes that, in case of waste coal-fired units, there are a variety of avenues of potential relief for States that wish to assist these units as they transition to competitive markets. Options for States to encourage certain types of generation include, but are not limited to: Revenue from renewable portfolio standards (where waste coal-fired units can qualify); and providing valuable CAIR NO_X annual and ozone season allowances, as well as mercury allowances under the Clean Air Mercury Rule (which are options in Pennsylvania, where most of the commenters waste coal-fired units are located). EPA also notes that, in the case of waste coal-fired units that have contended that they provide multi-media benefits, that they will have the flexibility to develop integrated, multi-pollutant compliance strategies under CAIR.

In summary, EPA does not agree with commenters that believe that complying with the CAIR FIP or CAIR SO_2 annual program would result in this category of units not being economically viable. These units are designed to generate electricity for sale on the grid and are part of the power generation sector. The CAIR FIP and CAIR trading programs are designed to achieve emission reductions from EGUs while providing the flexibility for the markets to find the least-cost reductions. Once their contracts expire, waste coal-fired units, just as other coal-fired generation sources which may or may not receive title IV SO_2 allowances, will be expected to hold SO_2 allowances and compete in the electricity markets. In addition, the commenter has not provided analysis that demonstrates that waste coal-fired units, as a category, would not be economically viable as a result of CAIR. For these reasons, EPA has not included an exemption for waste coal-fired units or IPPs in the CAIR FIP or CAIR trading programs.

Biomass-Fired Units under CAIR FIP. EPA received comment that biomass-fired units should be exempt from the CAIR and CAIR FIP trading programs. These commenters claimed that their operations are similar to those of solid waste incineration units, which EPA proposed to exempt in the CAIR FIP NPR. Commenters added that they could meet fossil fuel use criteria used in the solid waste incineration unit exemption (*i.e.,* the average annual fuel consumption of non-fossil fuels not exceeding 80 percent for the years 1985–1987 (or for a unit commencing operation after January 1, 1985, the first 3 years of operation) and during any 3 consecutive calendar years after 1990). In addition, commenters noted that this would be consistent with the title IV exemptions for biomass-fired units as ''qualifying facilities.''

EPA disagrees with commenters that request that biomass-fired EGUs be exempted from the CAIR and CAIR FIP trading programs because they are similar to solid waste incinerators. While biomass-fired EGUs may be able to meet the criteria for limited combustion of fossil fuel used in the solid waste incineration unit exemption in the CAIR and CAIR FIP trading programs, they differ from solid waste incineration units in that biomass-fired units are designed and operated for the purpose of generating electricity for sale. As a result, they are reasonably treated as part of the power generation sector, which comprises the category of sources the CAIR and CAIR FIP trading programs aimed at regulating. For this reason, EPA modeling for CAIR included biomass-fired EGUs as part of the power sector, which was shown to be able to make highly cost-effective SO_2 and NO_X emission reductions. The marginal cost of control and the average

[25] Assumes sources receive title IV opt-in allowances equal to their current emissions. The 2-to-1 retirement ratio of CAIR's first phase requires CAIR sources to hold twice as many allowances.

cost of control, shown to be highly cost-effective, reflect a range of power sector control costs that include costs from sources such as biomass-fired units. Commenters did not provide any basis for changing EPA's treatment of biomass-fired units in the modeling or for challenging EPA's modeling results.

Biomass-fired units included in the CAIR and CAIR FIP trading programs are distinguishable from solid waste incineration units exempt from the CAIR and CAIR FIP trading programs. First, while the purpose of biomass-fired units are to generate electricity (and, in some cases, useful thermal energy), solid waste incineration units are designed and operated for the purpose of disposing of solid waste, with electricity generation incidental to this purpose. In fact, the term ''solid waste incineration unit'' excludes sources whose primary purpose is something other than waste disposal, such as ''material recovery facilities * * * which combust for the primary purpose of recovering materials'' and ''qualifying small power production facilities * * * or qualifying cogeneration facilities * * * which burn homogeneous waste for the production of electric energy * * * for the production of electric energy and steam or forms of useful energy (such as heat) * * *'' (18 U.S.C. 7429(g)(1)) Thus, it was reasonable for EPA to treat biomass-fired units, but not solid waste incineration units, as part of the power sector. Second, as explained in the CAIR FIP NPR, emission reductions from solid waste incineration units, treated as a separate source category, were not considered in EPA's determination of highly cost-effective reductions from the power sector. Biomass-fired units were treated as part of the power sector, which was shown in EPA's modeling to be able to make highly cost-effective reductions.

EPA does not believe that the title IV exemption for qualifying biomass-fired units means that these units should be exempt from all cap-and-trade programs developed after the Acid Rain Program. Under the Acid Rain Program, an IPP facility (such as a biomass-fired unit) that has, as of November 15, 1990, a qualifying power purchase commitment (including a sales price) to sell at least 15 percent of planned net output capacity and has installed net output capacity not exceeding 130 percent of planned net output capacity is exempt from the program. However, if the power purchase commitment changes after November 15, 1990 in a way that allows the cost of compliance with the Acid Rain Program to be shifted to the purchaser, then the IPP facility loses the exemption. For example, expiration or termination of the power purchase commitment or modification so that the price is increased (*e.g.,* changed to a market price) results in loss of the exemption. The purpose of the exemption is to protect IPP facilities subject to contract prices that were set before passage of the CAA Amendments of 1990 (including the Acid Rain Program in title IV) and that did not allow pass through of the costs of Acid Rain Program compliance. However, EPA maintains that this exemption was aimed at easing the transition of such facilities into the Acid Rain Program and that there is no basis for maintaining this exemption for every subsequent cap-and-trade program.

Under the CAIR trading programs, a biomass-fired unit can be allocated NO_X allowances, just as any other CAIR unit. Further, although biomass-fired units are not generally allocated title IV allowances, which are used in the CAIR SO_2 annual trading program, those units can opt into the Acid Rain Program and receive title IV allowances as long as they retain their IPP exemption. If they lose the exemption because they are no longer bound by their power purchase commitment, then they can pass through compliance costs to the same extent any CAIR unit can do so.

For the reasons discussed above, the EPA is not including an exemption from the CAIR and CAIR FIP trading programs for biomass-fired units in today's final rule.

Low Emissions Units Under CAIR FIP. EPA received comment requesting that units with low emissions, such as units that emit less than 25-tons annually, be exempt from the CAIR and CAIR FIP trading programs. This includes simple cycle turbines that are operated infrequently, primarily during peak demand or when there are operational difficulties with baseload units. Commenters claim that the cost of monitoring and reporting their emissions is excessively burdensome and that special provisions in part 75 monitoring for low mass emitting (LME) units does not provide adequate relief.

Today's final CAIR FIP trading rules do not include an exemption for low emitting units. While low emitting, these units are designed and operated for the purposes of generating electricity for sale. As a result, they are reasonably treated as part of the power generation sector, which comprises the category of sources the CAIR and CAIR FIP trading programs aimed at regulating. For this reason, low-emitting units were included as part of the power sector, which was shown through EPA modeling for CAIR to be able to make highly cost-effective emission reductions. The marginal cost of control and the average cost of control, shown to be highly cost effective, reflect a range of power sector control costs that include costs from low-emitting units (including simple-cycle turbines).

Commenters advocating an exemption of these units did not provide any basis for changing EPA's treatment of these units in the modeling or for challenging EPA's modeling results.

The NO_X SIP Call did include an exemption for units that could demonstrate that their permits imposed an operating hour limitation under which their potential emissions during the ozone season did not exceed 25 tons (the ''25-ton exemption''). Units wishing to obtain the 25-ton exemption were required to use conservative emission estimates of their potential emissions and State budgets were adjusted to remove the equivalent of their potential emissions from that State's trading program budget. In general, this exemption was undersubscribed and complex. EPA also notes that it received little comment on including a 25-ton exemption, with only a single facility claiming that this exemption is necessary. EPA does not see compelling justification to include this exemption in the CAIR and CAIR FIP trading programs.

EPA does not agree with commenters that contend that the LME provisions do not adequately relieve the cost of monitoring and reporting for low emitting units. The part 75 LME provisions provide qualifying sources with multiple options to allow facilities to choose the approach that best fits their circumstances. First, units may choose to use EPA-provided, conservative emission factors in lieu of installing and operating Continuous Emissions Monitoring Systems (CEMS). The LME provisions provide a second option that allows facilities to determine unit-specific emission factors for use in estimating their annual emissions. Additionally, EPA provides the software necessary to generate the quarterly emissions reports for these sources to further lessen the burden on these sources. These streamlined monitoring and reporting procedures relieve much of the administrative burden, and therefore, the compliance costs, for LME qualifying units. This allows EPA to accurately and cost-effectively account for the emissions, even at low emission levels, and allow these units to participate in the CAIR trading programs.

F. Allocation of NO_X Emission Allowances to Sources

The EPA presented in the NPR (70 FR 49730–49734) its proposed schedules and methods for allocating NO_X allowances to sources, including allowances for the CAIR FIP NO_X annual trading program and the CAIR FIP NO_X ozone season trading program. The Agency proposed to use NO_X allocation methods that are consistent with the NO_X allocation methods in the CAIR SIP model trading rules.

As discussed above, the Agency proposed that a State could choose to modify the application of the FIP through abbreviated SIP revisions that would allow the State, rather than EPA, to allocate NO_X annual and/or ozone season allowances for the CAIR FIP trading programs.

The EPA proposed formulas for EPA-determined allocations of NO_X allowances to units (both existing units with sufficient baseline data and new units) under the CAIR FIP trading programs. Further, the Agency proposed schedules for applying the allocation formulas and for determining such NO_X allocations for the CAIR FIP trading programs. The EPA also proposed schedules for States to apply State-determined allocation formulas under abbreviated SIP revisions. In addition, EPA proposed a schedule for the Administrator to record NO_X allocations (whether EPA-or State-determined) in source accounts.

The EPA received a number of comments on each of these elements of its proposed schedules and methods for NO_X allocations. The Agency discusses the comments and presents the final schedules and methods for NO_X allocations below.

See section VI.I in today's preamble for a discussion of the Agency's method for distributing FIP NO_X annual allowances from the NO_X annual CSP.

1. Schedule for Determining and Recording NO_X Allocations

The Agency's preference is for States to make decisions about NO_X allocations for their sources. Although EPA will determine NO_X allocations for the CAIR FIP trading programs, we intend to only record EPA-determined allocations in allowance accounts for sources located in a State without a timely, approved CAIR SIP revision (or timely, approved abbreviated CAIR SIP revision providing for State-determined allocations).

While EPA's proposal included schedules for determining and recording NO_X allocations for both existing units with sufficient baseline data and new units, this section of the preamble—and the public comments—focus on the allocations for existing units.[26]

As discussed further below, EPA intends to determine NO_X allocations for the CAIR FIP trading programs by October 31, 2006 (covering 2009–2014). For any State choosing to determine CAIR FIP NO_X allocations using an abbreviated SIP revision, the deadline for States to notify EPA of their first set of NO_X allocations (covering at least 2009–2011) is April 30, 2007. The Agency will record EPA-determined allocations for the CAIR FIP trading programs by September 30, 2007 (covering 2009), September 30, 2008 (covering 2010) and September 30, 2009 (covering 2011–2013). If State-determined NO_X allocations are approved earlier than these recordation deadlines (under a full SIP revision or an abbreviated SIP revision), the Agency intends to record the State-determined allocations in source accounts rather than EPA-determined allocations, as soon as possible. Table VI–2, below, summarizes the final deadlines for recording CAIR FIP NO_X allocations (EPA-determined allocations or State-determined allocations using an abbreviated SIP revision). Table VI–3 summarizes the final deadlines for recording CAIR SIP NO_X allocations for States choosing to use the CAIR model trading rules (full SIP revisions).

As discussed in the NPR, the Agency developed proposed schedules for recording CAIR FIP NO_X allocations for existing units in source accounts with the objective of balancing the following two goals: (1) Providing both adequate certainty to sources regarding their CAIR NO_X allocations and adequate time for sources to make compliance decisions, and (2) providing States choosing to allocate CAIR NO_X allowances with time to submit, and EPA to approve, abbreviated or full SIP revisions that provide for State-determination of allowance allocations.

The final CAIR (70 FR 25162) requires States to submit SIP revisions complying with the CAIR requirements to the Agency by September 11, 2006 and to submit the initial set of NO_X allocations by October 31, 2006.

In the CAIR FIP NPR, the Agency proposed that States choosing to submit abbreviated SIP revisions would be required to submit such revisions to EPA by March 31, 2007, and—if choosing to address NO_X allocations in an abbreviated SIP revision—would be required to submit the initial set of NO_X allocations by September 30, 2007. The EPA proposed allowing States to submit abbreviated SIP revisions later than full revisions because the Agency anticipates being able to complete the approval process more quickly for abbreviated revisions due to their narrower scope.

The Agency stated in the FIP NPR its intention to determine final NO_X allocations for 2009 through 2014 for the FIP trading programs prior to December 1, 2007 (70 FR 49732). The EPA has further considered its plans for determining these final NO_X allocations and now intends to determine them by October 31, 2006. The Agency intends to publish a Notice of Data Availability (NODA) during spring 2006 with NO_X allocations for 2009 through 2014. The public will have an opportunity to make objections to any of the data used in these allocations. EPA will publish a NODA with the final NO_X allocations for 2009 through 2014 (adjusted if necessary in light of any objections) by October 31, 2006. In this manner, the Agency intends to provide earlier notice to sources of the EPA-determined NO_X allocations.

The EPA proposed to determine NO_X allocations by July 31, 2011 and July 31 of each year thereafter for the control period in the fourth year after the year of the deadline for the determination and then to provide opportunity for submission of objections to the determination. The EPA would make any necessary adjustments to the allocations in light of any objections, before the deadline for EPA to record the allocations. The EPA is now finalizing this schedule. For example, the Agency will determine allocations by July 31, 2011 for the 2015 control period and then provide opportunity for submission of objections. The Agency intends to make any necessary adjustments to these allocations, in light of any objections, as soon as possible after the receipt of objections and before the recordation deadline[27] of December 1, 2011. As discussed further below, the Agency intends to record EPA-determined NO_X allocations in source accounts only in the absence of a timely, approved full CAIR SIP revision or a timely, approved abbreviated CAIR SIP revision providing for State-determined allocations.

The EPA presented in the FIP NPR its proposed deadlines for recording NO_X allocations in source accounts for the CAIR FIP trading programs (*see* Table

[26] The Agency is finalizing the proposed schedules for determiing and recording FIP NO_X allocations for new units; see §§ 97.141, 97.341, 97.153 and 97.353.

[27] Recordation deadline means the date by which the Administrator will record allocations in source accounts in the allowance tracking systems.

VI–1 in the NPR at 70 FR 49732.) The proposed recordation deadlines for FIP NO_X allocations were as follows: By December 1, 2007 for the 2009 control period; by December 1, 2008 for the 2010 control period; by December 1, 2009 for the 2011, 2012 and 2013 control periods; by December 1, 2010 and December 1 of each year thereafter for the control period in the fourth year after the recordation deadline. These proposed recordation deadlines were the latest dates by which EPA proposed to record NO_X allocations for the CAIR FIP trading programs. The EPA proposed to record EPA-determined NO_X allocations *only* in the absence of a timely, approved full CAIR SIP revision or a timely, approved abbreviated CAIR SIP revision providing for State-determined NO_X allocations. The Agency intended to record any NO_X allocations determined by a State using an abbreviated SIP revision as soon as feasible after approval of the abbreviated SIP revision; EPA did not intend to wait until the proposed deadlines to record such State-determined allocations. Likewise, the Agency intended to record any NO_X allocations determined by a State using a full SIP revision as soon as feasible after approval of the full revision (and according to the recordation deadlines in the CAIR SIP rules at §§ 96.153 and 96.353).[28]

In the FIP NPR (70 FR 49739), the Agency proposed to remove the deadline to record NO_X allocations for the first set of years submitted in a SIP revision (*i.e.,* in a full SIP revision) that used the model allocation method in part 96, but to retain the deadlines to record the subsequent allocations. The CAIR NO_X model trading rules, as finalized at 70 FR 25162, required the Administrator to record the initial set of NO_X allocations submitted by the States by December 1, 2006 (§§ 96.153 and 96.353). However, since the SIP revisions that include such allocations are not due until September 11, 2006, it is highly unlikely that all the SIP revisions will be approved by EPA in time for the allocations to be recorded by December 1, 2006. CAIR NO_X allowance allocations should not be recorded, and thereby be tradable in the allowance market, before the SIP revision on which the allocations are based is final; it would be highly disruptive to the allowance market if allocations that are recorded and could be traded could subsequently be rendered invalid due to disapproval of the SIP revision on which the allocations are based.

The Agency's proposal to remove the deadline to record the first set of NO_X allocations submitted in a full SIP revision did not include an alternative recordation deadline. Some commenters suggested that EPA should set an alternative deadline, and one commenter suggested that the deadline should be within 30 to 60 days following EPA approval of a State's SIP revision. The Agency is finalizing a recordation deadline of September 30, 2007 for the first set of NO_X allocations submitted with a full SIP revision. This recordation deadline is based on the Agency's belief that full SIP revisions can be approved in about a year from submission, that is by about September 2007.

Some industry commenters who supported the abbreviated SIP revision approach did not support the proposed schedule for abbreviated revisions, in particular with regard to the schedule for NO_X allocations. Some suggested that abbreviated SIP revisions should be due on the same schedule as full SIP revisions (*i.e.,* that the deadline for abbreviated SIP revisions should be September 11, 2006, instead of March 31, 2007 as proposed) or, as suggested by one commenter, on an even earlier schedule than full SIP revisions. Similarly, some suggested that the deadline for the first set of NO_X allocations submitted with an abbreviated SIP revision should be the same as the NO_X allocations deadline for a full SIP revision (*i.e.,* that the deadline for allocations in an abbreviated revision should be October 31, 2006, instead of the proposed deadline).[29] Some commenters suggested that sources should be provided earlier knowledge of their allocations in order to plan for compliance.

A State commenter asserts that submitting an abbreviated SIP revision under the proposed schedule will be problematic for some States that may not be able to complete a State rulemaking prior to the deadline for such submission.

The EPA is finalizing the proposed March 31, 2007 deadline for submission of abbreviated SIP revisions to the Agency. Because of the narrower scope of abbreviated SIP revisions, EPA anticipates that it will be able to complete the approval process more quickly for such revisions than for full SIP revisions. The EPA believes that it can approve abbreviated SIP revisions in about 6 months from submission. With abbreviated SIP revisions due to the Agency about 6 months later than the deadline for full SIP revisions, EPA anticipates that approval for both types of submissions would be feasible by about the same time, that is by about September 2007.

The Agency is finalizing a deadline of April 30, 2007—instead of September 30, 2007 as proposed—for States to submit to EPA their first set of NO_X allocations associated with an abbreviated SIP revision (covering at least 2009, 2010 and 2011). The Agency revised this deadline in order to provide sources with an earlier opportunity to have notice of the State-determined NO_X allocations.

A few industry commenters argued that the deadlines for recording NO_X allocations in source accounts for the CAIR FIP trading programs should be earlier than proposed, to provide earlier knowledge to sources of their allocations. One recommended that NO_X allocations for the CAIR FIP trading programs—whether determined by EPA or determined by a State using an abbreviated SIP revision—be recorded in source accounts by December 1, 2006 for 2009 through 2011.

Another industry commenter suggested that, if a State fails to meet the October 31, 2006 deadline for allowance allocations in a full SIP revision, EPA should immediately record the FIP allowance allocations. The same commenter also suggested that NO_X allocations should be recorded in source accounts a minimum of 3 years prior to the date they can be used for compliance and asserted that, if a source did not know until a year before the compliance deadline what its allocation will be, the source ''would be completely unable to plan for compliance.''

A State commenter suggests that the requirements for notification of allocations under CAIR SIP trading programs and the CAIR FIP trading programs should be the same. According to the commenter, if EPA finalizes a lead time for recording NO_X allocations under the CAIR FIP trading programs of less than 3 years for the first 4 control periods, ''the same flexibility

[28] The FIP NPR preamble contained an inaccurate statement regarding proposed NO_X allocation recordation deadlines. The preamble (70 FR 49731) indicated that the recordation deadlines would be the same whether the allocations were in a full SIP revision or in an abbreviated revision; however the proposed recordation deadlines relevant to abbreviated revisions are different from deadlines for full SIP revisions.

[29] The deadline that EPA proposed for submitting NO_X allocations with an abbreviated SIP revision is September 30, 2007 for 2009, 2010 and 2011, as specified in the proposed regulatory text at § 51.123 (70 FR 49746). Through an inadvertent error the preamble to the NPR listed a different date; the preamble indicated that the proposed deadline for such allocations would be October 31, 2007 (70 FR 49731).

should be extended to approved CAIR SIP trading programs.''

In determining the final NO_X allocation recordation deadlines, abbreviated SIP submission deadlines, and schedules for determining NO_X allocations, the Agency is balancing the goals of (1) providing information in advance to source owners and operators regarding their future CAIR NO_X allocations in order to facilitate their decision-making concerning compliance with the requirements to hold allowances and (2) providing States choosing to allocate CAIR NO_X allowances sufficient time to prepare and submit SIP revisions (full or abbreviated revisions) setting forth the State allocation methodology and prepare and submit unit allocations for specific years and providing EPA sufficient time to review and approve these SIP revisions and record these unit allocations. The EPA made adjustments to the proposed NO_X allocation schedules in response to public comments received on the proposal. The Agency believes that the final schedules achieve a reasonable balance between these goals within the constraints of the available time.

The Agency is finalizing a deadline of September 30, 2007 (instead of December 1, 2007 as proposed) for recording NO_X allocations for 2009 for the CAIR FIP trading programs, whether EPA-determined or State-determined using an abbreviated SIP revision. This is the same deadline that EPA is finalizing for recording the first set of State-determined NO_X allocations in a full SIP revision, as discussed above. This is the earliest feasible recordation date based on EPA's assumption that it will take about a year to approve a full revision and about 6 months to approve an abbreviated revision. The EPA would like to stress that, if State-determined NO_X allocations are approved earlier than this deadline (under a full SIP revision or an abbreviated SIP revision) the Agency intends to record the State-determined allocations in source accounts as soon as possible. The Agency does not intend to wait until the recordation deadline to record State-determined allocations and will record EPA-determined allocations for 2009 by this deadline in the absence of an approved full SIP revision or an approved abbreviated SIP revision providing for State-determined allocations.

Similarly, the Agency is finalizing a recordation deadline of September 30, 2008 (instead of December 1, 2008) for recording CAIR FIP NO_X allocations for 2010; and September 30, 2009 (instead of December 1, 2009) for recording CAIR FIP NO_X allocations for 2011, 2012 and 2013. The Agency does not intend to wait until these deadlines to record State-determined allocations and will record EPA-determined allocations for 2010, 2011, 2012 and 2013 according to these deadlines in the absence of an approved full SIP revision or an approved abbreviated SIP revision providing for State-determined allocations. The Agency will record EPA-determined allocations in source accounts one year at a time for 2009 and 2010 in order to provide flexibility to States to determine allocations for their sources.

Beginning with allocations for the 2014 compliance year, EPA is finalizing the proposed recordation deadlines for CAIR FIP NO_X allowances. That is, beginning with the 2014 control period and for each control period thereafter, EPA intends to record NO_X allocations for the CAIR FIP trading programs in source accounts by December 1 of each year for the control period 4 years after the year in which the allocations are recorded. This approach will provide sources with their allocations about 3 years in advance. For example, EPA will record FIP allocations for the 2014 control period by December 1, 2010. The Agency will record EPA-determined allocations only in the absence of an approved full SIP revision or an approved abbreviated SIP revision providing for State-determined allocations.

Table VI–2, below, summarizes the final NO_X allocation recordation deadlines for the CAIR FIP trading programs. Deadlines for future control periods not shown in the table follow the same pattern shown for 2014 through 2016. Note that these are the latest dates by which EPA will record CAIR FIP NO_X allocations. The EPA intends to record State-determined CAIR FIP NO_X allocations as soon as possible after approval of abbreviated SIP revisions.

TABLE VI—2.—RECORDATION DEADLINES FOR CAIR FIP NO_X ALLOCATIONS

CAIR control period	Deadline by which FIP NO_X allocations are recorded (EPA-determined allocations or state-determined allocations using abbreviated SIP revision)
2009	September 30, 2007.
2010	September 30, 2008.
2011	September 30, 2009.
2012	September 30, 2009.
2013	September 30, 2009.
2014	December 1, 2010.
2015	December 1, 2011.
2016	December 1, 2012.

As discussed in the FIP NPR (70 FR 49731), EPA acknowledges that it is preferable for source owners and operators to have at least 3 years lead time with regard to allowance allocations when feasible. A shorter lead time would reduce the period for buying or selling allowances and could prevent sources from participating in allowance futures markets, a mechanism for hedging risk and lowering costs (CAIR NFR, 70 FR 25279). Although lead time may impact the selection of trading strategies, as discussed further below, EPA believes that the selection of compliance methods (*e.g.,* installation of emission control technology, fuel switching, or allowance purchases) should not be impacted by the amount of allowances a source is allocated for a given year.

The final schedule for recording NO_X allocations for the CAIR FIP trading programs in today's rulemaking provides that allocations will be recorded with at least 3 years lead time in all but the initial 4 compliance years. For those initial years, the Agency will work with the States to be able to record State-determined NO_X allocations as soon as feasible and will record EPA-determined allocations by the recordation deadlines in the absence of timely, approved full SIP revisions or timely, approved abbreviated SIP revisions providing for State-determined allocations.

Table VI–3, below, summarizes the final recordation deadlines for NO_X allocations for the CAIR SIP model trading rules (*i.e.,* NO_X allocations contained in full SIP revisions). Deadlines for future control periods not shown in the table follow the same pattern shown for 2015 and 2016. The EPA intends to record State-determined allocations as soon as possible after approval of full SIP revisions.

TABLE VI—3.—RECORDATION DEADLINES FOR CAIR SIP MODEL RULE NO_X ALLOCATIONS

CAIR control period	Deadline by which SIP NO_X allocations are recorded (for States choosing to use the CAIR SIP model rules)
2009	September 30, 2007.
2010	September 30, 2007.
2011	September 30, 2007.
2012	September 30, 2007.
2013	September 30, 2007.
2014	September 30, 2007.
2015	December 1, 2009.
2016	December 1, 2010.

It is likely that source owners and operators will know or at least have a reasonable understanding of the likely

amounts of their NO_X allocations substantially earlier than the deadlines for recording allocations in source accounts. States submitting full CAIR SIP revisions must notify EPA of their initial set of unit-by-unit NO_X allocations (covering at least 2009, 2010 and 2011) by October 31, 2006. As indicated in the CAIR, the States have broad discretion in making unit-by-unit allocations, and EPA's review will center on whether the total allocations in a given year exceed the State's trading budget. *See* §§ 51.123(o)(2)(ii)(A) and (aa)(2)(iii)(A). The Agency intends to determine unit-by-unit NO_X allocations for the initial compliance years of the CAIR FIP trading programs by the same date, October 31, 2006 (covering 2009 through 2014). States submitting abbreviated SIP revisions must notify EPA of their unit-by-unit NO_X allocations for the CAIR FIP trading programs by April 30, 2007 (covering at least 2009, 2010 and 2011). As is the case for States submitting full SIP revisions, EPA's review of unit-by-unit allocations will center on ensuring that the State budget would not be exceeded.

Moreover, through each State's public rulemaking, adjudicative, and/or legislative processes for determining allocations, source owners and operators will likely be aware of their State's plans regarding NO_X allocations even in advance of the deadlines by which the States must submit their unit-by-unit allocations to EPA. For example, the public is likely to know whether the State is planning to allocate using the example NO_X allocation method provided in the CAIR SIP model rules, or what alternative allocation method the State is planning to use. This knowledge would give owners and operators a sense for what their allocations will be.

An industry commenter asserted that, if a source did not know until a year before the compliance deadline what its allocation will be the source ''would be completely unable to plan for compliance,'' stating as a reason ''it takes longer than a year to install the controls that might be necessary to meet an unexpectedly low allocation.'' Another commenter asserted that ''Sources use the period of time between finalization of source-by-source allocations and the control period to plan and implement any strategy necessary to achieve compliance.'' The Agency disagrees with these arguments. The EPA believes—and general economic theory suggests—that for owners and operators of sources covered by CAIR trading programs, the determination regarding what will be the lowest cost compliance methods (*e.g.,* installation of emission control technology, fuel switching, or allowance purchases) should not be impacted by the amount of allowances a source is allocated for a given year.

The Agency believes the decision to install NO_X control technology will be made based on evaluating the cost to that source of installing controls compared to the price of NO_X allowances in the allowance market. For a particular source, if the cost to control a ton of NO_X emissions is lower than the NO_X allowance price, then the source will likely choose to control emissions. This is the case regardless of the amount of allowances allocated to the source since using an allocated allowance to cover emissions has an opportunity cost (*i.e.,* the value of that allowance if it were sold in the allowance market) just as using a purchased allowance to cover emissions has a cost (*i.e.,* the price of purchasing that allowance in the allowance market).

Such a source may choose to over-control and make greater reductions than those required on average by the NO_X trading program cap either to free up allocated allowances that can then be sold for more than it cost to free up the allowances or in order to avoid purchasing allowances in the allowance market. In contrast, for a particular source, if the cost to control a ton of NO_X emissions is higher than the NO_X allowance price, the source will likely choose to use allocated allowances or buy allowances to cover its NO_X emissions since that will cost less than installing control technology.

The Agency strongly urges States to submit CAIR SIP revisions (full or abbreviated revisions) to EPA in a timely manner. The EPA will endeavor to work with States to ensure that the Agency can timely approve SIP revisions and record State NO_X allocations in source accounts.[30] However, once EPA-determined NO_X allocations are recorded for a particular control period (which would only occur in the absence of a timely, approved full CAIR SIP revision, or a timely, approved abbreviated CAIR SIP revision providing for State-determined allocations), EPA intends not to record overlapping State-determined allocations for that same control period. Rather, EPA will work with the States to approve SIP revisions with State allocations for control periods after the last control period for which EPA-determined allocations have been recorded in source accounts. It would be highly disruptive to the allowance market if EPA-determined allocations that had been recorded and could be traded in the market could subsequently be rendered invalid due to approval of overlapping State allocations for the same control period.[31]

For States choosing to submit full SIP revisions for CAIR, the Agency suggests they consider designating any of the 4 specific elements that can be included in abbreviated SIP revisions (*e.g.,* NO_X allocations) as being submitted for purposes of both a full SIP revision and an abbreviated SIP revision. Because the Agency anticipates that it will be able to approve abbreviated SIP revisions more quickly than full SIP revisions, a State's designation of its NO_X allocations as an abbreviated SIP revision (as well as part of a full SIP revision) may result in EPA being able to approve the allocations portion more quickly and being able to record the State-determined unit-by-unit allocations sooner.

The Agency intends to work with any State choosing to allocate NO_X allocations (whether through a full SIP revision or an abbreviated SIP revision) and to ensure that the State's allocations, rather than EPA-determined allocations, will be recorded as soon as possible.

The Clean Air Act is designed to give States the first obligation (and opportunity) to prevent significant contribution to a downwind State's nonattainment problems. The EPA only acts in the case where a State does not meet this obligation. The Agency is promulgating CAIR FIPs as soon as possible to assure downwind States that emission reductions will occur in time to help them meet their nonattainment deadlines. Even though EPA is

[30] EPA believes that, if a State submits its CAIR SIP revision later than the submission deadline (September 11, 2006 or March 31, 2007 for a full or abbreviated SIP revision, respectively), it is unlikely that there will be adequate time for the Agency to review and approve the SIP revision and record State-determined NO_X allocations by the recordation deadline under the FIP for the 2009 compliance year. For a CAIR SIP revision submitted after its deadline, EPA intends to withdraw FIP requirements in a State as soon as practical after receiving approvable SIP revisions and will work with any State to ensure a timely withdrawal of the FIP and recording of State NO_X allocations in source accounts. The deadlines for recording CAIR FIP NO_X allocations and CAIR SIP NO_X allocations are presented above in Tables VI–2 and VI–3, respectively.

[31] The discussion in this section focuses on the time frame in which EPA plans to record EPA-determined allocations in order to coordinate with the approval of SIP revisions and the recordation of State allocations, assuming States choose to participate in the EPA-administered CAIR NO_X trading programs. The Agency will also carefully consider the timing of a transition from federal to State-implemented programs for any States choosing to use a method other than the EPA-administered CAIR SIP trading programs to meet their CAIR obligations.

promulgating FIPs, the Agency recognizes that the Clean Air Act assigns first responsibility to the States, and it is EPA's preference to defer, wherever possible, to States the decisions about control mechanisms to prevent significant contribution, including States' decisions about allocation of NO_X allowances.

2. Method for Allocating NO_X Allowances

Proposed NO_X Allocation Methodology. In the NPR, EPA proposed a NO_X allocation approach for both annual and ozone season allowances that is consistent with the example methodology presented in the CAIR SIP model trading rules. The proposed methodology was the same for annual NO_X allowances and for ozone season NO_X allowances, except that the ozone season method uses ozone season heat input not annual heat input.

For existing units, the proposed NO_X allocation methodology used input-based allocations, adjusting the heat input by factors based on fuel type (described later in this section). As in the example allocation methodology in the CAIR SIP model trading rules, for existing units the Agency proposed to use heat input based on the average of the 3 highest amounts of a unit's adjusted heat input for 5 years (2000 through 2004). The EPA took comment on using heat input based on 3 or 4 years of data rather than 5 years.

For new units that have established baselines, EPA proposed that allocations would be based on generation using a modified output approach to convert output to heat input (described below), and allocations to existing units would be updated to take into account new generation, because new units would receive allocations from the pool of allowances shared with existing sources. New units that have not yet established baseline data would receive allowances from a new unit set-aside.

The Agency proposed that EPA would allocate allowances to existing units from the State's EGU NO_X budget for the first 6 control periods (2009 through 2014) for existing sources on the basis of historic baseline heat input. Consistent with CAIR, EPA proposed January 1, 2001 as the proposed cut-off on-line date for considering units as existing units. Allowances for 2015 and later would be allocated from the State's EGU NO_X budget annually, 3 years in advance. These allocations would take into account output data from new units with established baselines (modified by heat input conversion factors to yield heat input numbers, as described below). As new units enter into service and establish a baseline, they would be allocated allowances in proportion to their share of the total calculated region-wide heat input. Allowances allocated to existing units would slowly decline as their share of total calculated heat input decreases with the entry of new units. (Note that once a baseline heat input was established for existing units, this baseline heat input would not change).

EPA proposed to allocate allowances from a new unit set aside to new units that have entered service but have not yet established a 5-year baseline. The allowances from the set-aside would be distributed based on a unit's reported emissions from the previous control period, which would provide allowances for use in meeting the allowance-holding requirement during the interim period before the unit would be allocated allowances on the same basis as existing units.

Consistent with the CAIR SIP example allocation methodology, the new unit set-aside would be equal to 5 percent of a State's emission budget for the years 2009–2013 and 3 percent of a State's emission budget for subsequent years. New units would begin receiving allowances from the set-aside for the control period immediately following the control period in which the new unit commences commercial operation, based on the unit's emissions from the preceding control period. EPA would allocate allowances from the set-aside to all new units in any given year as a group. If there were more allowances requested than exist in the set-aside, allowances would be distributed on a pro-rata basis.

EPA received a number of comments on various aspects of the proposed NO_X allocation methodology. First, while most commenters were supportive of allocating allowances to existing units using historic heat input, some commenters advocated the use of output data for determining allocations, suggesting that such an approach would reward cleaner, more efficient generation, particularly with updating.

Second, most commenters supported the use of a 5-year baseline for allocating allowances based on heat input, noting that a longer period of data collection is more likely to capture a unit's normal operating conditions. One commenter suggested that a shorter baseline period would allow new sources to enter the existing source pool in a more timely manner and thus provide existing sources with more certainty.

One commenter requested clarification on the treatment of replacement units under the allocation provisions, regarding whether they would be treated as new units, and have to reestablish a baseline, or maintain their allowance allocation similarly to retired units.

Several industry commenters made suggestions regarding the use of new unit set-asides in the FIP NO_X allocation methodology. Some stated that EPA should provide that unused allowances from the set-aside would be returned to existing units. The Agency proposed to do so, and is finalizing that any unallocated allowances that remain in the new unit set-asides will be allocated on a prorated basis to the units that received allocations. See §§ 97.142(d) and 97.342(d). One commenter argued against using a new unit set-aside. Another commenter supported the use of a set-aside but argued that new units should be provided access to allocations during their initial year of operation.

In today's rule, EPA is finalizing most of the NO_X allowance allocation provisions as proposed. First, EPA is finalizing the use of an input-based approach for allocating allowances. This approach uses a baseline heat input comprised of operating data from the years 2000–2004, and uses the average of the 3 highest heat input years from this time period for allowance allocation calculations for existing units. This baseline heat input will not be updated over time.

EPA believes, as it stated in the final CAIR, that allocating to existing units based on a baseline of historic heat input data, rather than output data, is desirable because accurate protocols currently exist for monitoring this data and reporting it to EPA, and several years of certified data are available for most of existing units. EPA has chosen not to utilize an updating system for allocating allowances, in order to avoid the subsidization of increased fuel use (or increased electricity generation) and the associated market distortions. If allocations were based on updated heat input (or updated output) data then increased fuel use (or increased electricity generation) would result in increased future allocations and thus would in effect be subsidized.

For new units, EPA is finalizing the use of the proposed modified output approach for calculating baseline heat input, described in detail below, as well as the allocation to new units without a baseline from a new unit set aside of 5 percent of a State's emission budget for the years 2009–2013 and 3 percent of a State's emission budget for subsequent years.

The Agency believes that it is reasonable to provide a set-aside for allocations to new units and further

believes that it is reasonable not to provide access to allocations for a new unit during its initial year of operation. The Agency's final methodology provides allocations to new units based on the prior year's emissions until the new unit establishes a baseline and is allocated as an existing unit. The methodology does not provide allowances to a unit in its first year of operation; however, it is straightforward, reasonable to implement, and predictable (see preamble to final CAIR, 70 FR 25281).

As in the CAIR SIP example methodology, after 5 years of operation, a new unit will have an adequate operating baseline of output data to be incorporated into the calculations for NO_X allocations for existing units. (However, as discussed below in section VII of this preamble, allowances are allocated to existing units several years in advance, and a new unit with a baseline may need to continue to get allowances from the new unit set-aside for a few years after the unit's baseline is established.) The average of the highest 3 years from these 5 years will be multiplied by a heat-input conversion factor of 7,900 Btu/KWh to calculate the heat input value used to determine the new unit's allocation from the pool of allowances for existing units. New units will update the heat input numbers only once—for the initial 5-year baseline period after they start operating. As in the CAIR SIP example methodology, existing units as a group will not update their heat input. This eliminates the potential for a generation subsidy because current or future operating behavior will not impact the units' allocations. Retired units will continue to receive allowances indefinitely, thereby avoiding creation of a disincentive to retire less efficient units.

As discussed in section VII in today's preamble, EPA is adopting technical changes to the SIP rules that make it clear that a separate request for new-unit-set-aside allowances must be submitted for each control period for which they are sought and must be submitted by May 1 (rather than July 1) of that control period; the final FIP rules are consistent with these technical changes.

Regarding replacement units, EPA's allocation approach allows such units to retain their NO_X allowance allocation, so as not to provide a disincentive to replace (*e.g.,* repower) older, less-efficient units. As discussed in section VII in today's preamble, a definition of ''replacement'' has been added and the definition of ''commence commercial operation'' has been clarified in the CAIR SIP model trading rules in order to clarify the treatment of replacement units. The final CAIR FIP rules are consistent with these changes in the SIP rules.

Adjustments to Heat Input Data by Fuel Factors. In the NPR, EPA proposed an allocation methodology based on the example allocation methodology in the CAIR SIP model rules, which included adjustments to heat input by fuel type, using fuel adjustment factors that are based on average historic NO_X emissions rates by 3 fuel types (coal, natural gas, and oil) for the years 1999—2002. These adjustment factors are 1.0 for coal-fired units, 0.6 for oil-fired units, and 0.4 for units fired with all other fuels (*e.g.,* natural gas). The factors reflect the inherently different emissions rates of different fossil fuel-fired units.

A number of commenters supported the use of the proposed fuel factors to adjust heat input, arguing that adjusting heat input for fuel type results in a more equitable allocation scheme that would provide allowances that are in closer proportion to historic emissions. Commenters supporting the use of fuel factors also noted that EPA should retain these fuel factors in order to maintain consistency with the model cap-and-trade rule, which would ease any necessary transitions from a CAIR FIP to a CAIR SIP if most States are expected to eventually adopt the model rule. One commenter opposing the use of fuel factors for individual unit allocations argued that adjusting baseline heat input for fuel use is inequitable and penalizes clean generation and is irreconcilable with EPA's ''highly cost-effective'' determination and EPA's air quality modeling. This same commenter also questioned EPA's legal authority to use fuel adjustment factors in the allocation of allowances.

EPA is finalizing the use of the proposed adjustment factors (1.0 for coal-fired units, 0.6 for oil-fired units, and 0.4 for units fired with all other fuels (*e.g.,* natural gas)), to adjust baseline heat input. EPA believes that these adjustment factors appropriately consider the inherently higher emissions rate of coal-fired units and the relatively greater burden on these units to control emissions.

EPA's determination that CAIR control levels are highly cost effective was assessed at the regional, rather than the State, level because of the ability of sources to meet control requirements through a regional cap-and-trade program for EGUs. While the chosen allocation methodology can affect the distribution of compliance costs under the cap-and-trade program, it will have little effect on overall compliance costs or environmental outcome. This is because the incentives provided by cap-and-trade encourage economically efficient compliance over the entire region, as discussed above. The economically efficient outcome will not depend on the relative levels of individual unit allowance allocations.

For this same reason, air quality modeling is not relevant to the determination of allowance allocations, and a given allowance allocation approach, particularly one based on historic data, would have no affect on air quality modeling.

Finally, EPA disagrees with the commenter who questioned its legal authority to use this allocation scheme. The approach selected by EPA is reasonable, is supported by the information available to EPA and is well within the scope of EPA's authority to act. For further discussion of this issue, see the CAIR notice of final action on reconsideration signed the same day as the final FIP notice. While the reconsideration notice addresses the use of fuel factors in the context of determining the State NO_X budgets, the same rationale applies to the use of fuel factors for individual unit allocations.

Cogeneration Units. In the NPR, EPA proposed that for a new cogeneration unit that is a boiler, annual heat input values used to calculate the unit's baseline heat input for purposes of allowance allocations would be determined by converting the available thermal output (Btu) of useable steam from the boiler to an equivalent heat input by dividing the total thermal output (Btu) by a standard boiler/heat exchanger efficiency rate of 80 percent. In today's rule, EPA is finalizing this approach.

For new cogeneration combustion turbines, EPA proposed in the NPR to calculate annual heat input for such a unit by: Converting the available thermal output of useable steam from a heat recovery steam generator (HRSG) to an equivalent heat input by dividing the total thermal output (Btu) by a standard boiler/heat exchanger efficiency rate of 80 percent; and then adding the equivalent heat input for the electrical generation from the combustion turbine, which is calculated by multiplying the turbine's generation (in KWh) by the conversion factor of 3,413 Btu/kWh. EPA is finalizing this approach as proposed.

One commenter suggested that EPA's approaches for allocating to new cogeneration boilers and combustion turbines be modified. This commenter argued that EPA's proposed

methodology improperly rewards new cogeneration units by not matching the rate of allocation with the degree of benefits realized by a specific cogeneration unit. The commenter further asserts that EPA's methodology would give a unit that only slightly improves its efficiency the same allowance allocation benefit as a unit that achieves a large increase in efficiency.

The commenter proposes an alternative allocation approach for cogeneration units, the primary goal of which is rewarding electricity as a higher value product than steam.

As EPA noted in the final CAIR preamble, steam and heat output, like electrical output, are useable forms of energy that can be utilized to power other processes. Because it would be nearly impossible to adequately define the efficiency in converting steam energy into the final product for each of the various processes and uses for these outputs, EPA selected an approach that focuses on the effectiveness of a cogeneration unit in capturing energy from fuel input and converting it into the useable forms of steam and electricity. EPA's approach does not attempt to regulate the efficiency of the processes that are powered by the steam output from cogeneration units.

Further, EPA disagrees with the commenters suggestion that the Agency's approach would not provide an incentive for cogeneration units to operate efficiently. The use of modified output, rather than actual heat input, as the basis of determining allowance allocations will promote the development of cleaner and more efficient generation of both electricity and process steam. EPA's approach rewards cogeneration combustion turbines that have HRSGs capable of recapturing greater than 80 percent of the available heat from the combustion turbine exhaust and any auxiliary burners. Furthermore, EPA's use of a 3,413 btu/KWh factor to convert electrical output from the combustion turbine to an equivalent heat input assumes that 100 percent of the combustion turbine's heat input that is not converted to electricity is sent to the HRSG as heat. This approach neglects energy losses in the combustion turbine and generator. EPA believes that any efficiency gains made by reducing these losses will be rewarded by the Agency's approach, by resulting in greater electricity and/or steam output for a given amount of heat input.

Comments on providing sources owned by small entities with a greater share of allowances: In the NPR, EPA took comment on allocating NO_X allowances in such a way as to provide sources owned by small entities with a greater share of allowances. As discussed at proposal, this option was based on the recommendation of one of the Small Business Advocacy Review Panel members. This option would necessitate reducing the number of NO_X allowances available to other affected sources in order to ensure that the overall reduction requirements of CAIR are achieved, but could potentially provide economic relief to small entities that demonstrate economic hardship as a result of the rulemaking.

A number of commenters expressed opposition to such an allocation approach arguing that it is inappropriate for EPA to subsidize small entity sources through additional allocations that result in reduced allowance allocations and increased compliance costs for larger sources. Additionally, some of these commenters noted that such an approach could open the NO_X allowance allocation system to gaming, such as through a company establishing subsidiaries in order to obtain additional allowances made available for small entities. Finally, one of these commenters suggested that such an approach would deviate from the CAIR model rules, and could restrict a State's freedom if the State plans to transition from CAIR FIP allocations to CAIR SIP allocations. One commenter expressed support for the approach described in the NPR, but noted the need for additional clarification on the definition of hardship and how such an approach would fit in with the compliance supplement pool. No potentially affected small entities, as defined in the NPR, submitted comments in support of this approach.

EPA is not finalizing a NO_X allocation approach that gives a greater share of allowances to small entities that demonstrate hardship. EPA believes that the flexibilities inherent in the CAIR FIP trading program, as well as the existence of the Compliance Supplement Pool in the first year of the program, will reasonably address concerns about the economic impact of the rule on all sources. Additionally, the lack of commenter support for such an approach suggests that such an approach may not be warranted.

Comments on use of an auction to distribute NO_X allowances. In the NPR, the Agency asked for comment on using a combination of direct allocation and auctions for distributing NO_X allowances in the proposed CAIR FIP trading programs. The proposed approach was analogous to the approach in the Administration's proposed Clear Skies legislation: For the first CAIR NO_X control period (2009) the Agency would allocate 100 percent of the allowances using the fuel-factor adjusted heat input approach described above. For the second control period (2010) the Agency would allocate 99 percent of allowances to units and auction the remaining 1 percent. The percentage of allowances distributed via auction would increase over time, with the Agency distributing via auction an additional 1 percent of allowances every year for 20 years and then an additional 2.5 percent of allowances every year thereafter, until eventually 100 percent of allowances would be distributed via auction. The Agency also requested comment on appropriate auction procedures for the proposed CAIR FIP trading programs.

The majority of commenters opposed the use of an auction for allocating allowances. One commenter expressed support for an auction and the specific approach that EPA outlined at proposal. This commenter suggested that EPA modeled the auction procedure after that used in the Acid Rain Program. EPA does not necessarily agree with the specifics of the arguments submitted by commenters opposing the use of an auction. However, in light of the comments, EPA is concerned that adoption of the auction approach would be premature because the Agency lacks sufficient information about the potential impact of such auctions on sources and about the appropriate procedures for implementing such auctions. Consequently, the allocation provisions for today's final rule do not include auctions. Today's final allocation methodology, described earlier in this section, provides for the direct distribution of allowances to affected units.

G. Allocation of SO_2 Allowances to Sources

The Agency proposed a CAIR FIP SO_2 cap-and-trade program substantively identical to the CAIR SIP model SO_2 trading rule, which relies on title IV allowances. Title IV allowances have already been allocated in perpetuity to individual units by title IV of the CAA (70 FR 25278). Thus, the FIP proposal did not include an allocation methodology for SO_2 allowances, except with regard to opt-in units.

The Agency received several comments on the use of the title IV allowances in the CAIR FIP SO_2 program. EPA also received several petitions for reconsideration of the CAIR, and granted reconsideration concerning claims that inequities result from using title IV allowance allocations in the CAIR program. EPA received, considered, and responded to numerous

comments on this issue as part of the reconsideration process. As explained in the CAIR Notice of Final Action on Reconsideration signed the same day as this action, EPA has decided not to alter the approach taken in the final CAIR.

In today's action, EPA is adopting the CAIR model SO_2 trading rules as the CAIR FIP SO_2 trading rules, with minor revisions to allow for Federal implementation. Thus, EPA is adopting the approach taken in the final CAIR for SO_2 allowance allocation and State SO_2 budgets, which was not changed during the reconsideration process. This approach is explained below, with a brief explanation of EPA's response to the major comments received on this process. A more complete discussion of this issue and the comments received appears in the preamble to the CAIR Notice of Final Action on Reconsideration.

Several issues on SO_2 allowance allocations and State budgets were raised both in comments on the proposed CAIR FIP and in the context of the CAIR reconsideration process. EPA has responded to such FIP comments in the CAIR Notice of Final Action on Reconsideration, a separate action signed the same day as this notice. These comments include the following claims:

- Inequities result from EPA's allocation approach, *i.e.,* using title IV allowance allocations in the CAIR FIP trading program. A few commenters suggested that EPA instead create new CAIR SO_2 allowances and allocate these allowances using a methodology similar to that adopted in the CAIR SIP model trading rule for NO_X.
- EPA's approach to SO_2 allowance allocation and State budgets creates inequities between States.
- New units and independent power production (IPP) facilities, which did not receive allocations under the Acid Rain Program, are unfairly disadvantaged by the CAIR SO_2 budget and allocation methodology.

A variety of approaches to SO_2 allowance allocation were raised and analyzed during the CAIR rulemaking process, including the approach EPA adopted in the final CAIR SIP model rule and in today's final FIP trading rule. Alternative approaches analyzed for the final CAIR included the creation of new CAIR SO_2 allowances and allocating on the basis of historic tonnage emissions, heat input (with alternatives based on heat input from all fossil generation or heat input from coal- and oil-fired generation only), and output (with alternatives based on all generation and all fossil-fired generation). (*See* CAIR Corrected Response to Comments, section X.A.26, Docket #: EPA–HQ–OAR–2003–0053–2172).

Furthermore, as a part of the CAIR reconsideration, EPA reanalyzed State differences in allocation approaches using the same methodology as for the final CAIR, comparing the title IV approach and seven alternative approaches (those discussed above, and those raised by the commenters on the reconsideration, discussed below). EPA also performed additional analyses to evaluate the use of title IV allowance allocations in the final CAIR to see how companies and States fared in terms of the amount of allowances allocated relative to their projected SO_2 emissions. In these analyses, EPA compared 3 alternative SO_2 allowance allocation methodologies that were either referred to by the petitioner in the petition for reconsideration or by commenters on the proposed response to the petition, to the use of title IV SO_2 allowance allocations. EPA considered the following approaches, all using 1999–2002 data: (1) Pure heat input; (2) heat input adjusted for fuel type (*e.g.,* coal, oil and gas); and (3) heat input adjusted for fuel type and coal type (*e.g.,* bituminous, sub-bituminous, and lignite).

Each allocation methodology suggested by the petitioner and commenters during the CAIR rulemaking results in both advantages and disadvantages for different companies and States. However, as EPA explained in the CAIR Response to Comments and again in the CAIR Notice of Final Action on Reconsideration, the analyses performed by EPA demonstrate that EPA's use of title IV allowance allocations is reasonable (*see* CAIR Notice of Final Action on Reconsideration, signed in a separate action the same day as this notice).

Comments about new units and IPPs, which did not receive allocations under the acid rain program, being disadvantaged by the CAIR SO_2 budget and allocation methodology are also addressed in the CAIR Notice of Final Action on Reconsideration, as well as in the applicability section (VI.E) of this final FIP action. EPA considered the allocation of title IV allowances to CAIR region units that are not currently in the Acid Rain Program but that could opt into the Acid Rain Program and receive title IV allowances (*see* 42 U.S.C. 7651i and 18 CFR part 74). EPA assumes that companies owning non-Acid Rain units subject to CAIR will opt into the Acid Rain Program to receive title IV allowances to cover a portion of the units' emissions under CAIR. EPA believes this assumption is reasonable because, as explained in the CAIR Notice of Final Action on Reconsideration, each of these units has the option of becoming an Acid Rain Program opt-in unit at little cost.

The fact that non-Acid Rain units may opt into the Acid Rain Program and receive allocations addresses the concern that the CAIR applicability provisions sweep in units that are not covered under the Acid Rain Program and thus do not receive Acid Rain Program allocations. EPA maintains that the statutory and regulatory provisions governing Acid Rain Program opt-in units allow units that are subject to CAIR, but not to the Acid Rain Program, to opt into the Acid Rain Program. *See* CAIR Notice of Final Action on Reconsideration—signed the same day as the final FIP rule—for additional discussion of authority under section 410(a) of the Clean Air Act.

Further, it should be noted, that not all units required to participate in the Acid Rain Program receive allocations under the Acid Rain Program. While, as noted above, the Acid Rain Program provides allowances for non-Acid Rain units opting into the program as long as they remain non-Acid Rain units, the Acid Rain Program provides no allocations for virtually all new Acid Rain units (*i.e.,* Acid Rain units commencing commercial operation on or after November 15, 1990) and for all existing units that were not Acid Rain units when the allowance allocations were completed in 1998 but that become Acid Rain units thereafter. By using title IV allowance allocations in the CAIR SIP SO_2 model trading program (adopted today as the CAIR FIP SO_2 trading program), EPA is taking the same approach to allocations for these units.

Finally, it is worth noting that not all title IV allowances for future years have been allocated. 250,000 allowances will continue to be auctioned for the years 2012 and thereafter, and these allowances could be used to comply with the requirements of CAIR. The availability of these allowances ensures that all sources, including new units and non-title IV sources, will have access to a pool of allowances.

In summary, EPA's use of title IV allowances in the CAIR (and CAIR FIP) SO_2 trading program is supported by: (1) EPA's determination that this approach is necessary to maintain the efficacy of the title IV program and prevent erosion of confidence in cap-and-trade programs in general; and (2) the results of EPA's analysis which indicate that the allocations resulting from this approach are reasonable.

A few comments related to SO_2 budgets and allocations submitted in response to the proposed CAIR FIP were unique to this action and, therefore, are addressed below.

One FIP commenter states that the CAIR final allocation methodology is ''inequitable'' because lower emitting units would buy allowances from higher emitting units that install emission controls. However, it is unclear why such a result would actually be inequitable. On the contrary, the owner of each of the units involved would be choosing to adopt the most economic compliance strategy in light of the unit's emission control costs and the market value of allowances. The ability of the owners to make such choices reflects the flexibility provided by a cap-and-trade program.

Moreover, EPA believes that for purposes of evaluating various allocation methodologies, computing allocations on a company-by-company basis is more appropriate than comparing allocations on a unit-by-unit basis. This is because, while one unit could be allocated fewer allowances under one methodology, another unit owned by the same company could be allocated more allowances, which may offset the smaller allocation of the first unit.

This same commenter performed its own analysis of differences in SO_2 State budgets for select States, comparing EPA's finalized method to ''a heat input method (similar to the NO_X allowance allocation method).'' The commenter described the 6 of its selected States as ''[l]ow-emitting states that already have made substantial investments in SO_2 emissions controls (*e.g.,* South Carolina, Minnesota, Iowa, Wisconsin, Virginia, and North Carolina).'' Another 5 States the commenter analyzed were described as ''high-emitting states (*e.g.,* Ohio, Georgia, West Virginia, Pennsylvania and New York).'' *See* Docket ID: EPA–HQ–OAR–2004–0076–0204. The commenter's characterization of States as ''low-'' or ''high-emitting'' and as having made ''substantial'' SO_2 control investments is entirely unsupported. The commenter provided no criteria or factual basis for making such characterization, and the analysis submitted by the commenter appears to disregard the cost of installing controls in order to generate any excess allowances in States that are characterized as ''high-emitting.'' Further, only 3 utilities from the State's listed as ''low-emitting'' by the commenter, submitted adverse comments on EPA's use of title IV.

Nevertheless, as mentioned above, EPA performed a comprehensive State-by-State SO_2 budget analysis of all CAIR States and a variety of alternative methodologies to evaluate the claim of inequity as a part of the CAIR Notice of Final Action on Reconsideration. In that analysis, EPA demonstrated that the CAIR (and CAIR FIP) SO_2 State budget and allocation methodology provides a reasonable result. EPA's use of title IV allowances in the CAIR (and CAIR FIP) SO_2 trading program is supported by: EPA's determination that this approach is necessary to maintain the emissions reductions from, and effectiveness of, the title IV program; prevent erosion of confidence in cap-and-trade programs in general; and EPA's analysis showing that the allocations resulting from this approach is reasonable.

H. Allowance Banking

Allowance banking is the retention of unused emissions allowances from one calendar year for use in a later calendar year (or from one ozone season for use in a later ozone season). Banking allows sources to make reductions beyond required levels and ''bank'' the unused allowances for use later. Generally speaking, banking has several advantages. Allowance banking can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reduction goals. The CAIR FIP NPR proposed a trading program with unrestricted banking.

Comments on the Banking of Allowances

Several commenters supported EPA's proposal to allow unrestricted banking of allowances. In general, they agreed with EPA that this approach: provides incentives for sources to make emission reductions beyond required levels, in some cases earlier emission reductions; is consistent with the CAIR SIP model trading rules; and provides flexibility in compliance strategies. Supporters of unrestricted banking also agreed with the EPA assessment that the use of banking restrictions, such as the ''flow control'' in the Ozone Transport Commission (OTC) cap-and-trade program, is complicated to understand and implement and caused market complexity.

Other commenters supported the use of banking restrictions claiming that allowing unrestricted banking delays emission reductions. These commenters did not provide additional details regarding an alternative to banking or, if banking were to be restricted, what restrictions should be used.

Final CAIR FIP Cap-and-Trade Program

Today's final CAIR FIP cap-and-trade programs allow unrestricted banking. EPA disagrees with commenters who claimed that unrestricted banking simply delays emission reductions. The ability of sources to sell allowances, without restriction, provides incentives for sources to over-control their emissions prior to emission reduction deadlines. As discussed in the CAIR NFR (section VIII.E), this creates a ''glide path'' towards the final emission cap levels. Emission levels along the glide path, which may not equate to the emissions caps for any given year, are the levels of emission reductions that are shown to address the pollution transport issue.

EPA also agrees with supporting commenters that banking restrictions, such as ''flow control,'' introduce uncertainty into source planning by introducing the potential for devaluing allowances on short notice. EPA also agrees that allowing unrestricted banking in the CAIR FIP cap-and-trade programs provides consistency with the CAIR cap-and-trade programs.

I. Incentives for Early Reductions

When sources reduce their SO_2 and NO_X emissions prior to the first phase of a multi-phase cap-and-trade program, it creates a slope of emissions that gradually declines over time, an emission reduction ''glide path'' that provides early environmental benefit and lowers the costs of compliance. Each of the cap-and-trade programs proposed in the CAIR FIP NPR incorporated the incentives for early reductions provided in the respective CAIR model trading programs: *i.e.,* the banking of title IV allowances allocated of vintage years pre-2010 into the CAIR SO_2 trading program, the compliance supplement pool (CSP) in the CAIR NO_X annual program, and the banking of NO_X SIP Call allowances of pre-2009 vintage into the CAIR NO_X ozone season program. While EPA believes that modeling has shown that the CAIR and CAIR FIP timelines are as early as feasible, early reductions incentives provide a mechanism for those facilities that can reduce their emissions prior to the implementation deadline to receive some credit. By shifting some emission reductions earlier, some environmental benefit is realized earlier. In addition, the CAIR FIP trading programs' early reduction mechanisms provide a way for companies that may have some difficulty meeting the implementation timeline to start early and achieve the mandated reductions on a more gradual pace. These mechanisms, along with

public comment on each, are discussed below.

1. SO_2 Annual Program

The proposed CAIR FIP SO_2 annual cap-and-trade program would provide incentives for sources to reduce their SO_2 emissions prior to the 2010 implementation date by allowing affected sources to use title IV SO_2 allowances of vintage 2009 and earlier for compliance with the CAIR FIP program at a 1-to-1 ratio. The CAIR FIP trading program adopts the early reductions incentive mechanism in the CAIR model trading rules. The modeling for the CAIR assumed the existence of such incentive mechanisms and showed that the SO_2 cap-and-trade program, with this early incentive mechanism, will achieve the level of SO_2 reductions needed to meet the CAIR goals.

Comments on Early Emission Reduction Incentives in the CAIR FIP SO_2 Cap-and-trade Program. In general, commenters supported EPA's approach of allowing sources to bank title IV SO_2 allowances into the CAIR FIP SO_2 trading program at a 1-to-1 ratio. One commenter opposed this mechanism because ''EPA does not explain how carrying these allowances over to the CAIR bank creates an incentive for reductions if the allowances already exist.'' The commenter continues by highlighting that EPA modeling projects emissions to be approximately 37 percent above the annual CAIR emission caps for the first 5 years after the compliance deadline.

Final CAIR FIP SO_2 Annual Cap-and-trade Program. Today's action allows sources to bank title IV SO_2 allowances into the Federal CAIR SO_2 annual cap-and-trade program at a 1-to-1 ratio. EPA disagrees with the comment that allowing banked allowances does not promote early reductions because allowances were banked before CAIR was proposed or finalized. Allowing sources to bank title IV allowances in the CAIR FIP SO_2 annual program provides incentive for sources to: (1) Preserve reductions already made (whether before or after CAIR was proposed) rather than negating these reductions by increasing their emissions before 2010 and ''spending down'' their bank; and (2) to reduce further emissions before 2010 and increase their bank. This incentive is created by allowing sources to benefit financially from allowances banked before 2010 that retain their value in the CAIR FIP and CAIR SO_2 trading programs. All pre-2010 vintage allowances will retain their value in the CAIR and CAIR FIP trading programs because they can be used (on a one-allowance-per-ton basis) to meet the requirement to hold allowance to cover emissions under the CAIR FIP (and CAIR) trading programs. In summary, a source has an incentive to continue banking allowances before 2010, which results in the preservation of existing emission reductions and the creation of further reductions.

The commenter noted that allowing banking into the CAIR FIP SO_2 annual program results in the emissions being greater than the cap levels. However, the gradually declining emissions ''glide slope'' is one of the keys to cap-and-trade programs achieving cost-effective reductions. As discussed above, EPA's modeling for CAIR showed that, with the pre-2010 title IV SO_2 allowance banking and subsequent use of the bank, the environmental goals of reducing the interstate transport of pollution will be achieved.

2. NO_X Annual Program

The FIP NPR proposed a CAIR FIP NO_X annual cap-and-trade program that included a Compliance Supplement Pool (CSP) to provide an incentive for early, annual NO_X annual emission reductions. The CSP would provide, for each affected State, a pool of CAIR NO_X annual allowances from which EPA could distribute allowances for early, surplus NO_X emissions reductions occurring in the years 2007 and 2008. The CSP would provide a total of 200,000 annual NO_X allowances of vintage 2009 for the CAIR region (including Delaware and New Jersey's share of the pool), apportioned to each State, which would be in addition to each State's annual NO_X budgets. Table V–3 in this preamble sets forth the CSP amounts by State. The CAIR FIP trading program adopts the CSP established in the CAIR model trading program. However, where the CAIR model trading program provides States with flexibility to determine what constitutes an early reduction qualifying for an allocation of allowances from the CSP, the Administrator allocates the CSP in the CAIR FIP trading program. As a result, the CAIR FIP, provides a specific methodology for determining early reductions than is in the CAIR model rules. This methodology is explained below.

As proposed, Federal CSP allowances could be distributed to sources based upon: (1) Implementing NO_X control measures that result in early emission reductions in 2007 or 2008, *i.e.,* reductions beyond what is required by any applicable State or Federal emissions limitation; or, (2) a demonstration of need for an extension of the 2009 deadline for implementing emission controls. See section VII.A. in the CAIR NFR preamble (70 FR 25256–25263). The Agency proposed that, in order for early emission reductions to qualify for allowances from the CAIR FIP CSP, sources would have to demonstrate that—for each year for which they apply for CAIR FIP CSP allowances—they had an annual NO_X emission rate below 0.25 lb/mmBtu. In addition, sources who also participate in a title IV NO_X averaging plan would have to demonstrate that the plan-wide weighted-average annual NO_X emission rate for each such year was equal to or lower than the plan-wide rate for the preceding year. Sources meeting this criterion could request early reduction credit equal to the difference between 0.25 lb/mmBtu and the unit's actual emission rate multiplied by the unit's actual heat input for the applicable control period.

Comments on Federal CSP. Several commenters supported the use of a CAIR FIP CSP to encourage early emission reductions and provide sources access to some additional allowances for demonstrated reliability needs. Some commenters supported including a CAIR FIP CSP but were concerned about the use of additional criteria (*i.e.,* a 0.25 lb/mmBtu threshold and the limitation on emissions under a title IV NO_X averaging plan). Other commenters believed that providing additional allowances would delay emission reductions and that EPA's analysis already demonstrated that the mandated emission reduction levels and timelines are feasible.

EPA disagrees with commenters that believe the CAIR FIP CSP should not include the criterion that units can only request early reduction credit equal to the difference between 0.25 lb/mmBtu and the unit's actual emission rate multiplied by the unit's actual heat input for the applicable control period. EPA believes that the 0.25 lb/mmBtu threshold (coupled with the limitation on emissions under a title IV NO_X averaging plan) provides a reasonable proxy for the more general standard that emission reductions exceed what is required under State or Federal law.[32] Applying these criteria will provide reasonable assurance that only early reductions (*i.e.,* reductions exceeding existing requirements) will be awarded CAIR FIP CSP allowances. Further, because these criteria are clearer and more precise than the general standard that reductions exceed existing

[32] The 0.25 lbs/mmBtu criterion is based upon EPA analysis described in the CAIR FIP CSP Technical Support Document and is similar to the criterion used for the CSP established under the NO_X SIP Call section 126 action. (65 FR 2674, January 18, 2000).

requirements, the criteria will give owners and operators greater certainty when making reasonable projections about how many allowances they may receive for their early reductions and will, thereby, encourage early emission reductions.

Additionally, EPA disagrees with commenters that believe the CAIR FIP CSP should not include the distribution criterion that units in a title IV NO_X averaging plan would have to demonstrate that the current plan-wide average NO_X emission rate be less than the plan-wide average for the previous year. The averaging plan criterion acknowledges the unique circumstances for units that are in title IV NO_X averaging plans, where emission reductions by one unit in the plan may be offset by emission increases by another unit in the plan, thereby, making it difficult to determine whether early reductions are taking place. As discussed above, EPA believes that this criterion, coupled with the 0.25 lb/mmBtu criterion, provides a reasonable proxy for the general standard that reductions exceed existing requirements and that the criteria provide greater certainty about the rewarding of CAIR FIP CSP allowances. EPA believes it is appropriate to base the averaging plan criterion on a single, prior year's plan-wide average emission rate because the averaging of emissions across a plan tends to mitigate year-to-year fluctuations.

EPA disagrees with commenters that believe a CAIR FIP CSP will significantly delay emission reductions. For the CAIR NFR, EPA conducted IPM modeling of the CAIR trading programs to evaluate the effect of the 200,000 CAIR annual CSP NO_X allowances. The modeling shows that these CSP allowances do not have a significant impact on regionwide NO_X emissions.

CAIR FIP CSP Finalized in Today's Action. Today's rule finalizes the CAIR FIP CSP mechanism proposed in the FIP NPR. EPA believes that including a CAIR FIP CSP will encourage early emission reductions and alleviate concerns of some sources that they have unique issues concerning compliance with the 2009 implementation deadline of the CAIR FIP trading program. (See 70 FR 25286 for additional discussion of the CAIR CSP.) EPA also believes that the CSP will not significantly impact the achievement of emission reduction goals.

The CAIR FIP CSP includes specific criteria for distributing allowances based upon early emission reductions that do not appear in the CAIR SIP trading programs. (Note that, as discussed in section IV.E of today's action, States choosing the abbreviated SIP revision option may choose to use the CAIR FIP CSP or the CAIR CSP mechanism or may choose another mechanism consistent with § 51.123(e)(4).) EPA believes that the criteria will reasonably ensure that the award of CSP allowances will be aimed at early reductions and give owners and operators greater certainty to make reasonable projections about how many allowances they may receive for their early reductions.

3. NO_X Ozone Season Program

The final CAIR FIP NO_X ozone season cap-and-trade program allows the banking of NO_X SIP Call allowances of vintage years 2008 and earlier and their use in the CAIR FIP NO_X ozone season program to meet the requirement to hold allowances covering their emissions. This provides incentive for sources in the NO_X SIP Call to reduce their ozone season NO_X emissions before 2009 and bank additional allowances into the CAIR FIP NO_X ozone season program. This early-reduction incentive mechanism is in the CAIR NO_X ozone season model rule and is adopted as part of the CAIR FIP NO_X ozone season cap-and-trade programs. EPA did not receive any comments specifically addressing the early-reduction incentive mechanism in the CAIR FIP NO_X ozone season program. However, several commenters generally supported mechanisms to provide incentives for early emission reductions. The Agency is finalizing this mechanism.

J. Monitoring and Reporting Requirements

Under the CAIR SIP model cap-and-trade rules, sources are required to monitor and report NO_X and SO_2 mass emissions in accordance with 40 CFR part 75. (*See* Section VIII.H. of the CAIR NFR preamble, 70 FR 25288.) Many CAIR sources are measuring and reporting SO_2 mass emissions and NO_X emission rate year round under the Acid Rain Program. Many additional sources are also reporting NO_X mass emissions at least during the ozone season and often year round under the NO_X SIP Call. The CAIR SIP model rules require continuous monitoring of NO_X mass emissions by all existing, affected units by January 1, 2008 using part 75 certified monitoring systems for the NO_X annual program and May 1, 2008 for the NO_X ozone season program. SO_2 emissions must be monitored by those same units beginning January 1, 2009.

Today's rulemaking requires part 75 monitoring, reporting, and recordkeeping for all units subject to the CAIR FIP cap-and-trade programs. This is consistent with the CAIR model cap-and-trade programs. For additional discussion on monitoring and reporting requirements, *see* Section VIII.H. in the CAIR NFR preamble (70 FR 25288).

K. Interactions With Other CAA Programs

In the CAIR NFR preamble, section IX discusses interactions between the NO_X SIP Call and CAIR. Section IX also discusses interactions between the title IV Acid Rain Program and CAIR. Today's final rule covers the same States as the CAIR and adopts as FIP trading programs the CAIR SIP model trading rules, thus the interactions would be as described in CAIR (70 FR 25289–25299).

VII. What Are the Revisions of the CAIR SIP Rule, Including the CAIR Model Cap-and-Trade Rules?

The EPA is adopting several revisions of the CAIR SIP rule. One such revision is part of EPA's final action on reconsideration concerning the applicability provisions as they relate to solid waste incineration units. In particular, for the reasons stated in the preamble of the August 24, 2005 proposed rule, EPA is finalizing the EGU definition in §§ 51.123(cc) and 51.124(q). The EGU definition, as adopted, excludes certain solid waste incineration units from being EGUs; limits EGUs to units that, as of November 15, 1990 or any time later, serve a generator with a greater than 25 MWe nameplate capacity producing electricity for sale; and clarifies language concerning cogeneration units. The final EGU definition is the same as the definition proposed on reconsideration except for a few minor changes, *e.g.,* to clarify the circumstances under which a unit that is not an EGU, but that begins to combust fossil fuel or to serve a generator with a 25 MWe nameplate, becomes an EGU. (For the reasons in the preamble of the August 24, 2005 proposed rule, the language in the final EGU definition is also reflected in final applicability provisions of the CAIR model trading rules and the CAIR FIP trading programs.) EPA is also finalizing, as discussed in detail above, provisions allowing States to submit abbreviated SIP revisions.

EPA is also adopting a number of revisions of the CAIR SIP model cap-and-trade rules. The revisions are generally necessary to integrate each of the CAIR SIP model cap-and-trade programs with its corresponding CAIR FIP cap-and-trade program, and some of the final revisions reflect needed technical and clarifying changes. The revisions are consistent with the

analogous provisions of the final CAIR FIP trading programs. One such revision is part of EPA's final action on reconsideration concerning the applicability provisions as they relate to solid waste incineration units.

In particular, several definitions of terms are revised, and a few new definitions are added. For example, the definitions of ''CAIR designated representative'' and ''alternate CAIR designated representative'' are modified to require that the respective individuals designated for these positions be the same individuals as designated, for a given source, as the designated representative and alternate designated representative under any applicable trading program under the Clean Air Mercury Rule (CAMR). (CAMR was promulgated in May 2005 to achieve reduction of national mercury (Hg) emissions. *See* 70 FR 28606, May 18, 2005.) This will greatly simplify the administration of the allowance tracking systems for the trading programs, including the Hg trading programs, for which EPA intends to propose analogous changes. (In order to implement this change, a new definition for ''Hg Budget Trading Program'' is added to the CAIR SIP model trading rules.)

As a further example, a new definition is added (''solid waste incineration unit''), and certain definitions are modified (''commence commercial operation'' and ''commence operation''), to reflect final changes in the applicability provisions for the CAIR model trading rule and to clarify and streamline the language in the definitions. In particular, the modified definitions are consistent with the above-noted revisions of the applicability provisions that: exempt certain solid waste incineration units from the CAIR trading programs; limit applicability to units that, as of November 15, 1990 or any time later, serve a generator with a greater than 25 MWe nameplate capacity producing electricity for sale; and clarify the language concerning cogeneration units. In addition, the ''commence commercial operation'' and ''commence operation'' definitions are simplified by removing unnecessary language, such as the language referring to CAIR opt-in units, which is unnecessary because these terms are not used in the CAIR opt-in rule provisions. Also, the simplified definition of ''commence operation'' means that all units will use the same ''commence operation'' definition in determining, for purposes of allocations under § 96.142 and 96.342, their baseline periods for calculating adjusted or converted heat input. (The provisions for opt-in units that subsequently become subject to the allocation provisions of § 96.142 and 96.342 and lose their opt-in status are also revised to reflect this approach.)

Further, a definition of ''replacement,'' a term used in the ''commence commercial operation'' and ''commence operation'' definitions, is added in order to clarify the application of the latter two terms to cases when a unit is replaced by another unit, rather than simply being modified. The revised applicability provisions and related definitions in the CAIR SIP model trading rules are consistent with the applicability provisions and related definitions in the final CAIR FIP trading rules and with the above-discussed EGU definition in §§ 51.123(cc) and 51.124(q).

In addition, the definitions of ''CAIR NO_X allowance,'' ''CAIR NO_X Annual Trading Program,'' ''CAIR SO_2 allowance,'' ''CAIR SO_2 Annual Trading Program,'' ''CAIR NO_X Ozone Season allowance,'' and ''CAIR NO_X Ozone Season Trading Program'' are modified to provide for integrated operation of each CAIR SIP trading program administered by EPA for any State with its corresponding CAIR FIP trading program for any State. Under these revised definitions, CAIR NO_X, SO_2, or NO_X Ozone Season allowances issued under either type of program for any State would be a ''CAIR NO_X allowance,'' ''CAIR SO_2 allowance,'' or ''CAIR NO_X Ozone Season allowance,'' respectively, usable by owners and operators for meeting the allowance-holding requirement under the corresponding CAIR SIP model trading program or CAIR FIP trading program for any State.

EPA is also simplifying and clarifying other definitions. For example, the term ''allocate'' is simplified to cover allocation of allowances for either the CAIR SIP or FIP trading programs. The definition of ''maximum design heat input'' is simplified, and the definition of ''nameplate capacity'' is clarified.

Further, the retired unit exemption provisions are revised. The revisions clarify that the provisions concerning CAIR designated representatives and the appeal procedures generally applicable to final actions of the Administrator are applicable to retired units and to final actions of the Administrator with regard to retired units.

In addition, the provisions listing the content of a certificate of representation are revised to clarify that the identification of each unit covered by the certificate of representation includes identification and nameplate capacity of each generator served by the unit. EPA believes that the current rule language requiring ''identification'' of each unit subject to the trading program is already broad enough to encompass such information concerning each generator served by the unit, particularly since only a unit serving a generator with a nameplate capacity greater than 25 MWe can be subject to the CAIR trading programs. However, EPA is revising the language to make it clear that generator information is required in the certificate of representation.

EPA is also making technical revisions to the provisions concerning the reflection in certificates of representation of the owners and operators of the source and units involved. The changes make it clear that all owners and operators must be listed and that those that should be, but are not, listed are still bound by the certificate of representation and the CAIR designated representative.

Further, new provisions concerning designated representatives and authorized account representatives are added to clarify that such individuals may use agents in order to make electronic submissions. The existing CAIR SIP model trading rules provide for certain submissions (*i.e.,* certificates of representation, applications for general account, allowance transfers, and quarterly emissions reports) required to be ''in a format prescribed'' or ''in a format specified'' by the Administrator. (The terms ''prescribed'' and ''specified'' have the identical meaning in these contexts.) These submissions may be made, and in the case of quarterly emissions reports must be made, electronically. Although the formats for the CAIR trading programs have not yet been developed, other EPA-administered trading programs (*i.e.,* the Acid Rain Program and the NO_X Budget Trading Program) have analogous language concerning submission formats and have existing, prescribed formats for submissions. The electronic formats prescribed by the Administrator for the Acid Rain Program and the NO_X Budget Trading Program allow the designated representative or authorized account representative, as appropriate, to designate other individuals (''agents'') who may make the electronic submissions for the designated representative or authorized account representative, who is fully bound by the agent's actions. EPA maintains that the references in the Acid Rain Program and NO_X Budget Trading Program regulations to ''prescribed'' (or ''specified'') formats, coupled with the existing electronic formats, provide the legal authority necessary for designated representatives and authorized account

representatives to use agents to make electronic submissions in the applicable trading programs. EPA plans to adopt electronic formats for the CAIR trading programs that, similarly, allow for the use of agents. EPA believes that the existing references in the CAIR SIP model trading rules to ''format[s] prescribed '' or ''specified'' by the Administrator, when coupled with the appropriate electronic formats, will similarly provide the legal authority necessary for the use of agents. However, in order to remove any uncertainty about such legal authority, EPA is adding provisions to the CAIR SIP model trading rules (and to the CAIR FIP trading rules) that explicitly authorize the use of agents for electronic submissions.

In addition, in the permitting provisions, EPA is revising the deadline for submission of CAIR permit applications to run from the later of January 1, 2009 (for the NO_X programs) or 2010 (for the SO2 program) or the date on which the unit commences commercial operation, rather than the date on which the unit simply commences operation. A unit's date of commencement of commercial operation is not likely to range from more than a few days to a few months later than the unit's date of commencement of operation since owners and operators of EGUs generally prefer to minimize using fuel without producing electricity. Moreover, running the permit application deadline from the commencement of commercial operation avoids the need for complex provisions in the definition of ''commence operation'' to address, solely for permitting purposes, units that are not subject to the CAIR trading programs when they first combust fuel and that subsequently become CAIR units. (The simplified definition of ''commence operation'' reflects this revision.)

Further, EPA is adopting certain technical corrections in the NO_X allowance allocation provisions. In particular, the current provisions concerning timing of submission of unit allocations by the permitting authority to the Administrator provide that if the unit allocations are not submitted on time, the Administrator will assume that the allocations are the same as in the prior year. If the year for which allocations are submitted late is 2015 (the beginning of phase II of the CAIR trading programs, the Administrator will assume that the allocations are 83% of the 2014 allocations. EPA is removing these provisions both for existing and new units because they seem unlikely to be used, are unduly complicated, and may result in 2015 in total allocations that do not equal the respective State trading budget. Moreover, there are no comparable provisions in the CAIR FIP trading rules.

EPA is also revising the current provisions for new unit allocations that provide that a new unit is eligible for allocations from the new unit set-aside until that unit has operated long enough to develop a baseline heat input using the 3 highest figures for converted control period heat input out of such figures for the first 5 years of operation. At that point, the unit is supposed to be allocated allowances from the pool of allowances allocated to all units that have a baseline heat input. However, allowances for units with baselines are allocated a number of years in advance of the first year for which such allowances may be used to meet the allowance-holding requirement. Consequently, it is possible for a new unit to have a baseline as of a given year but find that no more allowances are available for that year for units with baselines because the allowances for that year were allocated before the time when the new unit's baseline was developed. A new unit could find that, for some years, it was both ineligible for the new unit set-aside and unable to obtain an allocation from the pool for units with baselines. EPA intended that new units move seamlessly from new-unit-set-aside eligibility to units-with-baselines allocations and not to fall in between the two types of allocation procedures. EPA is revising the allocation provisions to clarify that a new unit continues to be eligible for the new unit set-aside so long as the unit is not allocated allowances from the pool for units with baselines allocations either because the new unit does not yet have a baseline or because all the allowances for units with baselines have already been allocated for the year involved.

EPA also is adopting technical changes that make it clear that a separate request for new-unit-set-aside allowances must be submitted for each control period for which they are sought and must be submitted by May 1 (for the NO_X annual program) or February 1 (for the NO_X ozone season program) of that control period. This approach will reasonably put the burden on owners and operators to inform the State permitting authority each year. This will ensure that the State permitting authority can keep track, for each control period in the future, of which units are seeking new-unit-set-aside allowances for that control period. These submission deadlines will give the State permitting authorities more time to process (which may include, when appropriate, opportunity for public comment) the requests in time to submit the allocations to the Administrator for recordation by December 1 (for the NO_X annual program) or September 1 (for the NO_X ozone season program). Similarly, EPA is revising the deadline for submission of requests for allowances from the compliance supplement pool to be May 1, 2009 (rather than July 1, 2009). Just as emissions data for 2008 will be available in time for new-unit-set-aside requests due on May 1, emissions data for 2008 (and 2007) will be available in time for compliance-supplement-pool requests due on May 1. The July 1, 2009 deadline did not provide sufficient time for State permitting authorities to process the requests.

In addition, EPA is adopting technical changes to the provisions for recordation of allowance allocations, for the reasons discussed below and elsewhere in this preamble. For example, the current provisions require the Administrator to record the initial allocations for 2010–2014 by December 1, 2006. Because State plans are not due until September 11, 2006, EPA cannot review and approve all State plans in time to record allowance allocations in those plans by December 1, 2006, which date is changed to September 30, 2007. Further, the current provisions also require the recordation of allocations for subsequent years to occur only after completion of the end-of-year compliance determination process for a previous year. Because of the need to finalize emissions data for a year before the compliance determination process for that year can be completed, the current provisions may delay recordation for a number of months. However, as a matter of logic, there is no necessary connection between one year's compliance determination and the future year's allocation recordation. Consequently, EPA is removing the connection made in the current provisions and is setting an independent deadline (December 1) for allocation recordation, which will result in recordation several months earlier than under the current provisions.

Further, EPA is adopting technical changes to the provisions referring to when an allowance transfer by the owner of an allowance to another allowance tracking system account is ''correctly submitted.'' The changes clarify that a ''correctly submitted'' allowance transfer is one that references allowances that both: Were in the owner's allowance tracking system account when the allowance transfer form was submitted to the

Administrator; and continue to be in such account when the allowance transfer form is processed by the Administrator.

In addition, EPA is revising the provisions for deducting allowances to determine compliance with the allowance-holding requirement under the trading programs. The revisions do not change the requirements that an allowance usable for compliance: be allocated for the year, or a year before the year, for which compliance is being determined; and be in or covered by a proper request for transfer into the source's compliance account by the allowance transfer deadline. However, the statement indicating that the allowance must also not be necessary to account for excess emissions for a prior year is removed because it is confusing and inconsistent with the compliance procedures that EPA has been using in its ongoing cap-and-trade programs, *i.e.,* the Acid Rain Program and the NO_X Budget Trading Program.

Further, as explained in the preamble of the August 24, 2005 proposed rule, EPA is adopting revisions clarifying the application of excess emissions penalties for a source that is subject to, and has excess emissions under, both the Acid Rain Program and the CAIR SO_2 model trading rule. Under these revisions, a given ton of SO_2 excess emissions at a source, the owners and operators of the source will be liable, if that ton is an excess emission under both the Acid Rain Program and the CAIR trading program, for the offset (the deduction of one allowance) and the dollar penalty ($2,000 inflation adjusted) under the Acid Rain Program and liable, if that ton is only an excess emission under the CAIR trading program, for the 3-for-1 allowance deduction under the CAIR trading program.

In addition, EPA is revising certain provisions concerning the use of substitute data when the owner or operator of a unit adds a new stack or flue and fails to meet the deadline for monitoring certification. EPA proposed, but is not finalizing, procedures that would allow for substitute data other than data reflecting maximum potential emissions. Because EPA believes that the proposed provisions would in fact still result in the use of data reflecting maximum potential emissions, EPA is not adopting the proposed provisions.

Further, EPA is removing a provision that separately requires units to monitor heat input. The provision is unnecessary because heat input monitoring is already explicitly required in the monitoring provisions in § 96.170, 96.270, and 96.370.

In addition, EPA is revising the requirements for CAIR opt-in permits for owners and operators planning to repower an opt-in unit and seeking special allowance allocations for such unit. The revisions require that the owners and operators state, in the permit application, that they intend to repower the opt-in unit before January 1, 2015. EPA believes that this is a reasonable requirement to prevent frivolous requests for the special allocations for opt-in units to be repowered. The permit application, like any submission for owners and operators, must of course include a certification as to the truth, accuracy, and completeness of the submission.

A few changes are adopted for some other provisions (concerning, *e.g.,* the submission deadlines for quarterly emissions reports for CAIR opt-in units and units applying to be CAIR opt-in units and inclusion of the CAIR opt-in permit in the CAIR permit and the title V permit for the source that includes the CAIR opt-in unit) of the CAIR SIP model trading rules. These other changes are similarly technical or clarifying in nature. All of these changes are consistent with the analogous provisions in the final CAIR FIP trading rules.

VIII. What Are the Revisions of Acid Rain Program Regulations?

A few changes are adopted for the Acid Rain Program regulations. As explained in the preamble of the August 24, 2005 preamble, EPA is adopting revisions aimed at facilitating interaction among the CAIR FIP trading programs, any EPA-administered CAIR SIP trading programs, and the Acid Rain SO_2 trading program and revisions related to the change, finalized in the CAIR rulemaking, from unit-level to source-level compliance with the Acid Rain SO_2 trading program.

In addition, EPA is revising the provisions listing the content of a certificate of representation to clarify that the identification of each unit covered by the certificate of representation includes identification and nameplate capacity of each generator served by the unit. EPA believes that the current rule language requiring ''identification'' of each unit subject to the trading program is already broad enough to encompass such information concerning each generator served by the unit, particularly since only a unit serving a generator with a nameplate capacity greater than 25 MWe can be subject to the Acid Rain Program. However, EPA is adopting revised language to make it clear that generator information is required in the certificate of representation.

EPA is also making technical revisions to the provisions concerning the reflection in certificates of representation of the owners and operators of the source and units involved. The changes make these provisions consistent with those in the CAIR trading programs. The changes make it clear that all owners and operators must be listed and that those that should be, but are not, listed are still bound by the certificate of representation and the CAIR designated representative.

Further, EPA is adding a new § 72.26 and a new § 73.33(g) that are analogous to provisions adopted in the CAIR SIP model trading rules and the CAIR FIP trading rules and concern the use of agents by a designated representative and authorized account representative. As discussed above in Section VII of this preamble, EPA maintains that the existing Acid Rain Program regulations already authorize a designated representative or authorized account representative to use agents to make certain electronic submissions. However, in order to remove any uncertainty about such legal authority, EPA is adding provisions to the Acid Rain Program regulations that explicitly authorize such use of agents.

In addition, EPA is revising the appeal provisions of part 78 to apply to the appeals procedures to final actions of the Administrator under the CAIR FIP trading rule, just as these provisions already apply to final Administrator actions under the CAIR SIP model trading rules. Part 78 is revised to refer specifically, where appropriate, to the CAIR FIP trading rules in a similar way to how part 78 currently refers specifically, where appropriate, to the CAIR SIP model trading rules.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action both provides a response to the Section 126 Petition filed by North Carolina and promulgates FIPs to implement the requirements of the recently published CAIR (May 2005) in all affected States. It also makes minor changes to the CAIR and the Acid Rain Program. The FIPs require the same set of air pollution emissions reductions required by the CAIR. For this reason, EPA is relying on the economic analysis conducted for CAIR entitled ''Regulatory Impact Analysis of the Final Clean Air Interstate Rule'' (March 2005) to serve as the analysis for these rulemakings.

This economic analysis shows that substantial net economic benefits to society are likely to be achieved due to reduction in emissions resulting from the CAIR program. The results show that the CAIR program would be highly beneficial to society, with annual net benefits (benefits less costs) of approximately $71.4 or $60.4 billion in 2010 and $98.5 or $83.2 billion in 2015. These alternative net benefits estimates occur due to differing assumptions concerning the social discount rate used to estimate the annual value of the benefits of the rule with the lower estimates relating to a discount rate of 7 percent and the higher estimates a discount rate of 3 percent. All amounts are reflected in 1999 dollars. The costs and benefits presented in the CAIR economic analysis are an accurate representation of the benefits and costs anticipated for the FIPs. For more information, see the NFR for the CAIR published in the **Federal Register** (70 FR 25162; May 12, 2005) and the ''Regulatory Impact Analysis for the Final Clean Air Interstate Rule'' (March 2005).

In view of its important policy implications and potential effect on the economy of over $100 million, this action has been judged to be an economically ''significant regulatory action'' within the meaning of the Executive Order. As a result, today's action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The EPA believes that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requirements of this rule are satisfied through the Information Collection Request (ICR) (EPA ICR number 2152.02; OMB control number 2060–0570) submitted to the OMB for review and approval on May 12, 2005 as part of the CAIR (70 FR 25162–25405) and approved by the OMB in September 2005. The ICR describes the nature of the information collection and its estimated burden and cost associated with that final rule. In cases where information is already collected by a related program, the ICR takes into account only the additional burden. [This situation arises in States that are also subject to requirements of the Consolidated Emissions Reporting Rule (EPA ICR number 0916.10; OMB control number 2060–0088) or for sources that are subject to the Acid Rain Program (EPA ICR number 1633.13; OMB control number 2060–0258) or NO_X SIP Call (EPA ICR number 1857.03; OMB number 2060–0445) requirements.]

The burden of today's rule is essentially the same as the burden estimated for the CAIR. There is a modest transfer of burden from the States to EPA if the Federal plan is implemented rather than the CAIR State plan. The overall total burden is essentially unchanged. Thus, the ICR prepared for CAIR satisfies the requirements of the Paperwork Reduction Act for this rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of this rulemaking, EPA defined small entities according to the following three criteria:

(1) A small business according to the Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity. The range of small business size standards for electric utilities is 4 billion kilowatt-hours of production or less;

(2) A small government jurisdiction that is a government of a city, county, town, district, or special district with a population of less than 50,000; and

(3) A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Table IX–1 lists entities potentially affected by this rule with applicable NAICS code.

TABLE IX–1.—POTENTIALLY REGULATED CATEGORIES AND ENTITIES [a]

Category	NAICS code [b]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	[c] 221112	Fossil fuel-fired electric utility steam generating units owned by the Federal government.

TABLE IX–1.—POTENTIALLY REGULATED CATEGORIES AND ENTITIES [a]—Continued

Category	NAICS code [b]	Examples of potentially regulated entities
State/Local/	[c] 221112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
Tribal Government	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[a] Include NAICS categories for source categories that own and operate electric generating units only.
[b] North American Industry Classification System.
[c] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

After considering the economic impacts of today's final rule on small entities, EPA is certifying that this action will not have a significant economic impact on a substantial number of small entities.

EPA has assessed the potential impact of today's action on small entities. Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule (70 FR 49708, 49743). Approximately 140 of the estimated 3,000 EGUs potentially affected by today's action are owned by the 58 potentially affected small entities identified by EPA. Of the 140, 49 units are owned by small entities that also share ownership with large entities. Of these units, 34 are believed to be more than 50 percent owned by a large entity.

Beyond the 140, an additional 185 units owned by small entities in these states could be exempted because they have a nameplate capacity less than 25 MW. The above estimates include a number of units that are owned jointly by small and non-small entities. In addition, these estimates represent the maximum number of units potentially affected by the CAIR FIP. Only units in States that fail to submit an approved SIP would be directly regulated under the CAIR FIP. The actual number of affected units will depend on the number of States that do not submit a SIP or do not get their SIP submittal approved.

This analysis is based in large part on EPA's prior analysis of the potential impact of regulations implementing the CAIR model trading programs in the CAIR region. The analysis of the model trading programs was based on the best information available at that time and assumed that 75 small entities could be affected by any eventual implementation of the trading programs. However, EPA subsequently determined that some of these 75 entities either did not meet the definition of a small entity, or had units that were no longer generating. EPA's final analysis thus concluded that only 58 entities would be affected by today's action. Because the Agency's analysis of small entity impacts was based on the earlier estimate of affected small entities (*i.e.,* the impacts were analyzed based on 75 affected entities, not 58 entities), the impact analysis overstates the maximum potential impact of today's action on small entities.

Overall, EPA analysis suggested that about 445 MW of total small entity capacity, or 1.0 percent of total small entity capacity in the CAIR region, is projected to be uneconomic to maintain under regulations implementing the CAIR trading programs relative to the Base Case. In practice, units projected to be uneconomic to maintain may be ''mothballed'', retired, or kept in service to ensure transmission reliability in certain parts of the grid. Our IPM modeling is unable to distinguish between these potential outcomes.

Of the 75 initially identified as potentially impacted by regulations implementing the model trading programs, EPA determined that 29 might experience compliance costs in excess of one percent of revenues in 2010 and 46 might in 2015. Potentially affected small entities experiencing compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of CAIR.

Pursuant to section 609(b) of the RFA, EPA convened a Small Business Advocacy Review Panel to obtain advice and recommendations from representatives of small entities that would potentially be regulated by the rule. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (EPA–HQ–OAR–2004–0076–0074). A summary of the Panel's recommendations is presented at 70 FR 49708, 49741.

A detailed discussion of the panel process is provided in the proposed rule. In the proposed rule, EPA took comment on all aspects of the proposed FIP and its impact on small entities. EPA did not receive significant comments in this regard. In addition, in section VI.D of the proposed rule preamble, EPA specifically took comment on one of the panel recommendations, which was to consider providing a greater share of NO_X allowances to small entities. A number of utilities submitted comments opposing such a provision, and one State expressed support for such a provision. These comments are discussed in more detail in section VI.F of this preamble.

The decision to certify that this rule will not have a significant economic impact on a substantial number of small entities is largely a result of two factors. First, because the rule only affects sources with a capacity greater than 25 MW, the majority of potentially affected small entities are exempted. The decision to include only units greater than 25 MW in size exempts 185 small entities that would otherwise be potentially affected by today's actions. In the final CAIR, EPA stated its belief that it is reasonable to assume no further control of air emissions from these smaller EGUs. Second, as EPA's analysis of potential impacts of this rulemaking on small entities progressed, we determined that our initial estimates were too high, because some of the entities that EPA had projected to be affected either did not meet the definition of a small entity, or had units that were no longer generating. Finally, as was discussed in the NPR, the use of cap-and-trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of

$100,000,000 or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more in 1 year. The costs of compliance will be borne predominately by sources in the private sector although a small number of sources owned by State and local governments may also be impacted. EPA prepared a written statement meeting the requirements of section 202 of the UMRA during the CAIR rulemaking process. The Federal mandates in today's action relate to its implementation of the CAIR and thus the analyses prepared for CAIR are applicable to today's action.

In accordance with section 202(c) of UMRA, EPA prepared the statement required by section 202 in conjunction with the Regulatory Impact Analysis prepared for the CAIR. This document is available at *http://www.epa.gov/cair/pdfs/finaltech08.pdf* and contains analyses that meet the requirements of section 202(a) of UMRA. That is, it contains a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate; estimates of future compliance costs and any disproportionate budgetary effects upon any particular regions of the nation; and estimates of the effect on the national economy.

Consultation with State, local and Tribal governments potentially affected by the CAIR emission reduction requirements was conducted during the CAIR rulemaking process. Such consultation was conducted in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, and Executive Order 12875, ''Enhancing the Intergovernmental Partnership.''

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, development of a small government plan under section 203 of the Act is not required. The requirements in this action do not distinguish EGUs based on ownership, either for those units that are included within the scope of the rule or for those units that are exempted by the generating capacity cut-off. Consequently, the rule has no requirements that uniquely affect small governments that own or operate EGUs within the region. Further, with respect to the significance of the rule's provisions, EPA's UMRA analysis demonstrates that the economic impact of the rule will not significantly affect State or municipal EGUs or non-EGUs, either in terms of total cost incurred and the impact of the costs on revenue, or increased cost of electricity to consumers.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These effects do not occur from the final rule itself because it is the provisions of the CAA that require EPA, after a State has failed to submit a SIP or a complete SIP, to make a finding to that effect and then to promulgate a FIP within 2 years of the finding. Although EPA is exercising discretion to promulgate the FIP within the early part of the 2-year period, EPA intends to rescind the FIP for each State that submits a SIP that EPA approves, and, if the FIP remains, sources are not required to implement controls until after the close of the 2-year period. Moreover, as emphasized throughout the preamble, States are not required to adopt the FIP provisions, or any particular portion thereof, in order for EPA to approve their SIPs. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This rule does not have ''Tribal implications'' as specified in Executive Order 13175.

This rule addresses transport of pollution for precursors of ozone and $PM_{2.5}$. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations clarify the statutory obligations of States and Tribes that develop plans to implement these rules. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes because no Tribe has implemented a federally-enforceable air quality management program under the CAA at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal Government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today' rule could have implications for that Tribe, but would

not impose substantial direct costs upon the Tribe, nor preempt Tribal law. The EPA has estimated the total annual private costs for the FIP for the CAIR region as implemented by State, local, and Tribal governments to be approximately $2.4 billion in 2010 and $3.6 billion in 2015 (1999$). There are currently very few emissions sources in Indian country that could be affected by these rules and the percentage of Tribal land that will be impacted is very small. For Tribes that choose to regulate sources in Indian country, the costs would primarily be attributed to inspecting regulated facilities and enforcing adopted regulations.

EPA consulted with Tribal officials in developing the final CAIR, which provides the basis for the FIPs in today's rule. The EPA encouraged Tribal input at an early stage. Also, EPA held periodic meetings with the States and the Tribes during the technical development of CAIR. Three meetings were held with the Crow Tribe, where the Tribe expressed concerns about potential impacts of the rule on their coal mine operations. In addition, EPA held three calls with Tribal environmental professionals to address concerns specific to the Tribes. These discussions have given EPA valuable information about Tribal concerns regarding the development of CAIR. During the CAIR rulemaking process, the EPA provided briefings for Tribal representatives and the newly formed National Tribal Air Association (NTAA), and other national Tribal forums. Input from Tribal representatives was taken into consideration in development of CAIR.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategy in this rule would further improve air quality and would further improve children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

This final rule is a significant regulatory action under Executive Order 12866 and this rule may have a significant adverse effect on the supply, distribution, or use of energy. The energy impacts of this rule come from its implementation of the emission reduction requirements in the CAIR. The impacts for this rule will therefore not differ from those for the CAIR. These impacts are detailed in the final CAIR (70 FR 25315). As discussed in the CAIR NFR, EPA's analysis shows that the EGU emission reductions required under the trading programs are projected to result in a 1.6 percent or less increase in natural gas prices projected from 2010 to 2020. If base case natural gas prices are higher than EPA has assumed in its primary analysis, the impact on natural gas price will be even less.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's rule implements requirements largely identical to the requirements in the CAIR. This rule requires all sources that participate in the trading programs under part 97 (analogous to the CAIR SIP trading programs under part 96) to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under § 75.66 before they are used under part 75.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPAs NEPA Compliance Analyses. Office of Federal Activities, Washington, D.C., April, 1998. Agencies

are to assess whether minority or low-income populations face risks or a rate of exposure to hazards that are significant and that appreciably exceed or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group (EPA, 1998).

In accordance with Executive Order 12898, the Agency has considered whether this rule may have disproportionate negative impacts on minority or low income populations. The Agency expects this rule will lead to reductions in air pollution and exposures generally. In addition, EPA has conducted an air quality modeling analysis to estimate the changes in exposure of minority and low-income populations to ambient concentrations of $PM_{2.5}$ as a result of implementation of a cap-and-trade program similar to CAIR: the Acid Rain Program. The analysis shows that each racial, ethnic, and income-level group studied is projected to experience similar average improvement in ambient concentrations of $PM_{2.5}$ in the eastern U.S. (where the vast majority of the emission reductions took place) as a result of the Acid Rain Program in 2010. No disproportionately high and adverse human health or environmental effects of the Acid Rain Program were found for any minority, low-income, or other population. For these reasons, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 27, 2006.

List of Subjects

40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Parts 72, 73, 74, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Parts 96 and 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 51, 52, 72, 73, 74, 78, 96, and 97 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.123 is amended as follows:

■ a. In paragraph (o)(2)(ii)(B), by revising the words ''for the year after the year of'' to read ''for the 4th year after the year of'' and by removing the word ''and'' at the end;

■ b. In paragraph (o)(2)(ii)(C), by revising the words ''allocated.'' to read allocated; and'';

■ c. By adding a new paragraph (o)(2)(ii)(D);

■ d. By adding a new paragraph (p);

■ e. In paragraph (cc), by amending the definition of ''Electric generating unit'' or ''EGU'' by:

■ i. In paragraph (1) of the definition, by redesignating the paragraph as paragraph ''(1)(i)'', by revising the words ''since the start-up'' to read ''since the later of November 15, 1990 or the start-up'', and by adding a new paragraph (1)(ii); and

■ ii. By revising paragraph (2) of the definition; and

■ f. In paragraph (cc), by adding a new definition for ''Solid waste incineration unit''; and

■ g. By adding a new paragraph (ee).

§ 51.123 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule.

* * * * *

(o) * * *

(ii) * * *

(D) The State's methodology for allocating the compliance supplement pool must be substantively identical to § 97.143 (except that the permitting authority makes the allocations and the Administrator records the allocations made by the permitting authority) or otherwise in accordance with paragraph (e)(4) of this section.

* * * * *

(p) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR NO_X Annual Trading Program under subparts AA through HH of part 97 of this chapter as follows:

(1) The State may adopt, as CAIR NO_X allowance allocation provisions replacing the provisions in subpart EE of part 97 of this chapter:

(i) Allocation provisions substantively identical to subpart EE of part 96 of this chapter, under which the permitting authority makes the allocations; or

(ii) Any methodology for allocating CAIR NO_X allowances to individual sources under which the permitting authority makes the allocations, provided that:

(A) The State's methodology must not allow the permitting authority to allocate CAIR NO_X allowances for a year in excess of the amount in the State's Annual EGU NO_X budget for such year.

(B) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by April 30, 2007 for 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the 4th year after the year of the notification deadline.

(C) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X allowances by October 31 of the year for which the CAIR NO_X allowances are allocated.

(2) The State may adopt, as compliance supplement pool provisions replacing the provisions in (97.143 of this chapter:

(i) Provisions for allocating the State's compliance supplement pool that are substantively identical to § 97.143 of this chapter, except that the permitting authority makes the allocations and the Administrator records the allocations made by the permitting authority;

(ii) Provisions for allocating the State's compliance supplement pool that are substantively identical to § 96.143 of this chapter; or

(iii) Other provisions for allocating the State's compliance supplement pool that are in accordance with paragraph (e)(4) of this section.

(3) The State may adopt CAIR opt-in unit provisions as follows:

(i) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(ii) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.188(b) of this chapter and the provisions of subpart II of part 96 of this chapter that apply only to units covered by § 96.188(b) of this chapter; or

(iii) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart II of part 96 of this chapter and the provisions of subparts AA through HH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.188(c) of this chapter and the provisions of subpart II of part 96 of this chapter that apply only to units covered by § 96.188(c) of this chapter.

(cc) * * *

Electric generating unit or *EGU* means:

(1)(i) * * *

(ii) If a stationary boiler or stationary combustion turbine that, under paragraph (1)(i) of this section, is not an electric generating unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit as provided in paragraph (1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraphs (2)(i)(A), (2)(ii)(A), or (2)(ii)(B) of this definition paragraph shall not be an electric generating unit:

(i)(A) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (2)(i)(A) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (2)(i)(A)*(2)* of this section.

(ii)(A) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition commencing operation before January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(B) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition commencing operation on or after January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(C) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (2)(ii)(A) or (B) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

(ee) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR NO_X Ozone Season Trading Program under subparts AAAA through HHHH of part 97 of this chapter as follows:

(1) The State adopt, as applicability provisions replacing the provisions in § 97.304 of this chapter, provisions for applicability that are substantively identical to the provisions in § 96.304 of this chapter expanded to include all non-EGUs subject to the State's emissions trading program approved under § 51.121(p).

(2) The State may adopt, as CAIR NO_X Ozone Season allowance allocation provisions replacing the provisions in subpart EEEE of part 97 of this chapter:

(i) Allocation provisions substantively identical to subpart EEEE of part 96 of this chapter, under which the permitting authority makes the allocations; or

(ii) Any methodology for allocating CAIR NO_X Ozone Season allowances to

individual sources under which the permitting authority makes the allocations, provided that:

(A) The State may provide for issuance of an amount of CAIR Ozone Season NO_X allowances for an ozone season, in addition to the amount in the State's Ozone Season EGU NO_X Budget for such ozone season, not exceeding the portion of the State's trading program budget, under the State's emissions trading program approved under § 51.121(p), attributed to the non-EGUs that the applicability provisions in § 96.304 of this chapter are expanded to include under paragraph (ee)(1) of this section.

(B) The State's methodology must not allow the State to allocate CAIR Ozone Season NO_X allowances for an ozone season in excess of the amount in the State's Ozone Season EGU NO_X Budget for such ozone season plus any additional amount of CAIR Ozone Season NO_X allowances issued under paragraph (ee)(2)(ii)(A) of this section for such ozone season.

(C) The State's methodology must require that, for EGUs commencing operation before January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X Ozone Season allowances by April 30, 2007 for 2009, 2010, and 2011 and by October 31, 2008 and October 31 of each year thereafter for the 4th year after the year of the notification deadline.

(D) The State's methodology must require that, for EGUs commencing operation on or after January 1, 2001, the permitting authority will determine, and notify the Administrator of, each unit's allocation of CAIR NO_X Ozone Season allowances by July 31 of the year for which the CAIR NO_X Ozone Season allowances are allocated.

(3) The State may adopt CAIR opt-in unit provisions as follows:

(i) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X Ozone Season allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(ii) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X Ozone Season allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.388(b) of this chapter and the provisions of subpart IIII of part 96 of this chapter that apply only to units covered by § 96.388(b) of this chapter; or

(iii) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR NO_X allowances for CAIR opt-in units, that are substantively identical to subpart IIII of part 96 of this chapter and the provisions of subparts AAAA through HHHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.388(c) of this chapter and the provisions of subpart IIII of part 96 of this chapter that apply only to units covered by § 96.388(c) of this chapter.

■ 3. Section 51.124 is amended as follows:

■ a. In paragraph (q), by amending the definition of ''Electric generating unit'' or ''EGU'' by:

■ i. In paragraph (1) of the definition, redesignating the paragraph as paragraph ''(1)(i)'', revising the words ''since the start-up'' to read ''since the later of November 15, 1990 or the start-up'', and adding a new paragraph (1)(ii); and

■ ii. Revising paragraph (2) of the definition; and

■ b. In paragraph (q), add a new definition for ''Solid waste incineration unit''; and

■ c. Add a new paragraph (r).

§ 51.124 Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule.

* * * * *

(q) * * *

Electric generating unit or *EGU* means:

(1)(i) * * *

(ii) If a stationary boiler or stationary combustion turbine that, under paragraph (1)(i) of this section, is not an electric generating unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit as provided in paragraph (1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraphs (2)(i)(A), (2)(ii)(A), or (2)(ii)(B) of this definition paragraph shall not be an electric generating unit:

(i)(A) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition:

(1) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (2)(i)(A) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (2)(i)(A)*(2)* of this section.

(ii)(A) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition commencing operation before January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(B) Any unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition commencing operation on or after January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis)

and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(C) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (2)(ii)(A) or (B) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

(r) Notwithstanding any other provision of this section, a State may adopt, and include in a SIP revision submitted by March 31, 2007, regulations relating to the Federal CAIR SO_2 Trading Program under subparts AAA through HHH of part 97 of this chapter as follows. The State may adopt the following CAIR opt-in unit provisions:

(1) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied;

(2) Provisions for CAIR opt-in units, including provisions for applications for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.288(b) of this chapter and the provisions of subpart III of part 96 of this chapter that apply only to units covered by § 96.288(b) of this chapter; or

(3) Provisions for applications for CAIR opt-in units, including provisions for CAIR opt-in permits, approval of CAIR opt-in permits, treatment of units as CAIR opt-in units, and allocation and recordation of CAIR SO_2 allowances for CAIR opt-in units, that are substantively identical to subpart III of part 96 of this chapter and the provisions of subparts AAA through HHH that are applicable to CAIR opt-in units or units for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied, except that the provisions exclude § 96.288(c) of this chapter and the provisions of subpart III of part 96 of this chapter that apply only to units covered by § 96.288(c) of this chapter.

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Subpart A is amended by adding §§ 52.35 and 52.36 to read as follows:

§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule relating to emissions of nitrogen oxides?

The Federal CAIR NO_X Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO_X). These provisions apply to sources in each State that is described in § 51.123(c)(1) and (2) of this chapter, Delaware, and New Jersey, each of which States is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. The Federal CAIR NO_X Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of nitrogen oxides (NO_X) during the ozone season, as defined in § 97.302 of this chapter. These provisions apply to sources in each State that is described in § 51.123(c)(1) and (3) of this chapter, each of which States is subject to a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the 8-hour ozone NAAQS. These provisions do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part, nor the obligations of States under the requirements of § 51.123 and 51.125 of this chapter.

§ 52.36 What are the requirements of the Clean Air Interstate Rule Federal Implementation Plans relating to emissions of sulfur dioxide?

The Federal CAIR SO_2 Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions for emissions of sulfur dioxide (SO_2). These provisions apply to sources in each State that is described in § 51.124(c) of this chapter, Delaware, and New Jersey, each of which States is subject to an EPA finding that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(I) of the Clean Air Act for the $PM_{2.5}$ NAAQS. These provisions do not invalidate or otherwise affect the obligations of States, emissions sources, or other responsible entities with respect to all portions of plans approved or promulgated under this part, nor the obligations of States under the requirements of §§ 51.124 and 51.125 of this chapter.

Subpart B—Alabama

■ 3. Subpart B is amended by adding §§ 52.54 and 52.55 to read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Alabama and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Alabama and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart E—Arkansas

■ 4. Subpart E is amended by adding §§ 52.184 to read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Arkansas and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart H—Connecticut

■ 5. Subpart H is amended by adding §§ 52.386 to read as follows:

§ 52.386 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Connecticut and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart I—Delaware

■ 6. Subpart I is amended by adding §§ 52.440 and 52.441 to read as follows:

§ 52.440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Delaware and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Delaware and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart J—District of Columbia

■ 7. Subpart J is amended by adding §§ 52.484 and 52.485 to read as follows:

§ 52.484 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the District of Columbia and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.485 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the District of Columbia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart K—Florida

■ 8. Subpart K is amended by adding §§ 52.540 and 52.541 to read as follows:

§ 52.540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Florida and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Florida and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart L—Georgia

■ 9. Subpart L is amended by adding §§ 52.584 and 52.585 to read as follows:

§ 52.584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Georgia and for which requirements are set forth under Federal CAIR NO_X Annual Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Georgia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart O—Illinois

■ 10. Subpart O is amended by adding §§ 52.745 and 52.746 to read as follows:

§ 52.745 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Illinois and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.746 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Illinois and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart P—Indiana

■ 11. Subpart P is amended by adding §§ 52.789 and 52.790 to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Indiana and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.790 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Indiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Q—Iowa

■ 12. Subpart Q is amended by adding §§ 52.840 and 52.841 to read as follows:

§ 52.840 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Iowa and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.841 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Iowa and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart S—Kentucky

■ 13. Subpart S is amended by adding §§ 52.940 and 52.941 to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.941 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Kentucky and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart T—Louisiana

■ 14. Subpart T is amended by adding §§ 52.984 and 52.985 to read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.985 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Louisiana and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart V—Maryland

■ 15. Subpart V is amended by adding §§ 52.1084 and 52.1085 to read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Maryland and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1085 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Maryland and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart W—Massachusetts

■ 16. Subpart W is amended by adding § 52.1140 to read as follows:

§ 52.1140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Massachusetts and for which requirements are set forth under the Federal CAIR NO_X Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart X—Michigan

■ 17. Subpart X is amended by adding §§ 52.1186 and 52.1187 to read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Michigan and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1187 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Michigan and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Y—Minnesota

■ 18. Subpart Y is amended by adding §§ 52.1240 and 52.1241 to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Minnesota and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart Z—Mississippi

■ 19. Subpart Z is amended by adding §§ 52.1284 and 52.1285 to read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must

comply with such applicable requirements.

§ 52.1285 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Mississippi and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart AA—Missouri

■ 20. Subpart AA is amended by adding §§ 52.1341 and 52.1342 to read as follows:

§ 52.1341 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Missouri and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1342 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Missouri and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart FF—New Jersey

■ 21. Subpart FF is amended by adding §§ 52.1584 and 52.1585 to read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Program in part 97 of this chapter must comply with such applicable requirements.

§ 52.1585 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of New Jersey and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart HH—New York

■ 22. Subpart HH is amended by adding §§ 52.1684 and 52.1685 to read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of New York and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1685 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of New York and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart II—North Carolina

■ 23. Subpart II is amended by adding §§ 52.1784 and 52.1785 to read as follows:

§ 52.1784 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1785 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of North Carolina and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart KK—Ohio

■ 24. Subpart KK is amended by adding §§ 52.1891 and 52.1892 to read as follows:

§ 52.1891 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Ohio and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.1892 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Ohio and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart NN—Pennsylvania

■ 25. Subpart NN is amended by adding §§ 52.2040 and 52.2041 to read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2041 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Pennsylvania and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart PP—South Carolina

■ 26. Subpart PP is amended by adding §§ 52.2140 and 52.2141 to read as follows:

§ 52.2140 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must

comply with such applicable requirements.

§ 52.2141 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of South Carolina and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart RR—Tennessee

■ 27. Subpart RR is amended by adding §§ 52.2240 and 52.2241 to read as follows:

§ 52.2240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2241 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Tennessee and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart SS—Texas

■ 28. Subpart SS is amended by adding §§ 52.2283 and 52.2284 to read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Texas and for which requirements are set forth under the Federal CAIR NO_X Annual Trading Program in part 97 of this chapter must comply with such applicable requirements.

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Texas and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart VV—Virginia

■ 29. Subpart VV is amended by adding §§ 52.2440 and 52.2441 to read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2441 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart XX—West Virginia

■ 30. Subpart XX is amended by adding §§ 52.2540 and 52.2541 to read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2541 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of West Virginia and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

Subpart YY—Wisconsin

■ 31. Subpart YY is amended by adding §§ 52.2587 and 52.2588 to read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner or operator of each NO_X source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR NO_X Annual and Ozone Season Trading Programs in part 97 of this chapter must comply with such applicable requirements.

§ 52.2588 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

The owner or operator of each SO_2 source located within the State of Wisconsin and for which requirements are set forth under the Federal CAIR SO_2 Trading Program in part 97 of this chapter must comply with such applicable requirements.

PART 72—[AMENDED]

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

■ 2. Section 72.2 is amended, in the definition of ''Receive or receipt'', by revising the words ''official correspondence log'' to read ''official log''.

■ 3. Section 72.7 is amended as follows:

■ a. By revising paragraph (f)(2); and

■ b. In paragraph (f)(4)(i), by revising the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' to read, for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''. The revision reads as follows:

§ 72.7 New units exemption.

* * * * *

(f) * * *

(2) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of chapter.

* * * * *

■ 4. Section 72.8 is amended as follows:

■ a. By revising paragraph (d)(4); and

■ b. In paragraph (d)(6)(i) introductory text, by revising the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' to read ,'' for purposes of

applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''.

The revision reads as follows:

§ 72.8 Retired units exemption.

* * * * *

(d) * * *

(4) For any period for which a unit is exempt under this section:

(i) For purposes of applying parts 70 and 71 of this chapter, the unit shall not be treated as an affected unit under the Acid Rain Program and shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(ii) The unit shall not be eligible to be an opt-in source under part 74 of chapter.

* * * * *

§ 72.20 [Amended]

■ 5. Section 72.20 is amended, in paragraph (b), by revising the words ''his or her actions'' to read ''his or her representations, actions''.

§ 72.22 [Amended]

■ 6. Section 72.22 is amended, in paragraph (b), by revising the words ''any action, representation, or failure to act'' to read ''any representation, action, inaction, or submission'' whenever they appear.

§ 72.23 [Amended]

■ 7. Section 72.23 is amended as follows:

■ a. In paragraphs (a) and (b), by revising the words ''submissions, actions, and inactions'' to read ''representations, actions, inactions, and submissions''; and

■ b. In paragraph (c)(1), by revising the words ''a new owner'' to read ''an owner'', by revising the words ''such new owner'' to read ''such owner'', by revising the words ''submissions, actions, and inactions'' to read ''representations, actions, inactions, and submissions'', and by revising the words ''the new owner'' to read ''the owner.''

§ 72.24 [Amended]

■ 8. Section 72.24 is amended as follows:

■ a. In paragraph (a)(1) by revising the words ''is submitted.'' to read ''is submitted, including identification and nameplate capacity of each generator served by each such unit'';

■ b. In paragraph (a)(6), by revising the words ''actions, inactions, or submissions'' to read ''representations, actions, inactions, or submissions''; and

■ c. In paragraph (a)(9)(ii), by revising the words ''or ,if such multiple'' to read '', except that, if such multiple''.

§ 72.25 [Amended]

■ 9. Section 72.25 is amended, in paragraph (b), by revising the words ''submission, action or inaction'' to read ''representation, action, inaction, or submission'' and revise the words ''submission, action, or inaction'' to read ''representation, action, inaction, or submission''.

■ 10. Add a new 72.26 to read as follows:

§ 72.26 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part and parts 73 through 77 of this chapter.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part and parts 73 through 77 of this chapter.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative, as appropriate:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 72.26(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 72.26(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 72.26 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 73.31 [Amended]

■ 2. Section 73.31 is amended, in paragraph (c)(1)(v), by revising the words ''actions, inactions, or submissions'' to read ''representations, actions, inactions, or submissions''.

■ 3. Section 73.33 is amended as follows:

■ a. In paragraph (d)(4), by revising the words ''action, representation, or failure to act'' to read ''representation, action, inaction, or submission'' and by revising the word ''an action'' to read ''a representation, action, inaction, or submission'';

■ b. In paragraph (e), by revising the word ''actions'' to read ''representations, actions, inactions, or submissions'';

■ c. In paragraph (f), by revising the words ''any submission to'' to read ''any representation, action, inaction, or submission to'' and revise the words ''the recordation of transfers submitted

by'' to read ''any representation, action, inaction, or submission of''; and

■ d. By adding a new paragraph (g) to read as follows:

§ 73.33 Authorized account representative.

* * * * *

(g) *Delegation by authorized account representative and alternate authorized account representative.* (1) An authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part.

(2) An alternate authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission (in a format prescribed by the Administrator) to the Administrator provided for or required under this part.

(3) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (g)(1) or (2) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(i) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(ii) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(iii) For each such natural person, a list of the type or types of electronic submissions under paragraph (g)(1) or (2) of this section for which authority is delegated to him or her;

(iv) The following certification statements by such authorized account representative or alternate authorized account representative:

(A) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a authorized account representative or alternate authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 73.33(g)(4) shall be deemed to be an electronic submission by me.''

(B) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 73.33(g)(4), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 73.33(g) is eliminated.''

(4) A notice of delegation submitted under paragraph (g)(3) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(5) Any electronic submission covered by the certification in paragraph (g)(3)(iv)(A) of this section and made in accordance with a notice of delegation effective under paragraph (g)(4) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

PART 74—[AMENDED]

■ 1. The authority citation for Part 74 continues to read as follows:

Authority: 7601 and 7651 *et seq.*

§ 74.4 [Amended]

■ 2. In § 74.4, paragraph (c) is removed.

PART 78—[AMENDED]

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 2. Section 78.1 is amended as follows:

■ a. In paragraph (b)(8)(ii), by revising ''§ 97.256'' to read ''§ 96.256''.

■ b. By adding new paragraphs (b)(10), (b)(11), and (b)(12) to read as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(10) Under subparts AA through II of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_X allowances under subpart EE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_X allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X allowances based on the information as adjusted, under § 97.154 of this chapter;

(iii) The correction of an error in a CAIR NO_X Allowance Tracking System account under § 97.156 of this chapter;

(iv) The decision on the transfer of CAIR NO_X allowances under § 97.161 of this chapter;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 97.175 of this chapter.

(11) Under subparts AAA through III of part 97 of this chapter,

(i) The decision on the deduction of CAIR SO_2 allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR SO_2 allowances based on the information as adjusted, under § 97.254 of this chapter;

(ii) The correction of an error in a CAIR SO_2 Allowance Tracking System account under § 97.256 of this chapter;

(iii) The decision on the transfer of CAIR SO_2 allowances under § 97.261 of this chapter;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 97.275 of this chapter.

(12) Under subparts AAAA through IIII of part 97 of this chapter,

(i) The decision on the allocation of CAIR NO_X Ozone Season allowances under subpart EEEE of part 97 of this chapter.

(ii) The decision on the deduction of CAIR NO_X Ozone Season allowances, and the adjustment of the information in a submission and the decision on the deduction or transfer of CAIR NO_X Ozone Season allowances based on the information as adjusted, under § 97.354 of this chapter;

(iii) The correction of an error in a CAIR NO_X Ozone Season Allowance Tracking System account under § 97.356 of this chapter;

(iv) The decision on the transfer of CAIR NO_X Ozone Season allowances under § 97.361;

(v) The finalization of control period emissions data, including retroactive adjustment based on audit;

(vi) The approval or disapproval of a petition under § 97.375 of this chapter.

* * * * *

■ 3. Section 78.3 is amended as follows:

■ a. In paragraph (b)(3)(i), by revising the words ''under paragraph (a)(4), (5), or (6) of this section'' to read ''under paragraph (a)(4), (5), (6), (7), (8), or (9) of this section'';

■ b. In paragraph (d)(3), by revising the words ''account certificate of

representation submitted by a CAIR designated representative'' to read ''certificate of representation submitted by a CAIR designated representative'' and by revising the words ''or subparts AAAA through IIII of part 96 of this chapter'', the words ''subparts AAAA through IIII of part 96 of this chapter, or under part 97 of this chapter''; and

■ c. By adding new paragraphs (a)(7), (a)(8), (a)(9), (d)(8), (d)(9), and (d)(10) to read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(7) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of part 97 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(8) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR SO_2 Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

(9) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAAA through III of part 97 and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR Ozone Season NO_X Allowance Tracking System account, covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(8) Any provision or requirement of subparts AA through II of part 97 of this chapter, including the standard requirements under § 97.106 of this chapter and any emission monitoring or reporting requirements.

(9) Any provision or requirement of subparts AAA through III of part 97 of this chapter, including the standard requirements under § 97.206 of this chapter and any emission monitoring or reporting requirements.

(10) Any provision or requirement of subparts AAAA through IIII of part 97 of this chapter, including the standard requirements under § 97.306 of this chapter and any emission monitoring or reporting requirements.

PART 96—NO_X BUDGET TRADING PROGRAM AND CAIR NO_X AND SO_2 TRADING PROGRAMS FOR STATE IMPLEMENTATION PLANS

■ 1. The heading of part 96 is revised to read as set forth above.

■ 2. The authority citation for part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

■ 3. Section 96.102 is amended as follows:

■ a. By revising the definition of ''Allocate or allocation'';

■ b. In the definition of ''Allowance transfer deadline'', by revising the words ''midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter'' to read ''midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day),'';

■ c. In the definition of ''Alternate CAIR designated representative'', by revising the words ''in accordance with'' to read '', in accordance with'' and by adding at the end the words ''If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.'';

■ d. In the definition of ''CAIR authorized account representative'', by revising the words ''subparts BB and II'' to read ''subparts BB, FF, and II'';

■ e. In the definition of ''CAIR designated representative'', by adding at the end the words ''If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.'';

■ f. By revising the definition of ''CAIR NO_X allowance'';

■ g. In the definition of ''CAIR NO_X allowance deduction or deduct CAIR NO_X allowances'', by adding, after the words ''compliance account'', the words '', *e.g.,*'';

■ h. In the definition of ''CAIR NO_X Annual Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§ 51.123(p) and 52.35 of this chapter,'';

■ i. In the definition of ''CAIR NO_X emissions limitation'', by revising the words ''tonnage equivalent of'' to read ''tonnage equivalent, in NO_X emissions in a control period, of'' and by revising the words ''for a control period'' to read ''for the control period'';

■ j. In the definition of ''CAIR NO_X Ozone Season source'', by revising the words ''includes one or more CAIR NO_X Ozone Season units'' to read ''is subject to the CAIR NO_X Ozone Season Trading Program'';

■ k. In the definition of ''CAIR NO_X Ozone Season Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§ 51.123(ee) and 52.35 of this chapter,'';

■ l. By removing the definition of ''CAIR NO_X Ozone Season unit'';

■ m. In the definition of ''CAIR SO_2 source'', by revising the words ''includes one or more CAIR SO_2 units'' to read ''is subject to the CAIR SO_2 Trading Program'';

■ n. In the definition of ''CAIR SO_2 Trading Program'', by revising the words ''§ 51.124 of this chapter,'' to read ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§ 51.124(r) and 52.36 of this chapter,'';

■ o. By removing the definition of ''CAIR SO_2 unit'';

■ p. In paragraph (2) of the definition of ''Cogeneration unit'', by revising the words ''calendar year after which'' to read ''calendar year after the calendar year in which'';

■ q. In paragraph (2) of the definition of ''Combustion turbine'', by revising the words ''any associated heat recovery steam generator''to read ''any associated duct burner, heat recovery steam generator,'';

■ r. By revising the definition of ''Commence commercial operation'';

■ s. By revising the definition of ''Commence operation'';

■ t. In the definition of ''Control period'', by revising the words ''January 1 of a calendar year and'' to read ''January 1 of a calendar year, except as provided in § 96.106(c)(2), and'';

■ u. By revising the definition of ''Maximum design heat input'';

■ v. In the definition of ''Nameplate capacity'', by revising the words ''other deratings) as specified'' to read ''other deratings) as of such installation as specified'' and by revising the words ''maximum amount as specified'' to read

''maximum amount as of such completion as specified'';

■ w. In the definition of ''Oil-fired'', by revising the words ''in a specified year.'' to read ''in a specified year and not qualifying as coal-fired.'';

■ x. In the definition of ''Receive or receipt'', by revising the words ''official correspondence log'' to read ''official log''; and

■ y. By adding new definitions of ''Hg Budget Trading Program'', ''Replacement, replace, or replaced'', and ''Solid waste incineration unit'' to read as follows:

§ 96.102 Definitions.

* * * * *

Allocate or *allocation* means, with regard to CAIR NO_X allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit, a new unit set-aside, or other entity.

* * * * *

CAIR NO_X allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, or under subpart EE of part 97 or § 97.188 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter or subpart EE of part 97 or § 97.188 of this chapter shall not be a CAIR NO_X allowance.

* * * * *

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.105 and § 96.184(h).

(i) For a unit that is a CAIR NO_X unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_X unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_X unit under § 96.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under § 96.104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.184(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.184(h).

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Replacement, *replace*, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

■ 4. Section 96.103 is revised to read as follows:

§ 96.103 Measurements, abbreviations, and acroynyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide
H_2O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_X—nitrogen oxides
O2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

■ 5. Section 96.104 is revised to read as follows:

§ 96.104 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X units, and any source that includes one or more such units shall be a CAIR NO_X source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X units:

(1)(i) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.105 [Amended]

■ 6. Section 96.105 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''§ 96.106(c)(4) through (8), § 96.107, and subparts EE through GG of this part'' to read ''§ 96.106(c)(4) through (7), § 96.107, § 96.108, and (subparts BB and EE through GG'';

■ b. In paragraph (b)(3), by revising the words ''shall retain at the source'' to read ''shall retain, at the source''; and

■ c. In paragraph (b)(7), by revising the words ''commences operation and commercial operation'' to read ''commences commercial operation''.

§ 96.106 [Amended]

■ 7. Section 96.106 is amended as follows:

■ a. In paragraph (a)(1)(i), by revising the words ''in § 96.121(a) and (b)'' to read ''in § 96.121'';

■ b. In paragraph (c)(2), by revising the words ''under paragraph (c)(1) of this section'' to read ''under paragraph (c)(1) of this section for the control period'' and by revising the words ''under § 96.170(b)(1), (2), or (5)'' to read ''under § 96.170(b)(1), (2), or (5) and for each control period thereafter'';

■ c. In paragraph (c)(4), by revising the words ''subpart EE'' to read ''subparts FF, GG, and II'';

■ d. In paragraph (c)(7), by revising the words ''under subpart FF, GG, or II'' to read ''under subpart EE, FF, GG, or II'', by revising the words ''from a CAIR NO_X unit's compliance account'' to read ''from a CAIR NO_X source's compliance account'', and by removing the words ''that includes the CAIR NO_X unit'';

■ e. In paragraph (d)(1), by removing the paragraph designation ''(1)'' and by redesignating paragraph (i) as paragraph (d)(1); and

■ f. By removing paragraph (d)(2) and by redesignating paragraph (ii) as paragraph (d)(2).

§ 96.111 [Amended]

■ 8. Section 96.111 is amended, in paragraph (c), by revising the words ''§ 96.151 and 96.182'' to read ''96.115, 96.151, and 96.182''.

§ 96.112 [Amended]

■ 9. Section 96.112 is amended, in paragraph (c)(1), by revising the words ''a new owner'' to read ''an owner'', by revising the words ''such new owner'' to read ''such owner'', and by revising the words ''the new owner'' to read ''the owner''.

§ 96.113 [Amended]

■ 10. Section 96.113 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''is submitted'' to read ''is submitted, including identification and nameplate capacity of each generator served by each such unit''; and

■ b. In paragraph (a)(4)(iv), by revising the words ''where a customer'' to read ''where a utility or industrial customer''.

■ 11. Add a new § 96.115 to read as follows:

§ 96.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic

submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.115(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.115 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

§ 96.120 [Amended]

■ 12. Section 96.120 is amended, in paragraph (a), by revising the words ''otherwise by this subpart and'' to read ''otherwise by § 96.105, this subpart, and''.

§ 96.121 [Amended]

■ 13. Section 96.121 is amended as follows:

■ a. In paragraph (a), by revising the words ''commences operation'' to read ''commences commercial operation, except as provided in § 96.183(a)''; and

■ b. In paragraph (b), by revising the words ''permit renewal'' to read ''permit renewal, except as provided in § 96.183(b)''.

§ 96.123 [Amended]

■ 14. Section 96.123 is amended, in paragraph (b), by revising the words ''subpart FF, GG, or II'' to read ''subpart EE, FF, GG, or II''.

§ 96.141 [Amended]

■ 15. Section 96.141 is amended as follows:

■ a. In paragraph (b)(1), removing the paragraph designation ''(1)'';

■ b. By removing paragraph (b)(2);

■ c. In paragraph (c)(1), removing the paragraph designation ''(1)''; and

■ d. By removing paragraph (c)(2).

■ 16. Section 96.142 is amended as follows:

■ a. In paragraph (a)(2)(ii)(C), by revising the words ''3,414 Btu/kWh'' to read ''3,413 Btu/kWh'';

■ b. By revising paragraph (c) introductory text;

■ c. In paragraph (c)(1), by revising the words ''2009 through 2013'' to read ''2009 through 2014'' and by revising the words ''in 2014'' to read ''in 2015'';

■ d. In paragraph (c)(2), by revising the words ''The CAIR NO_X allowance allocation request must be submitted on or before July 1 of the first control period for which CAIR NO_X allowances are requested'' to read ''A separate CAIR NO_X allowance allocation request for each control period for which CAIR NO_X allowances are sought must be submitted on or before May 1 of such control period''; and

■ e. In paragraph (c)(4)(ii), by revising the words ''On or after July 1'' to read ''On or after May 1''; and revising to read as follows:

§ 96.142 CAIR NO_X allowance allocations.

* * * * *

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X allowances to CAIR NO_X units in a State that are not allocated CAIR NO_X allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_X allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

* * * * *

§ 96.143 [Amended]

■ 17. Section 96.143 is amended as follows:

■ a. In paragraphs (b)(2), (c)(1), and (d), by revising the words ''July 1'' to read ''May 1'';

■ b. In paragraph (d)(3), by revising the words '' 'Unit's allocation' is the number of CAIR NO_X allowances'' to read '' 'Unit's allocation' is the amount of CAIR NO_X allowances'';

■ c. In paragraph (d)(4), by revising the words ''paragraph (d)(3) or (4)'' to read ''paragraph (d)(2) or (3)''; and

■ d. In paragraph (d)(5), by revising the words ''paragraph (d)(5)'' to read ''paragraph (d)(4)''.

■ 18. Section 96.151 is amended as follows:

■ a. In paragraph (b)(2) introductory text, by revising the word ''representative'' to read ''representative or alternate CAIR authorized account representative'';

■ b. In paragraph (b)(3)(iii)(A), by revising the words ''a new person'' to read ''a person'', by revising the words ''such new person'' to read ''such person'', and by revising the words ''the new person'' to read ''the person'';

■ c. In paragraph (b)(3)(iii)(B), by revising the words ''addition of persons'' to read ''addition of a new person'';

■ d. In paragraph (b)(4) introductory text, by revising the word ''representative'' to read ''representative or alternate CAIR authorized account representative'';

■ e. In paragraphs (b)(4)(ii) and (iii), by revising the words ''alternative CAIR'' to read ''alternate CAIR'' whenever they appear; and

■ f. By adding a new paragraph (b)(5) to read as follows:

§ 96.151 Establishment of accounts.

* * * * *

(b) * * *

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.151(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.151 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.151 (b)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

* * * * *

■ 19. Section 96.153 is amended as follows:

■ a. In paragraph (a), by revising the words ''By December 1, 2006,'' to read ''By September 30, 2007,'' and revising the words ''at a source'' to read ''at the source'';

■ b. In paragraphs (b) and (d), by removing the words ''or as determined by the Administrator''; and

■ c. By revising paragraph (c) to read as follows:

§ 96.153 Recordation of CAIR NO_X allowance allocations.

* * * * *

(c) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority in accordance with § 96.141(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

* * * * *

§ 96.154 [Amended]

■ 20. Section 96.154 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''prior year;'' to read ''prior year; and'';

■ b. In paragraph (a)(2), revising the words ''§ 96.160 by the allowance transfer deadline for the control period; and'' to read ''§§ 96.160 and 96.161 by the allowance transfer deadline for the control period.'';

■ c. By removing paragraph (a)(3);

■ d. In paragraph (c)(2)(ii), by revising the words ''to any unit'' to read ''to any entity'';

■ e. In paragraph (e), by revising the words ''under paragraph (b) or (d) of this section'' to read ''under paragraphs (b) and (d) of this section and subpart II'';

■ f. In paragraph (f)(2), by revising the words ''of this section.'' to read ''of this section, and record such deductions and transfers.''

§ 96.155 [Amended]

■ 21. Section 96.155 is amended, in paragraph (b), by revising the words ''§ 96.156, or subpart GG'' to read ''§ 96.156, or subpart GG or II''.

§ 96.157 [Amended]

■ 22. Section 96.157 is amended, in paragraphs (a) and (b), by revising the words ''§ 96.160'' to read ''§§ 96.160 and 96.161''.

■ 23. Section 96.170 is amended as follows:

■ a. In paragraph (b) introductory text, by revising the words ''The owner'' to read ''Except as provided in paragraph (e) of this section, the owner'';

■ b. In paragraph (b)(5), by revising the words ''paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner'' to read ''paragraphs (b)(1) and (2) of this section, for the owner'';

■ c. In paragraph (c)(1), by removing the paragraph designation ''(1)'' and by revising the words ''Except as provided in paragraph (c)(2) of this section, the owner'' to read ''The owner'';

■ d. By removing paragraph (c)(2);

■ e. In paragraph (d)(3), by revising the words ''the atmosphere'' to read ''the atmosphere or heat input''; and

■ f. By adding a new paragraph (e) to read as follows:

§ 96.170 General Requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.171 [Amended]

■ 24. Section 96.171 is amended, in paragraph (c), by revising the words ''§ 75.12, § 75.17, or subpart H of part 75'' to read ''§ 75.12 or § 75.17''.

§ 96.173 [Amended]

■ 25. Section 96.173 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.

■ 26. Section 96.174 is amended as follows:

■ a. In paragraph (d)(1)(i), by revising the words ''2008; or'' to read ''2008;'';

■ b. In paragraph (d)(1)(ii), by revising the words ''2008.'' to read ''2008;'';

■ c. By adding new paragraphs (d)(1)(iii) and (iv); and

■ d. In paragraph (d)(3), by revising the words ''or CAIR SO_2 Trading Program,'' to read '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and by revising the words ''subparts F through H'' to read ''subparts F through I'' and revising to read as follows:

§ 96.174 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 96.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 96.184(g).

* * * * *

§ 96.176 [Removed]

■ 27. Section 96.176 is removed.

■ 28. Section 96.183 is amended as follows:

■ a. By revising paragraph (a)(5); and

■ b. In paragraph (b)(2), by revising the words ''CAIR opt-in unit''to read ''CAIR NO_X opt-in unit'' and revising to read as follows:

§ 96.183 Applying for CAIR opt-in permit.

(a)* * *

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under § 96.188(b) or § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)). If allocation under § 96.188(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

* * * * *

§ 96.184 [Amended]

■ 29. Section 96.184 is amended as follows:

■ a. In paragraph (c)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and for the control periods under paragraph (b)(2) of this section''to read''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';

■ b. In paragraph (d)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section''to read''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';

■ c. In paragraph (d)(3), by revising the words ''for such control period'' with words''for such control periods'';

■ d. In paragraph (f), by revising the words ''CAIR NO_X opt-in permit'' to read ''CAIR opt-in permit''; and

■ e. In paragraph (h)(2), by revising the words ''a CAIR opt-in unit'' to read ''a CAIR NO_X opt-in unit''.

■ 30. Section 96.185 is amended as follows:

■ a. In paragraph (a)(5), by revising the words ''under § 96.188(c)''to read''§ 96.188(b) or § 96.188(c)''; and

■ b. By adding a new paragraph (c) to read as follows:

§ 96.185 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_X opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.186 [Amended]

■ 31. Section 96.186 is amended as follows:

■ a. In paragraph (a), by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X opt-in unit''; and

■ b. In paragraph (b)(2), by revising the words ''equal in number to'' to read ''equal in amount to''.

■ 32. Section 96.187 is amended as follows:

■ a. In paragraph (b)(1), by revising the words ''under § 96.123'' to read ''under § 96.123, and remove the CAIR opt-in permit provisions,'';

■ b. In paragraph (b)(2)(i), by revising the words ''equal in number to'' to read ''equal in amount to'';

■ c. By revising paragraph (b)(3)(i);

■ d. In paragraph (b)(3)(ii), by revising the words ''Notwithstanding paragraph (b)(3)(i) of this section, if'' to read ''If'', by revising the words ''January 1'' to read ''December 31,'' and by revising the words ''number of CAIR NO_X allowances'' to read ''amount of CAIR NO_X allowances''; and

■ e. In paragraph (b)(3)(ii)(A), by revising the words ''number of CAIR NO_X allowances'' to read ''amount of CAIR NO_X allowances'' and revising to read as follows:

§ 96.187 Change in regulatory status.

* * * * *

(b) * * *

(3)(i) For every control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, the CAIR NO_X opt-in unit will be allocated CAIR NO_X allowances under § 96.142.

* * * * *

§ 96.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

■ 33. Section 96.188 is amended as follows:

■ a. By revising the heading of the section as set forth above;

■ b. In paragraph (a)(2), by revising the words ''of the control period in which a CAIR opt-in unit'' to read ''of the control period after the control period in which a CAIR NO_X opt-in unit'';

■ c. In paragraph (c), by revising the words ''issues a CAIR opt-in permit'' to read ''issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 96.183(a)(5))''; and

■ d. In paragraph (d)(2), by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X opt-in unit'' and revising the words ''CAIR opt-in unit''.

■ 34. Section 96.202 is amended as follows:

■ a. By revising the definition of ''Allocate or allocation'';

■ b. In the definition of ''Allowance transfer deadline'', by revising the words ''midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter'' to read ''midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day),'';

■ c. In the definition of ''Alternate CAIR designated representative'', by adding at the end the words ''If the CAIR SO_2

source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.'';

■ d. In the definition of ''CAIR authorized account representative'', by revising the words ''subparts BBB and III'' to read ''subparts BBB, FFF, and III'';

■ e. In the definition of ''CAIR designated representative'', by adding at the end the words ''If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.'';

■ f. In the definition of ''CAIR NO_X Annual Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§ 51.123(p) and 52.35 of this chapter,'';

■ g. In the definition of ''CAIR NO_X Ozone Season source'', by revising the words ''includes one or more CAIR NO_X Ozone Season unit'' to read ''is subject to the CAIR NO_X Ozone Season Trading Program'';

■ h. In the definition of ''CAIR NO_X Ozone Season Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§ 51.123(ee) and 52.35 of this chapter,'';

■ i. By removing the definition of ''CAIR NO_X Ozone Season unit'';

■ j. In the definition of ''CAIR NO_X source'', by revising the words ''includes one or more CAIR NO_X units'' to read ''is subject to the CAIR NO_X Annual Trading Program'';

■ k. By removing the definition of ''CAIR NO_X unit'';

■ l. In the definition of ''CAIR SO_2 allowance'', by revising in the introductory text the words ''under § 96.288,'' to read ''under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter or § 97.288 of this chapter,'', by designating the last sentence of the definition as paragraph (4), and by revising in paragraph (4) the words ''(Program or under the provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter'' to read ''(Program, provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter, or § 97.288 of this chapter'';

■ m. In the definition of ''CAIR SO_2 allowance deduction or deduct CAIR SO_2 allowances'', by adding, after the words ''compliance account'', the words '', *e.g.,*'';

■ n. In the definition of ''CAIR SO_2 emissions limitation'', by revising the words ''tonnage equivalent of'' to read ''tonnage equivalent, in SO_2 emissions in a control period, of'' and by revising the words ''for a control period'' to read ''for the control period''

■ o. In the definition of ''CAIR SO_2 Trading Program'', by revising the words ''§ 51.124 of this chapter,'' to read ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§ 51.124(r) and 52.36 of this chapter,'';

■ p. In paragraph (2) of the definition of ''Cogeneration unit'', by revising the words ''calendar year after which'' to read ''calendar year after the calendar year in which'';

■ q. In the definition of ''Combustion turbine'', by revising the words ''any associated heat recovery steam generator'' to read ''any associated duct burner, heat recovery steam generator,'';

■ r. By revising the definition of ''Commence commercial operation'';

■ s. By revising the definition of ''Commence operation'';

■ t. In the definition of ''Control period'', by revising the words ''January 1 of a calendar year and'' to read ''January 1 of a calendar year, except as provided in § 96.206(c)(2), and'';

■ u. By revising the definition of ''Maximum design heat input'';

■ v. In the definition of ''Nameplate capacity'', by revising the words ''other deratings) as specified'' to read ''other deratings) as of such installation as specified'' and by revising the words ''maximum amount as specified'' to read ''maximum amount as of such completion as specified'';

■ w. In the definition of ''Receive or receipt'', by revising the words ''official correspondence log'' to read ''official log'';

■ x. In the definition of ''Useful thermal energy'', by revising in paragraph (2) the word ''heat'' with the word ''heating''; and

■ y. By adding new definitions of ''Hg Budget Trading Program'', ''Replacement, replace, or replaced'', and ''Solid waste incineration unit'' to read as follows:

§ 96.202 Definitions.

* * * * *

Allocate or *allocation* means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity and, with regard to CAIR SO_2 allowances issued under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter or § 97.288 of this chapter, the determination by a permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity.

* * * * *

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.205 and § 96.284(h).

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.284(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in (96.284(h).

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

■ 35. Section 96.203 is revised to read as follows:

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
H_2O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

■ 36. Section 96.204 is revised to read as follows:

§ 96.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO_2 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO_2 units:

(1)(i) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive

calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.205 [Amended]

■ 37. Section 96.205 is amended as follows:
■ a. In paragraph (a)(1), by revising the words ''§ 96.206(c)(4) through (8), § 96.207, and subparts FFF and GGG'' to read ''§ 96.206(c)(4) through (7), § 96.207, § 96.208, and subparts BBB, FFF, and GGG'';
■ b. In paragraph (b)(2), by revising the words ''shall retain at the source'' to read ''shall retain, at the source''; and
■ c. In paragraph (b)(6), by revising the words ''commences operation and commercial operation'' to read ''commences commercial operation''.

§ 96.206 [Amended]

■ 38. Section 96.206 is amended as follows:
■ a. In paragraph (a)(1)(i), by revising the words ''in § 96.221(a) and (b)'' to read ''in § 96.221'';
■ b. In paragraph (c)(2), by revising the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and by revising the words ''under § 96.270(b)(1), (2), or (5)'' to read ''under § 96.270(b)(1), (2), or (5) and for each control period thereafter'';
■ c. In paragraph (c)(7), by revising the words ''from a CAIR SO_2 unit's compliance account'' to read ''from a CAIR SO_2 source's compliance account'' and by removing the words ''that includes the CAIR SO_2 unit''; and
■ d. In paragraph (d)(1), by removing the paragraph designation ''(1)'' and by redesignating paragraph (i) as paragraph (d)(1); and
■ e. By removing paragraph (d)(2) and by redesignating paragraph (ii) as paragraph (d)(2).

§ 96.211 [Amended]

■ 39. In paragraph (c), by revising the words ''96.251 and 96.282'' to read ''96.215, 96.251, and 96.282''.

§ 96.212 [Amended]

■ 40. Section 96.212 is amended, in paragraph (c)(1), by revising the words ''a new owner'' to read ''an owner'', by revising the words ''such new owner'' to read ''such owner'', and by revising the words ''the new owner'' to read ''the owner''.

§ 96.213 [Amended]

■ 41. Section 96.213 is amended as follows:
■ a. In paragraph (a)(1), by revising the words ''is submitted'' to read ''is submitted, including identification and nameplate capacity of each generator served by each such unit''; and
■ b. In paragraph (a)(4)(iv), by revising the words ''where a customer'' to read ''where a utility or industrial customer''.
■ 42. Add a new section 96.215 to read as follows:

§ 96.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person ''referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.215(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.215(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.215 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

§ 96.220 [Amended]

■ 43. Section 96.220 is amended as follows:
■ a. In paragraph (a), by revising the words ''otherwise by this subpart and'' to read ''otherwise by § 96.205, this subpart, and''; and
■ b. In paragraph (b), by replacing the words ''CAIR SO_2 units at the source'' to read ''CAIR SO_2 units at the source covered by the CAIR permit''.

§ 96.221 [Amended]

■ 44. Section 96.221 is amended as follows:
■ a. In paragraph (a), by revising the words ''commences operation'' to read ''commences commercial operation, except as provided in § 96.283(a)'' and
■ b. In paragraph (b), by revising the words ''permit renewal'' to read ''permit renewal, except as provided in § 96.283(b)''.

■ 45. Section 96.251 is amended as follows:
■ a. In paragraph (b)(2) introductory text, by revising the word ''representative'' to read ''representative

or alternate CAIR authorized account representative'';

■ b. In paragraph (b)(3)(iii)(A), by revising the words ''a new person'' to read ''a person'', revise the words ''such new person'' to read ''such person'', and revise the words ''the new person'' to read ''the person'';

■ c. In paragraph (b)(3)(iii)(B), by revising the words ''addition of persons'' to read ''addition of a new person'';

■ d. In paragraph (b)(4) introductory text, by revising the word ''representative'' to read ''representative or alternate CAIR authorized account representative'';

■ e. In paragraphs (b)(4)(ii) and (iii), by revising the words ''alternative CAIR'' to read ''alternate CAIR'' whenever they appear; and

■ f. By adding a new paragraph (b)(5) to read as follows:

§ 96.251 Establishment of accounts.

* * * * *

(b) * * *

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.251(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.251 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.251 (b)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

* * * * *

§ 96.254 [Amended]

■ 46. Section 96.254 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''prior year;'' to read ''prior year; and'';

■ b. In paragraph (a)(2), revising the words ''§ 96.260 by the allowance transfer deadline for the control period; and'' to read ''§§ 96.260 and 96.261 by the allowance transfer deadline for the control period.'';

■ c. Removing paragraph (a)(3);

■ d. In paragraph (b)(1)(ii), by removing the words ''available under paragraph (a) of this section and'';

■ d. In paragraphs (c)(2)(ii), (c)(2)(iv), and (c)(2)(vi), by revising the words ''to any unit'' to read ''to any entity'';

■ e. In paragraph (d)(1), by revising the words ''3 times the number of tons of the source's excess emissions'' to read ''3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section'';

■ f. In paragraph (e), by revising the words ''under paragraph (b) or (d) of this section'' to read ''under paragraphs (b) and (d) of this section) and subpart III''; and

■ g. In paragraph (f)(2), by revising the words ''of this section'' to read ''of this section, and record such deductions and transfers''.

§ 96.255 [Amended]

■ 47. Section 96.255 is amended, in paragraph (b), by revising the words ''§ 96.256, or subpart GGG'' to read ''§ 96.256, or subpart GGG or III''.

§ 96.257 [Amended]

■ 48. Section 96.257 is amended, in paragraphs (a) and (b), by revising the words ''96.260''; to read ''§§ 96.260 and 96.261''.

■ 49. Section 96.261 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''§ 96.260; and'' to read ''§ 96.260;'';

■ b. In paragraph (a)(2), by revising the words ''transfer.'' to read ''transfer; and''; and

■ c. By adding a new paragraph (a)(3) to read as follows:

§ 96.261 EPA recordation.

(a) * * *

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

* * * * *

■ 50. Section 96.270 is amended as follows:

■ a. In paragraph (b) introductory text, by revising the words ''The owner'' to read ''Except as provided in paragraph (e) of this section, the owner'';

■ b. In paragraph (b)(5), by revising the words ''paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner'' to read ''paragraphs (b)(1) and (2) of this section, for the owner'';
■ c. In paragraph (c)(1), by removing the paragraph designation ''(1)'' and by revising the words ''Except as provided in paragraph (c)(2) of this section, the owner'' to read ''The owner'' and the words ''SO_2 concentration, SO_2 emission rate,'' to read ''SO_2 concentration,'';
■ d. By removing paragraph (c)(2);
■ e. In paragraph (d)(3), by revising the words ''the atmosphere'' to read ''the atmosphere or heat input''; and
■ f. By adding a new paragraph (e) to read as follows:

§ 96.270 General requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a CAIR SO_2 unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.271 [Amended]

■ 51. Section 96.271 is amended by removing and reserving paragraph (c).

§ 96.273 [Amended]

■ 52. Section 96.273 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.
■ 53. Section 96.274 is amended as follows:
■ a. In paragraph (d)(1)(i), by revising the words ''2009; or'' to read ''2009;'';
■ b. In paragraph (d)(1)(ii), by revising the words ''2009.'' to read ''2009;'';
■ c. By adding new paragraphs (d)(1)(iii) and (iv); and
■ d. In paragraph (d)(3), by revising the words ''or CAIR NO_X Ozone Season Trading Program,'' to read '', CAIR NO_X Ozone Season Trading Program, or Hg Budget Trading Program,'' and by revising the words ''subparts F through H'' to read ''subparts F through I'' and revising to read as follows:

§ 96.274 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 96.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR SO_2 opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 96.284(g).

* * * * *

§ 96.276 [Removed]

■ 54. Section 96.276 is removed.
■ 55. Section 96.283 is amended as follows:
■ a. In paragraph (a)(2)(iii), by revising the words ''CAIR opt-in unit'' to read ''CAIR SO_2 opt-in unit'';
■ b. By revising paragraph (a)(5);
■ c. In paragraph (b)(1), by revising the words ''or permitting authority's'' to read ''or the permitting authority's'';
■ d. In paragraph (b)(2), by revising the words ''withdrawal of the CAIR opt-in unit'' to read ''withdrawal of the CAIR SO_2 opt-in unit'' and revising to read as follows:

§ 96.283 Applying for CAIR opt-in permit.

(a) * * *

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under § 96.288(b) or § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g)). If allocation under § 96.288(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

* * * * *

§ 96.284 [Amended]

■ 56. Section 96.284 is amended as follows:
■ a. In paragraph (a), by revising the words ''heat input of the unit'' to read ''heat input of the unit and all other applicable parameters'';
■ b. In paragraph (c)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' to read ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';
■ c. In paragraph (d)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' to read ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';
■ d. In paragraph (d)(3), by revising the words ''for such control period'' with words ''for such control periods'';
■ d. In paragraph (f), by revising the words ''CAIR SO_2 opt-in permit'' to read ''CAIR opt-in permit''; and
■ e. In paragraph (h)(2), by revising the words ''a CAIR opt-in unit'' to read ''a CAIR SO_2 opt-in unit''.
■ 57. Section 96.285 is amended as follows:
■ a. In paragraph (a)(5), by revising the words ''under § 96.288(c)'' to read ''§ 96.288(b) or § 96.288(c)''; and
■ b. By adding a new paragraph (c) to read as follows:

§ 96.285 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR SO_2 opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.286 [Amended]

■ 58. Section 96.286 is amended as follows:
■ a. In paragraph (a), by revising the words ''CAIR opt-in unit'' to read ''CAIR SO_2 opt-in unit''; and
■ b. In paragraph (b)(2), by revising the words ''equal in number to'' to read ''equal in amount to'' and by revising the words ''§ 96.188'' to read ''§ 96.288''.

§ 96.287 [Amended]

■ 59. Section 96.287 is amended as follows:
■ a. In paragraph (b)(1), by revising the words ''under § 96.223'' to read ''under § 96.223, and remove the CAIR opt-in permit provisions,'';
■ b. In paragraph (b)(2)(i), by revising the words ''equal in number to'' to read ''equal in amount to''; and
■ c. By removing paragraph (b)(3).

§ 96.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

■ 60. Section 96.288 is amended as follows:
■ a. By revising the heading of the section as set forth above;
■ b. In paragraph (a)(2), by revising the words ''of the control period in which a CAIR opt-in unit'' to read ''of the control period after the control period in which a CAIR SO_2 opt-in unit'';
■ c. In paragraph (c), by revising the words ''issues a CAIR opt-in permit'' to read ''issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 96.283(a)(5))''; and
■ d. In paragraph (d)(2), by revising the words ''CAIR opt-in unit'' to read ''CAIR SO_2 opt-in unit''.
■ 61. Section 96.302 is amended as follows:

■ a. By revising the definition of ''Allocate or allocation'';
■ b. In the definition of ''Allowance transfer deadline'', by revising the words ''midnight of November 30, if it is a business day, or, if November 30 is not a business day, midnight of the first business day thereafter'' to read ''midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day),'';
■ c. In the definition of ''Alternate CAIR designated representative'', by adding at the end the words ''If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.''
■ d. In the definition of ''CAIR authorized account representative'', by revising the words ''subparts BBBB and IIII'' to read ''subparts BBBB, FFFF, and IIII'';
■ e. In the definition of ''CAIR designated representative'', by adding at the end the words ''If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.''
■ f. In the definition of ''CAIR NO_X Annual Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§ 51.123(p) and 52.35 of this chapter,'';
■ g. Revising the definition of ''CAIR NO_X Ozone Season allowance'';
■ h. In the definition of ''CAIR NO_X Ozone Season allowance deduction or deduct CAIR NO_X Ozone Season allowances'', by adding, after the words ''compliance account'', the words ''*, e.g.,*'';
■ i. In the definition of ''CAIR NO_X Ozone Season emissions limitation'', by revising the words ''tonnage equivalent of'' to read ''tonnage equivalent, in NO_X emissions in a control period, of'' and by revising the words ''for a control period'' to read ''for the control period'';
■ j. In the definition of ''CAIR NO_X Ozone Season Trading Program'', by revising the words ''§ 51.123 of this chapter,'' to read ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§ 51.123(ee) and 52.35 of this chapter,'';
■ k. In the definition of ''CAIR NO_X source'', by revising the words ''includes one or more CAIR NO_X units'' to read ''is subject to the CAIR NO_X Annual Trading Program'';
■ l. By removing the definition of ''CAIR NO_X unit'';
■ m. In the definition of ''CAIR SO_2 source'', by revising the words ''includes one or more CAIR SO_2 units'' to read ''is subject to the CAIR SO_2 Trading Program'';
■ n. In the definition of ''CAIR SO_2 Trading Program'', by revising the words ''§ 51.124 of this chapter,'' to read ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§ 51.124(r) and 52.36 of this chapter,'';
■ o. By removing the definition of ''CAIR SO_2 unit'';
■ p. In paragraph (2) of the definition of ''Cogeneration unit'', by revising the words ''calendar year after which'' to read ''calendar year after the calendar year in which'';
■ q. In the definition of ''Combustion turbine'', by revising the words ''any associated heat recovery steam generator'' to read ''any associated duct burner, heat recovery steam generator,'';
■ r. By revising the definition of ''Commence commercial operation'';
■ s. By revising the definition of ''Commence operation'';
■ t. In the definition of ''Control period'', by revising the words ''May 1 of a calendar year and'' to read ''May 1 of a calendar year, except as provided in § 96.306(c)(2), and'';
■ u. By revising the definition of ''Maximum design heat input'';
■ v. In the definition of ''Nameplate capacity'', by revising the words ''other deratings) as specified''to read ''other deratings) as of such installation as specified'' and by revising the words ''maximum amount as specified'' to read ''maximum amount as of such completion as specified'';
■ w. In the definition of ''Oil-fired'', by revising the words ''in a specified year.'' to read ''in a specified year and not qualifying as coal-fired.'';
■ x. In the definition of ''Receive or receipt'', by revising the words ''official correspondence log'' to read ''official log'';
■ y. In the definition of ''Useful thermal energy'', by revising in paragraph (2) the word ''heat'' with the word ''heating'';
and
■ z. By adding new definitions of ''Hg Budget Trading Program'', ''Replacement, replace, or replaced'', and ''Solid waste incineration unit'' and revising to read as follows:

§ 96.302 Definitions.

* * * * *

Allocate or *allocation means*, with regard to CAIR NO_X Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit, a new unit set-aside, or other entity.

* * * * *

CAIR NO_X Ozone Season allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, or under subpart EEEE of part 97 or § 97.388 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_X Budget Trading Program in accordance with § 51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in § 51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_X Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or subpart EEEE of part 97 or § 97.388 of this chapter or under the NO_X Budget Trading Program as described in the prior sentence shall not be a CAIR NO_X Ozone Season allowance.

* * * * *

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial

operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.384(h).

* * * * *

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

* * * * *

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

* * * * *

Replacement, *replace*, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

* * * * *

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

* * * * *

■ 62. Section 96.303 is revised to read as follows:

§ 96.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
H_2O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

■ 63. Section 96.304 is revised to read as follows:

§ 96.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1)(i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for

at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 [Amended]

■ 64. Section 96.305 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''CAIR NO_X Ozone Season opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part'' and by revising the words ''§ 96.306(c)(4) through (8), § 96.307, and subparts EEEE through GGGG'' to read ''§ 96.306(c)(4) through (7), § 96.307, § 96.308, and subparts BBBB and EEEE through GGGG'';

■ b. In paragraph (b)(3), by revising the words ''shall retain at the source'' to read ''shall retain, at the source''; and

■ c. In paragraph (b)(7), by revising the words ''commences operation and commercial operation'' to read ''commences commercial operation''.

§ 96.306 [Amended]

■ 65. Section 96.306 is amended as follows:

■ a. In paragraph (a)(1)(i), by revising the words ''in § 96.321(a) and (b)'' to read ''in § 96.321'';

■ b. In paragraph (c)(2), by revising the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and by revising the words ''under § 96.370(b)(1), (2), (3), or (7)'' to read ''under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter'';

■ c. In paragraph (c)(4), by revising the words ''subpart EEEE'' to read ''subparts FFFF, GGGG, and IIII'';

■ d. In paragraph (c)(7), by revising the words ''from a CAIR NO_X Ozone Season unit's compliance account'' to read ''from a CAIR NO_X Ozone Season source's compliance account'', and by removing the words ''that includes the CAIR NO_X Ozone Season unit''; and

■ e. In paragraph (d)(1), by removing the paragraph designation ''(1)'' and by redesignating paragraph (i) as paragraph (d)(1); and

■ f. By removing paragraph (d)(2) and by redesignating paragraph (ii) as paragraph (d)(2).

§ 96.311 [Amended]

■ 66. In paragraph (c), by revising the words ''96.351 and 96.382'' to read ''96.315, 96.351, and 96.382''.

§ 96.312 [Amended]

■ 67. Section 96.312 is amended, in paragraph (c)(1), by revising the words ''a new owner'' to read ''an owner'', by revising the words ''such new owner'' to read ''such owner'', and by revising the words ''the new owner'' to read ''the owner''.

§ 96.313 Amended]

■ 68. Section 96.313 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''is submitted'' to read ''is submitted, including identification and nameplate capacity of each generator served by each such unit''; and

■ b. In paragraph (a)(4)(iv), by revising the words ''where a customer'' to read ''where a utility or industrial customer''.

■ 69. A new section 96.315 is added to read as follows:

§ 96.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall

be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

§ 96.320 [Amended]

■ 70. Section 96.320 is amended, in paragraph (a), by revising the words ''otherwise by this subpart and'' to read ''otherwise by § 96.305, this subpart, and''.

§ 96.321 [Amended]

■ 71. Section 96.321 is amended as follows:

■ a. In paragraph (a), by revising the words ''commences operation'' to read ''commences commercial operation, except as provided in § 96.383(a)''; and

■ b. In paragraph (b), by revising the words to read ''permit renewal'', to read ''permit renewal, except as provided in § 96.383(b)''.

§ 96.341 [Amended]

■ 72. Section 96.341 is amended as follows:

■ a. In paragraph (b)(1), removing the paragraph designation ''(1)'';

■ b. By removing paragraph (b)(2);

■ c. In paragraph (c)(1), removing the paragraph designation ((1)(; and

■ d.. By removing paragraph (c)(2).

■ 73. Section 96.342 is amended as follows:

■ a. In paragraph (a)(2)(i), by revising the words ''during a calendar year'' to read ''during a control period in a calendar year'';

■ b. In paragraph (a)(2)(ii)(C), by revising the words ''3,414 Btu/kWh'' to read ''3,413 Btu/kWh'';

■ c. By revising paragraph (c) introductory text;

■ d. In paragraph (c)(1), by revising the words ''2009 through 2013'' to read ''2009 through 2014'' and revise the words ''in 2014'' to read ''in 2015'';

■ e. In paragraph (c)(2), by revising the words ''The CAIR NO_X Ozone Season allowance allocation request must be submitted on or before April 1 of the first control period for which CAIR NO_X Ozone Season allowances are requested'' to read ''A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X allowances are sought must be submitted on or before February 1 of such control period''; and

■ f. In paragraph (c)(4)(ii), by revising the words ''On or after April 1'' to read ''On or after February 1'' and revising to read as follows:

§ 96.342 CAIR NO_X Ozone Season allowance allocations.

* * * * *

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units in a State that are not allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_X Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

* * * * *

■ 74. Section 96.351 is amended as follows:

■ a. In paragraph (b)(2) introductory text, by revising the word ''representative'' to read ''representative or alternate CAIR authorized account representative'';

■ b. In paragraph (b)(3)(iii)(A), by revising the words ''a new person'' to read ''a person'', by revising the words ''such new person'' to read ''such person'', and by revising the words ''the new person'' to read ''the person'';

■ c. In paragraph (b)(3)(iii)(B), by revising the words ''addition of persons'' to read ''addition of a new person'';

■ d. In paragraph (b)(4) introductory text, by revising the word ''representative'' to read ''representative or alternate CAIR authorized account representative'';

■ e. In paragraphs (b)(4)(ii) and (iii), by revising the words ''alternative CAIR'' to read ''alternate CAIR'' whenever they appear; and

■ f. By adding a new paragraph (b)(5) to read as follows:

§ 96.351 Establishment of accounts.

* * * * *

(b) * * *

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR

96.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.351(b)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

* * * * *

■ 75. Section 96.353 is amended as follows:

■ a. In paragraph (a), by revising the words ''By December 1, 2006,'' to read ''By September 30, 2007,'' and revising the words ''at a source'' to read ''at the source'';

■ b. In paragraphs (b) and (d), by removing the words ''or as determined by the Administrator''; and

■ c. By revising paragraph (c) to read as follows:

§ 96.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

* * * * *

(c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

* * * * *

§ 96.354 [Amended]

■ 76. Section 96.354 is amended as follows:

■ a. In paragraph (a)(1), by revising the words ''prior year;'' to read ''prior year; and'';

■ b. In paragraph (a)(2), revising the words ''§ 96.360 by the allowance transfer deadline for the control period; and'' to read ''§§ 96.360 and 96.361 by the allowance transfer deadline for the control period.'';

■ c. Removing paragraph (a)(3);

■ d. In paragraph (c)(2)(ii), by revising the words ''to any unit ''to read ''to any entity'';

■ e. In paragraph (e), by revising the words ''under paragraph (b) or (d) of this section'' to read ''under paragraphs (b) and (d) of this section and subpart IIII''; and

■ f. In paragraph (f)(2), by revising the words ''of this section'' to read ''of this section, and record such deductions and transfers''.

§ 96.355 [Amended]

■ 77. Section 96.355 is amended, in paragraph (b), by revising the words ''§ 96.356, or subpart GGGG'' to read ''§ 96.356, or subpart GGGG or IIII''.

§ 96.357 [Amended]

■ 78. Section 96.357 is amended, in paragraphs (a) and (b), by revising the words ''§ 96.360'' to read ''§§ 96.360 and 96.361''.

■ 79. Section 96.370 is amended as follows:

■ a. In paragraph (b) introductory text, by revising the words ''The owner'' to read ''Except as provided in paragraph (e) of this section, the owner'';

■ b. In paragraph (b)(2)(ii), by removing the words '', if the compliance date under paragraph (b)(2)(i) is before May 1, 2008'';

■ c. In paragraph (b)(3) introductory text, by revising the words ''commences operation'' to read ''commences commercial operation'';

■ d. In paragraph (b)(7), by revising the words ''paragraphs (b)(1), (2), and (3) of this section and solely for purposes of § 96.206(c)(2), for the owner'' to read ''paragraphs (b)(1), (2), and (3) of this section, for the owner'' and by revising the words ''CAIR NO_X Ozone Season opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part'';

■ e. In paragraph (c)(1), by removing the paragraph designation ''(1)'' and by revising the words ''Except as provided in paragraph (c)(2) of this section, the owner'' to read ''The owner'';

■ f. By removing paragraph (c)(2);

■ g. In paragraph (d)(3), by revising the words ''the atmosphere'' to read ''the atmosphere or heat input''; and

■ h. By adding a new paragraph (e) to read as follows:

§ 96.370 General Requirements.

* * * * *

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 [Amended]

■ 80. Section 96.371 is amended, in paragraph (c), by revising the words ''§ 75.12, § 75.17, or subpart H of part 75'' to read ''§ 75.12 or § 75.17''.

§ 96.373 [Amended]

■ 81. Section 96.373 is amended by removing the words '', except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority''.

■ 82. Section 96.374 is amended as follows:

■ a. In paragraph (d)(1)(i), by revising the words ''2008; or'' to read ''2008;'';

■ b. In paragraph (d)(1)(ii), by revising the words ''2008.'' to read ''2008;'' and by revising the words ''fourth quarter of 2007'' to read ''fourth quarter of 2007 or the first quarter of 2008'';

■ c. In paragraph (d)(2)(ii)(B), by revising the words ''such date.'' to read ''such date;''; and

■ d. By adding new paragraphs (d)(1)(iii) and (iv) and (d)(2)(ii)(C) and (D);

■ e. By renumbering the second paragraph (d)(2) and the second paragraph (d)(3) as paragraphs (d)(3) and (d)(4) respectively and, in paragraph (d)(4), by revising the words ''or CAIR SO_2 Trading Program,'' to read '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and by revising the words ''subparts F through H'' to read ''subparts F through I'' and revising to read as follows:

§ 96.374 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X

Ozone Season Trading Program as provided in § 96.384(g).

(2) * * *

(ii) * * *

(C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 96.384(g).

* * * * *

§ 96.376 [Removed]

■ 83. Section 96.376 is removed.

■ 84. Section 96.383 is amended as follows:

■ a. By revising paragraph (a)(5); and

■ b. In paragraph (b)(2), by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit'', by revising the words ''Annual Trading Program'' to read ''Ozone Season Trading Program'', by revising the words ''CAIR NO_X unit'' to read ''CAIR NO_X Ozone Season unit'', and by revising the words ''CAIR NO_X opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit'' whenever they appear and revising to read as follows:

§ 96.383 Applying for CAIR opt-in permit.

(a) * * *

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under § 96.388(b) or § 96.388(c) (subject to the conditions in §§ 96.384(h) and 96.386(g)). If allocation under § 96.388(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

* * * * *

§ 96.384 [Amended]

■ 85. Section 96.384 is amended as follows:

■ a. In paragraph (b), by revising the words ''heat input of the unit emissions rate and the heat input of the unit'' to read ''heat input of the unit'';

■ b. In paragraph (c)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and for the control periods under paragraph (b)(2) of this section'' to read ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';

■ c. In paragraph (d)(2), by revising the words ''for the control period under paragraph (b)(1)(ii) of this section and the control periods under paragraph (b)(2) of this section'' to read ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section'';

■ d. In paragraph (d)(3), by revising the words ''for such control period'' to read ''for such control periods'';

■ e. In paragraph (h)(2), revising the words ''a CAIR opt-in unit'' to read ''a CAIR NO_X Ozone Season opt-in unit.''

■ 86. Section 96.385 is amended as follows:

■ a. In paragraph (a)(5), by revising the words ''under § 96.388(c)'' to read ''§ 96.388(b) or § 96.388(c)''; and

■ b. By adding a new paragraph (c) to read as follows:

§ 96.385 CAIR opt-in permit contents.

* * * * *

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.386 [Amended]

■ 87. Section 96.386 is amended as follows:

■ a. In paragraph (a), by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X Ozone Season opt-on unit'';

■ b. In paragraph (b)(2), by replacing the words ''equal in number to'' to read ''equal in amount to''; and

■ c. In paragraphs (c)(2) and (g), by revising the words ''CAIR NO_X opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit''.

■ 88. Section 96.387 is amended as follows:

■ a. In paragraph (b)(1), by revising the words ''under § 96.323'' to read ''under § 96.323, and remove the CAIR opt-in permit provisions,'';

■ b. In paragraph (b)(2)(i), by revising the words ''equal in number to'' to read ''equal in amount to'';

■ c. By revising paragraph (b)(3)(i);

■ d. In paragraph (b)(3)(ii), by revising the words ''Notwithstanding paragraph (b)(3)(i) of this section if,'' to read ''If'', by revising the words ''May 1'' to read ''September 30'', and by revising the words ''number of CAIR NO_X Ozone Season allowances'' to read ''amount of CAIR NO_X Ozone Season allowances''; and

■ e. In paragraph (b)(3)(ii)(A), by revising the words ''number of CAIR NO_X Ozone Season allowances'' to read ''amount of CAIR NO_X Ozone Season allowances'' and revising to read as follows:

§ 96.387 Change in regulatory status.

* * * * *

(b) * * *

(3)(i) For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, the CAIR NO_X Ozone Season opt-in unit will be allocated CAIR NO_X Ozone Season allowances under § 96.342.

* * * * *

§ 96.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

■ 89. Section 96.388 is amended as follows:

■ a. By revising the heading of the section as set forth above;

■ b. In paragraph (a)(2), by revising the words ''of the control period in which'' to read ''of the control period after the control period in which'', by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit'', and by revising the words ''CAIR NO_X opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit'';

■ c. In paragraph (c), by revising the words ''issues a CAIR opt-in permit'' to read ''issues a CAIR opt-in permit'' (based on a demonstration of the intent to repower stated under § 96.383(a)(5)); and

■ d. In paragraph (d)(2), by revising the words ''CAIR opt-in unit'' to read ''CAIR NO_X Ozone Season opt-in unit.''

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM AND CAIR NO_X AND SO_2 TRADING PROGRAMS

■ 1. The heading of part 97 is revised to read as set forth above.

■ 2. The authority citation for part 97 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 3. Part 97 is amended by adding subparts AA through II, to read as follows:

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

Sec.

97.101 Purpose.
97.102 Definitions.
97.103 Measurements, abbreviations, and acronyms.
97.104 Applicability.
97.105 Retired unit exemption.

97.106 Standard requirements.
97.107 Computation of time.
97.108 Appeal procedures.

Subpart BB—CAIR Designated Representative for CAIR NO_X Sources

97.110 Authorization and responsibilities of CAIR designated representative.
97.111 Alternate CAIR designated representative.
97.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
97.113 Certificate of representation.
97.114 Objections concerning CAIR designated representative.
97.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CC—Permits

97.120 General CAIR NO_X Annual Trading Program permit requirements.
97.121 Submission of CAIR permit applications.
97.122 Information requirements for CAIR permit applications.
97.123 CAIR permit contents and term.
97.124 CAIR permit revisions.

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

97.140 State trading budgets.
97.141 Timing requirements for CAIR NO_X allowance allocations.
97.142 CAIR NO_X allowance allocations.
97.143 Compliance supplement pool.
97.144 Alternative of allocation of CAIR NO_X allowances and compliance supplement pool by permitting authority.

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

Subpart FF— CAIR NO_X Allowance Tracking System

97.150 [Reserved]
97.151 Establishment of accounts.
97.152 Responsibilities of CAIR authorized account representative.
97.153 Recordation of CAIR NO_X allowance allocations.
97.154 Compliance with CAIR NO_X emissions limitation.
97.155 Banking.
97.156 Account error.
97.157 Closing of general accounts.

Subpart GG—CAIR NO_X Allowance Transfers

97.160 Submission of CAIR NO_X allowance transfers.
97.161 EPA recordation.
97.162 Notification.

Subpart HH—Monitoring and Reporting

97.170 General requirements.
97.171 Initial certification and recertification procedures.
97.172 Out of control periods.
97.173 Notifications.
97.174 Recordkeeping and reporting.
97.175 Petitions.

Subpart II—CAIR NO_X Opt-in Units

97.180 Applicability.
97.181 General.
97.182 CAIR designated representative.
97.183 Applying for CAIR opt-in permit.
97.184 Opt-in process.
97.185 CAIR opt-in permit contents.
97.186 Withdrawal from CAIR NO_X Annual Trading Program.
97.187 Change in regulatory status.
97.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Opt-in Units

Subpart AA—CAIR NO_X Annual Trading Program General Provisions

§ 97.101 Purpose.

This subpart and subparts BB through II set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) NO_X Annual Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

§ 97.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Actual weighted average NO_X emission rate means, for a NO_X averaging plan under § 76.11 of this chapter and for a year:

(1) The sum of the products of the actual annual average NO_X emission rate and actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_X averaging plan for the year; divided by

(2) The sum of the actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_X averaging plan for the year.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_X allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X emissions limitation for such control period in accordance with § 97.154.

Alternate CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB, FF, and II of this part, to transfer and otherwise dispose of CAIR NO_X allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_X allowance means a limited authorization issued by a permitting authority or the Administrator under subpart EE of this part or § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter shall not be a CAIR NO_X allowance.

CAIR NO_X allowance deduction or deduct CAIR NO_X allowances means the permanent withdrawal of CAIR NO_X allowances by the Administrator from a compliance account, *e.g.,* in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X units at a CAIR NO_X source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_X Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Allowance Tracking System account means an account in the CAIR NO_X Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

CAIR NO_X allowances held or *hold CAIR NO_X allowances* means the CAIR NO_X allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_X Allowance Tracking System account.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X emissions limitation means, for a CAIR NO_X source, the tonnage equivalent, in NO_X emissions in a control period, of the CAIR NO_X allowances available for deduction for the source under § 97.154(a) and (b) for the control period.

CAIR NO_X Ozone Season source means a source that is subject to the CAIR NO_X Ozone Season Trading Program.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X source means a source that includes one or more CAIR NO_X units.

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 97.104 and, except for purposes of § 97.105 and subpart EE of this part, a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_X Annual Trading Program requirements applicable to a CAIR NO_X source, to each CAIR NO_X unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that is subject to the CAIR SO_2 Trading Program.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit, (A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.105 and § 97.184(h).

(i) For a unit that is a CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.105, for a unit that is not a CAIR NO_X unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under § 97.104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.184(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 97.184(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_X Allowance Tracking System account, established by the Administrator for a CAIR NO_X source under subpart FF or II of this part, in which any CAIR NO_X allowance allocations for the CAIR NO_X units at the source are initially recorded and in which are held any CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation in accordance with § 97.154.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas

concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period beginning January 1 of a calendar year, except as provided in § 97.106(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X units at a CAIR NO_X source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_X unit or a CAIR NO_X source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X source or a CAIR NO_X unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X unit at the source or the CAIR NO_X unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X unit at the source or the CAIR NO_X unit; or

(iii) Any purchaser of power from a CAIR NO_X unit at the source or the CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Annual Trading Program in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CAIR NO_X allowances, the movement of CAIR NO_X allowances by the Administrator into or between CAIR NO_X Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR NO_X Annual Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid

owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
H_2O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

§ 97.104 Applicability

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X units, and any source that includes one or more such units shall be a CAIR NO_X source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X units:

(1)(i) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_X unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Annual Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Annual Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.105 Retired unit exemption.

(a)(1) Any CAIR NO_X unit that is permanently retired and is not a CAIR NO_X opt-in unit under subpart II of this part shall be exempt from the CAIR NO_X Annual Trading Program, except for the provisions of this section, §§ 97.102, 97.103, 97.104, 97.106(c)(4) through (7),

97.107, 97.108, and subparts BB and EE through GG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate CAIR NO_X allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.106 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.122 in accordance with the deadlines specified in § 97.121; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X source required to have a title V operating permit and each CAIR NO_X unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_X source that is not otherwise required to have a title V operating permit and each CAIR NO_X unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_X source and such CAIR NO_X unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_X source with the CAIR NO_X emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under § 97.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR NO_X unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.170(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR NO_X allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_X allowance was allocated.

(4) CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with subparts EE, FF, GG, and II of this part.

(5) A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Annual Trading Program. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_X allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EE, FF,

GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_X source emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_X unit at the source shall surrender the CAIR NO_X allowances required for deduction under § 97.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_X source and each CAIR NO_X unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.113 for the CAIR designated representative for the source and each CAIR NO_X unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Annual Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Annual Trading Program.

(2) The CAIR designated representative of a CAIR NO_X source and each CAIR NO_X unit at the source shall submit the reports required under the CAIR NO_X Annual Trading Program, including those under subpart HH of this part.

(f) *Liability.* (1) Each CAIR NO_X source and each CAIR NO_X unit shall meet the requirements of the CAIR NO_X Annual Trading Program.

(2) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X source or the CAIR designated representative of a CAIR NO_X source shall also apply to the owners and operators of such source and of the CAIR NO_X units at the source.

(3) Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X unit or the CAIR designated representative of a CAIR NO_X unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X source or CAIR NO_X unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR Designated Representative for CAIR NO_X Sources

§ 97.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.111, each CAIR NO_X source, including all CAIR NO_X units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Annual Trading Program concerning the source or any CAIR NO_X unit at the source.

(b) The CAIR designated representative of the CAIR NO_X source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X units at the source and shall act in accordance with the certification statement in § 97.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X source represented and each CAIR NO_X unit at the source in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Allowance Tracking System account will be established for a CAIR NO_X unit at a source, until the Administrator has received a complete certificate of representation under § 97.113 for a CAIR designated representative of the source and the CAIR NO_X units at the source.

(e)(1) Each submission under the CAIR NO_X Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary

responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X source or a CAIR NO_X unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.102, 97.110(a) and (d), 97.112, 97.113, 97.115, 97.151 and 97.182, whenever the term ''CAIR designated representative'' is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X source and the CAIR NO_X units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR NO_X source or a CAIR NO_X unit is not included in the list of owners and operators in the certificate of representation under § 97.113, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_X source or a CAIR NO_X unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.113 amending the list of owners and operators to include the change.

§ 97.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X source, and each CAIR NO_X unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X source and of each CAIR NO_X unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owners and operators of the source and of each CAIR NO_X unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.''

(iv) (Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X unit, or where a utility or industrial customer purchases power from a CAIR NO_X unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X unit at the source; and CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X allowances by contract, CAIR NO_X allowances and proceeds of transactions involving CAIR NO_X allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of

representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.113 is received by the Administrator.

(b) Except as provided in § 97.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Annual Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

§ 97.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.115(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.115 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CC—Permits

§ 97.120 General CAIR NO_X Annual Trading Program permit requirements.

(a) For each CAIR NO_X source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.105, this subpart, and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X source and the CAIR NO_X units at the source covered by the CAIR permit, all applicable CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.121 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_X source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_X unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X unit commences commercial operation, except as provided in § 97.183(a).

(b) *Duty to reapply.* For a CAIR NO_X source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_X unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.183(b).

§ 97.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X source;

(b) Identification of each CAIR NO_X unit at the CAIR NO_X source; and

(c) The standard requirements under § 97.106.

§ 97.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart EE, FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from the compliance account of the CAIR NO_X source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X source's title V operating permit or other federally enforceable permit as applicable.

§ 97.124 CAIR permit revisions.

Except as provided in § 97.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD—[Reserved]

Subpart EE—CAIR NO_X Allowance Allocations

§ 97.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_X allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
Delaware	4,166	3,472
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New Jersey	12,670	10,558
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
Total	1,521,707	1,268,091

§ 97.141 Timing requirements for CAIR NO_X allowance allocations.

(a) The Administrator will determine by order the CAIR NO_X allowance allocations, in accordance with § 97.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X allowance allocations, in accordance with § 97.142(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X allowance allocations, in accordance with § 97.142(a),(c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_X allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.142. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.142.

§ 97.142 CAIR NO_X allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X allowance allocations under paragraph (b) of this section for each CAIR NO_X unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_X units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the applicable State trading budget under § 97.140 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_X allowances to each CAIR NO_X unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X unit to the total amount of baseline heat input of all such CAIR NO_X units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_X allowances to CAIR NO_X units in a State that are not allocated CAIR NO_X allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_X allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the applicable State trading budget under § 97.140.

(2) The CAIR designated representative of such a CAIR NO_X unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO_X allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X allowances under paragraph (b) of this section. A separate CAIR NO_X allowance allocation request for each control period for which CAIR NO_X allowances are sought must be submitted on or before May 1 of such control period and after the date on which the CAIR NO_X unit commences commercial operation.

(3) In a CAIR NO_X allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X allowances in an amount not exceeding the CAIR NO_X unit's total tons of NO_X emissions during the calendar year immediately before such control period.

(4) The Administrator will review each CAIR NO_X allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Administrator will determine the sum of the CAIR NO_X allowances requested (as adjusted under

paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO_X unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X allowances (if any) allocated for the control period to the CAIR NO_X unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_X allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_X unit that was allocated CAIR NO_X allowances under paragraph (b) of this section in the State an amount of CAIR NO_X allowances equal to the total amount of such remaining unallocated CAIR NO_X allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the applicable State trading budget under § 97.140, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_X allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_X unit under § 97.104 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_X allowances under § 97.153.

(2) If the Administrator already recorded such CAIR NO_X allowances under § 97.153 and if the Administrator makes such determination before making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_X allowances were recorded under § 97.153 an amount of CAIR NO_X allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_X allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO_X allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_X allowances under § 97.153 and if the Administrator makes such determination after making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_X allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_X allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.143 Compliance supplement pool.

(a) In addition to the CAIR NO_X allowances allocated under § 97.142, the Administrator may allocate for the control period in 2009 up to the following amount of CAIR NO_X allowances to CAIR NO_X units in the respective State:

State	Compliance supplement pool
Alabama	10,166
Delaware	843
District of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New Jersey	660
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898
Total	199,997

(b) For any CAIR NO_X unit in a State, if the unit's average annual NO_X emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, where such unit is included in a NO_X averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, the unit's NO_X averaging plan has an actual weighted average NO_X emission rate for such year equal to or less than the actual weighted average NO_X emission rate for the year before such year and if the unit achieves NO_X emission reductions in 2007 and 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_X unit shall monitor and report the NO_X emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_X unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the sum of the unit's heat input for the control period in 2007 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's NO_X emission rate for the control period in 2007 plus the unit's heat input for the control period in 2008 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's

NO_X emission rate for the control period in 2008, determined in accordance with subpart HH of this part and with the sum divided by 2,000 lb/ton and rounded to the nearest whole number of tons as appropriate.

(c) For any CAIR NO_X unit in a State whose compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_X allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_X unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_X allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_X unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_X allowances requested, the unit's compliance with CAIR NO_X emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_X emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_X allowances to prevent such undue risk.

(d) The Administrator will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR NO_X allowances for the control period in 2009 to CAIR NO_X units in a State and covered by such request as follows:

(1) Upon receipt of each such request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_X allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_X allowances not less than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate to each CAIR NO_X unit covered by such requests the amount of CAIR NO_X allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_X allowances than the total amount of CAIR NO_X allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate CAIR NO_X allowances to each CAIR NO_X unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

''Unit's allocation'' is the amount of CAIR NO_X allowances allocated to the unit from the State's compliance supplement pool.

''Unit's adjusted allocation'' is the amount of CAIR NO_X allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

''State's compliance supplement pool'' is the amount of CAIR NO_X allowances in the State's compliance supplement pool.

''Total adjusted allocations for all units'' is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By July 31, 2009, the Administrator will determine by order the allocations under paragraph (d)(2) or (3) of this section. The Administrator will make available to the public each determination of CAIR NO_X allowances under such paragraph and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (b) or (c) of this section and paragraph (d)(2) or (3) of this section, as appropriate. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with such paragraphs.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

§ 97.144 Alternative of allocation of CAIR NO_X allowances and compliance supplement pool by permitting authority.

(a) Notwithstanding §§ 97.141, 97.142, and 97.153 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(1) of this chapter providing for allocation of CAIR NO_X allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.141 and 97.142 for the CAIR NO_X units in the State, and under § 97.153, the Administrator will record the allocations made under such approved State implementation plan revision instead of allocations made under §§ 97.141 and 97.142.

(b) Notwithstanding § 97.143, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(2) of this chapter providing for allocation of the State's compliance supplement pool by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under § 97.143(d)(4) for the CAIR NO_X units in the State, and under § 97.143(d)(5), the Administrator will record the allocations of the State's compliance supplement pool made under such approved State implementation plan revision instead of allocations made under § 97.143(d)(4).

(c)(1) In implementing paragraph (a) of this section and §§ 97.141, 97.142, and 97.153, the Administrator will ensure that the total amount of CAIR NO_X allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(1) of this chapter, for a control period for CAIR NO_X sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

(2) In implementing paragraph (b) of this section and § 97.143, the Administrator will ensure that the total amount of CAIR NO_X allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(2), for CAIR NO_X sources in the State will not exceed the State(s compliance supplement pool.

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. The following States have State Implementation Plan revisions under § 51.123(p)(1) of this chapter approved by the Administrator and providing for allocation of CAIR NO_X allowances by the permitting authority under § 97.144(a):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(p)(2) of this chapter approved by the Administrator and providing for allocation of the Compliance Supplement Pool by the permitting authority under § 97.144(b):

[Reserved]

Subpart FF—CAIR NO_X Allowance Tracking System

§ 97.150 [Reserved]

§ 97.151 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.184(e), upon receipt of a complete certificate of representation under § 97.113, the Administrator will establish a compliance account for the CAIR NO_X source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X allowances held in the general account in all matters pertaining to the CAIR NO_X Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative

and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR NO_X allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.151(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.151(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.151(b)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Allowance Tracking System account, all submissions to the

Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.153 Recordation of CAIR NO_X allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source in accordance with § 97.142(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_X allowances.* When recording the allocation of CAIR NO_X allowances for a CAIR NO_X unit in a compliance account, the Administrator will assign each CAIR NO_X allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X allowance is allocated.

§ 97.154 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X allowances are available to be deducted for compliance with a source's CAIR NO_X emissions limitation for a control period in a given calendar year only if the CAIR NO_X allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X allowance transfer correctly submitted for recordation under §§ 97.160 and 97.161 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.161, of CAIR NO_X allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_X units at the source for the control period; or

(2) If there are insufficient CAIR NO_X allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_X allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X source or the CAIR NO_X units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart II.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X allowances from or transfer CAIR NO_X allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.155 Banking.

(a) CAIR NO_X allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X allowance is deducted or transferred under § 97.142, § 97.154, § 97.156, or subpart GG or II of this part.

§ 97.156 Account error.

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

§ 97.157 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.160 and 97.161 for any CAIR NO_X allowances in the account to one or more other CAIR NO_X Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X allowances into the account under §§ 97.160 and 97.161 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_X Allowance Transfers

§ 97.160 Submission of CAIR NO_X allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X allowance transfer, the Administrator will record a CAIR NO_X allowance transfer by moving each CAIR NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.160; and

(2) The transferor account includes each CAIR NO_X allowance identified by serial number in the transfer.

(b) A CAIR NO_X allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.154 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X allowance transfer under § 97.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X allowance transfer that fails to meet the requirements of § 97.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§ 97.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.102 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR NO_X unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.102. The owner or operator of a unit that is not a CAIR NO_X unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with (§§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_X unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_X unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_X unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline

under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 97.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR NO_X opt-in unit under subpart II of this part, by the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 97.184(g).

(c) *Reporting data.* The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_X unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.175.

(2) No owner or operator of a CAIR NO_X unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.171(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.170(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.175 to determine whether the approval applies under the CAIR NO_X Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include

replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.170(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified'', and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_X Annual Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Annual Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.172(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.*,, NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions

(LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.171 for each disapproved monitoring system.

§ 97.173 Notifications.

The CAIR designated representative for a CAIR NO_X unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.174 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.110(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR NO_X unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§ 97.183 and 97.184(a).

(c) *Certification applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the NO_X mass emissions data and heat input data for the CAIR NO_X unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 97.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program as provided in § 97.184(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_X units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Ozone Season Trading Program, CAIR SO_2 Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions.

§ 97.175 Petitions.

The CAIR designated representative of a CAIR NO_X unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this

subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart II—CAIR NO_X Opt-In Units

§ 97.180 Applicability.

A CAIR NO_X opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR NO_X unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.181 General.

(a) Except as otherwise provided in §§ 97.101 through 97.104, §§ 97.106 through 97.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_X opt-in unit shall be treated as a CAIR NO_X unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X unit before issuance of a CAIR opt-in permit for such unit.

§ 97.182 CAIR designated representative.

Any CAIR NO_X opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X units.

§ 97.183 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X opt-in unit in § 97.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.122;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.122;

(3) A monitoring plan in accordance with subpart HH of this part;

(4) A complete certificate of representation under § 97.113 consistent with § 97.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.188(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X opt-in unit shall submit a complete CAIR permit application under § 97.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X opt-in unit from the CAIR NO_X Annual Trading Program in accordance with § 97.186 or the unit becomes a CAIR NO_X unit under § 97.104, the CAIR NO_X opt-in unit shall remain subject to the requirements for a CAIR NO_X opt-in unit, even if the CAIR designated representative for the CAIR NO_X opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Annual Trading Program in accordance with § 97.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal

emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline* NO_X *emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X opt-in unit in § 97.180 and meets the elements certified in § 97.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X opt-in unit in § 97.180 or meets the elements certified in § 97.183(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR* NO_X *Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X opt-in unit, and a CAIR NO_X unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR* NO_X *opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under § 97.188(c) and such unit is repowered after its date of entry into the CAIR NO_X Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X opt-in unit replacing the original CAIR NO_X opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X opt-in unit, and the original CAIR NO_X opt-in unit shall no longer be treated as a CAIR NO_X opt-in unit or a CAIR NO_X unit.

§ 97.185 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.122;

(2) The certification in § 97.183(a)(2);

(3) The unit's baseline heat input under § 97.184(c);

(4) The unit's baseline NO_X emission rate under § 97.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_X allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Annual Trading Program only in accordance with § 97.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X allowances to or from the compliance account of the source that includes a CAIR NO_X opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_X opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.186 Withdrawal from CAIR NO_X Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X opt-in unit may withdraw from the CAIR NO_X Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_X opt-in unit from the CAIR NO_X Annual Trading Program, the CAIR designated representative of the CAIR NO_X opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_X Annual Trading

Program under § 97.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X opt-in unit must meet the requirement to hold CAIR NO_X allowances under § 97.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit CAIR NO_X allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X opt-in unit may submit a CAIR NO_X allowance transfer for any remaining CAIR NO_X allowances to another CAIR NO_X Allowance Tracking System in accordance with subpart GG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit of the acceptance of the withdrawal of the CAIR NO_X opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X opt-in unit that the CAIR NO_X opt-in unit's request to withdraw is denied. Such CAIR NO_X opt-in unit shall continue to be a CAIR NO_X opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Annual Trading Program concerning any control periods for which the unit is a CAIR NO_X opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Annual Trading Program.* Once a CAIR NO_X opt-in unit withdraws from the CAIR NO_X Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.183 for such CAIR NO_X opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.184.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X opt-in unit shall not be eligible to withdraw from the CAIR NO_X Annual Trading Program if the CAIR designated representative of the CAIR NO_X opt-in unit requests, and the permitting authority issues a CAIR NO_X opt-in permit providing for, allocation to the CAIR NO_X opt-in unit of CAIR NO_X allowances under § 97.188(c).

§ 97.187 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, the permitting authority will revise the CAIR NO_X opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.123, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X opt-in unit that becomes a CAIR NO_X unit under § 97.104, CAIR NO_X allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for any control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104; and

(B) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 is not December 31, the CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 97.188 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X unit that becomes a CAIR NO_X unit under § 97.104 contains the CAIR NO_X allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, the CAIR NO_X opt-in unit will be allocated CAIR NO_X allowances under § 97.142.

(ii) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 is not December 31, the following amount of CAIR NO_X allowances will be allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under (97.142 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104:

(A) The amount of CAIR NO_X allowances otherwise allocated to the CAIR NO_X opt-in unit (as a CAIR NO_X unit) under § 97.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.184(e), the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline heat input determined under § 97.184(c); or

(ii) The CAIR NO_X opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(i) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.183(a)(5)) providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under this paragraph (subject to the conditions in §§ 97.184(h) and 97.186(g)), the permitting authority will allocate to the CAIR NO_X opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with (51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X allowance allocations will be the lesser of:

(A) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period in which the CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g).

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X opt-in unit is to be allocated CAIR NO_X allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.184(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X opt-in unit at any time during the control period for which CAIR NO_X allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X allowances to the CAIR NO_X opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR NO_X opt-in unit enters the CAIR NO_X Annual Trading Program under § 97.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X opt-in unit, the CAIR NO_X allowances allocated by the permitting authority to the CAIR NO_X opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Opt-In Units

1. The following States have State Implementation Plan revisions under § 51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X opt-in units under subpart II of this part and allocation of CAIR NO_X allowances to such units under § 97.188(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X opt-in units under subpart II of this part and allocation of CAIR

NO_X allowances to such units under § 97.188(c):

[Reserved]

■ 4. Part 97 is amended by adding subparts AAA through CCC, adding and reserving subparts DDD and EEE and adding subparts FFF through III to read as follows:

Subpart AAA—CAIR SO_2 Trading Program General Provisions

Sec.
97.201 Purpose.
97.202 Definitions.
97.203 Measurements, abbreviations, and acronyms.
97.204 Applicability.
97.205 Retired unit exemption.
97.206 Standard requirements.
97.207 Computation of time.
97.208 Appeal procedures.

Subpart BBB—CAIR Designated Representative for CAIR SO_2 Sources

97.210 Authorization and responsibilities of CAIR designated representative.
97.211 Alternate CAIR designated representative.
97.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
97.213 Certificate of representation.
97.214 Objections concerning CAIR designated representative.
97.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CCC—Permits

97.220 General CAIR SO_2 Trading Program permit requirements.
97.221 Submission of CAIR permit applications.
97.222 Information requirements for CAIR permit applications.
97.223 CAIR permit contents and term.
97.224 CAIR permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

97.250 [Reserved]
97.251 Establishment of accounts.
97.252 Responsibilities of CAIR authorized account representative.
97.253 Recordation of CAIR SO_2 allowances.
97.254 Compliance with CAIR SO_2 emissions limitation.
97.255 Banking.
97.256 Account error.
97.257 Closing of general accounts.

Subpart GGG—CAIR SO_2 Allowance Transfers

97.260 Submission of CAIR SO_2 allowance transfers.
97.261 EPA recordation.
97.262 Notification.

Subpart HHH—Monitoring and Reporting

97.270 General requirements.
97.271 Initial certification and recertification procedures.
97.272 Out of control periods.
97.273 Notifications.
97.274 Recordkeeping and reporting.
97.275 Petitions.

Subpart III—CAIR SO_2 Opt-in Units

97.280 Applicability.
97.281 General.
97.282 CAIR designated representative.
97.283 Applying for CAIR opt-in permit.
97.284 Opt-in process.
97.285 CAIR opt-in permit contents.
97.286 Withdrawal from CAIR SO_2 Trading Program.
97.287 Change in regulatory status.
97.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-In Units

Subpart AAA—CAIR SO_2 Trading Program General Provisions

§ 97.201 Purpose.

This subpart and subparts BBB through III set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under section 110 of the Clean Air Act and § 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

§ 97.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity and, with regard to CAIR SO_2 allowances issued under § 97.288 or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter, the determination by a permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with § 97.254.

Alternate CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used

to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB, FFF, and III of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and (§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that is subject to the CAIR NO_X Ozone Season Trading Program.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and (§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X source means a source that is subject to the CAIR NO_X Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program, by a permitting authority under § 97.288, or by a permitting authority under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 97.254(b);

(2) For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 97.254(b); and

(3) For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 97.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, § 97.288, or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter shall not be a CAIR SO_2 allowance.

CAIR SO_2 allowance deduction or *deduct CAIR SO_2 allowances* means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account, *e.g.,* in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO_2 Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO_2 allowances under the Acid Rain Program.

CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO_2 allowances held or *hold CAIR SO_2 allowances* means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO_2 Allowance Tracking System account.

CAIR SO_2 emissions limitation means, for a CAIR SO_2 source, the tonnage equivalent, in SO_2 emissions in a control period, of the CAIR SO_2 allowances available for deduction for the source under § 97.254(a) and (b) for the control period.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o) (1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 97.204 and, except for purposes of § 97.205, a CAIR SO_2 opt-in unit under subpart III of this part.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or

decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.205 and § 97.284(h).

(i) For a unit that is a CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.205, for a unit that is not a CAIR SO_2 unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 97.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.284(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 97.284(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR SO_2 source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO_2 source under subpart FFF or III of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with § 97.254.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(4) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period means the period beginning January 1 of a calendar year, except as provided in § 97.206(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO^2 emissions limitation means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

(ii) Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

(iii) Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO_2 unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other

agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, *record*, or *recorded* means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, *replace*, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR SO_2 Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device. *Unit operating day* means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
H_2O—water.
Hg—mercury.

hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
lb—pound.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
NO_X—nitrogen oxides.
O_2—oxygen.
ppm—parts per million.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
yr—year.

§ 97.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO_2 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO_2 units:

(1)(i) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR SO_2 unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO_2 Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO_2 Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.205 Retired unit exemption.

(a)(1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under subpart III of this part shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, §§ 97.202, 97.203, 97.204, 97.206(c)(4) through (7), 97.207, 97.208, and subparts BBB, FFF, and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on

a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.206 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.222 in accordance with the deadlines specified in § 97.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a title V operating permit and each CAIR SO_2 unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period, as determined in accordance with § 97.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit(s monitor certification requirements under § 97.270(b)(1),(2), or (5) and for each control period thereafter.

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF, GGG, and III of this part.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.205 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under § 97.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period

shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.213 for the CAIR designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) *Liability.* (1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program.

(2) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR Designated Representative for CAIR SO_2 Sources

§ 97.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.211, each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in § 97.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR SO_2 unit at a source, until the Administrator has received a complete certificate of representation under § 97.213 for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e)(1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR

designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.202, 97.210(a) and (d), 97.212, 97.213, 97.215, 97.251 and 97.282, whenever the term ''CAIR designated representative'' is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit is not included in the list of owners and operators in the certificate of representation under § 97.213, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.213 amending the list of owners and operators to include the change.

§ 97.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR SO_2 source, and each CAIR SO_2 unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of the owners and operators of the source and of each CAIR SO_2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owners and operators of the source and of each CAIR SO_2 unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.''

(iv) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO_2 unit, or where a utility or industrial customer purchases power from a CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.213 is received by the Administrator.

(b) Except as provided in § 97.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality

of any decision or order by the permitting authority or the Administrator under the CAIR SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

§ 97.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.215(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.215(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.215 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCC—Permits

§ 97.220 General CAIR SO_2 Trading Program permit requirements.

(a) For each CAIR SO_2 source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.205, this subpart, and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR SO_2 Trading Program, CAIR NO_X Annual Trading Program, and CAIR NO_X Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.221 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR SO_2 source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.222 for the source covering each CAIR SO_2 unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO_2 unit commences commercial operation, except as provided in § 97.283(a).

(b) *Duty to reapply.* For a CAIR SO_2 source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.222 for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.283(b).

§ 97.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO_2 source;

(b) Identification of each CAIR SO_2 unit at the CAIR SO_2 source; and

(c) The standard requirements under § 97.206.

§ 97.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all lements required for a complete CAIR permit application under § 97.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as

necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's title V operating permit or other federally enforceable permit as applicable.

§ 97.224 CAIR permit revisions.

Except as provided in § 97.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

Subpart FFF—CAIR SO_2 Allowance Tracking System

§ 97.250 [Reserved]

§ 97.251 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.284(e), upon receipt of a complete certificate of representation under § 97.213, the Administrator will establish a compliance account for the CAIR SO_2 source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 *allowances held in the general account.* I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general

account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.251(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.251 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address, unless all delegation of authority by me under 40 CFR 97.251 (b)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.253 Recordation of CAIR SO_2 allowances.

(a)(1) After a compliance account is established under § 97.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new 30th year (*i.e.,* the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO_2 allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 97.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the general account any CAIR SO_2 allowance allocated for the new 30th year (*i.e.,* the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR SO_2 allowances.* When recording the allocation of CAIR SO_2 allowances issued by a permitting authority under § 97.288, the Administrator will assign each such CAIR SO_2 allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

§ 97.254 Compliance with CAIR SO_2 emissions limitation.

(a) *Allowance transfer deadline.* The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under §§ 97.260 and 97.261 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.261, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR SO_2 source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO_2 allowances, not issued by a permitting authority under § 97.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(B) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(2) For a CAIR SO_2 source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(ii) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(c)(1) *Identification of CAIR SO_2 allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the

Administrator, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO_2 allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO_2 allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO_2 allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO_2 source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 97.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section 3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart III.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 97.254, § 97.256, or subpart GGG or III of this part.

§ 97.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.260 and 97.261 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under §§ 97.260 and 97.261 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG—CAIR SO_2 Allowance Transfers

§ 97.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: "By this signature I authorize any transfer of allowances into each

account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator.''

§ 97.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO_2 allowances allocated to a CAIR SO_2 unit or as provided in paragraph (b) of this section) of receiving a CAIR SO_2 allowance transfer, the Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.260;

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer; and

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 97.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 97.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 97.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.202 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR SO_2 unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' or (''CEMS'') respectively, as defined in § 97.202. The owner or operator of a unit that is not a CAIR SO_2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO_2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR SO_2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 97.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR SO_2 opt-in unit under subpart III of this part, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 97.284(g).

(c) *Reporting data.* The owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained

prior written approval in accordance with § 97.275.

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO_2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.271(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR SO_2 unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR SO_2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.270(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.270(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO_2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.272(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*2*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*3*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of appendix D to part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.271 for each disapproved monitoring system.

§ 97.273 Notifications.

The CAIR designated representative for a CAIR SO_2 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.274 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.210(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR SO_2 unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 97.283 and 97.284(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the SO_2 mass emissions data and heat input data for the CAIR SO_2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009;

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 97.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR SO_2 opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 97.284(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO_2 units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 97.275 Petitions.

The CAIR designated representative of a CAIR SO_2 unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart III—CAIR SO_2 Opt-in Units

§ 97.280 Applicability.

A CAIR SO_2 opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.124(r)(1), (2), or (3) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR SO_2 unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.281 General.

(a) Except as otherwise provided in §§ 97.201 through 97.204, §§ 97.206 through 97.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

§ 97.282 CAIR designated representative.

Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

§ 97.283 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR SO_2 opt-in unit in § 97.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.286(f) and (g),

and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO_2 unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not, and so long as the unit is a CAIR SO_2 opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack, and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 97.213 consistent with § 97.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator. If allocation under § 97.288(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete CAIR permit application under § 97.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR SO_2 opt-in unit from the CAIR SO_2 Trading Program in accordance with § 97.286 or the unit becomes a CAIR SO_2 unit under § 97.204, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO_2 emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 97.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 Trading Program in accordance with § 97.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 Trading Program under § 97.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO_2 Trading Program under § 97.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit(s total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline SO_2 emission rate.* The unit's baseline SO_2 emission rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO_2 emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO_2 emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input

and the baseline SO_2 emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 97.280 and meets the elements certified in § 97.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 97.280 or meets the elements certified in § 97.283(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR SO_2 Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR SO_2 opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 97.288(c) and such unit is repowered after its date of entry into the CAIR SO_2 Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO_2 emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR SO_2 opt-in unit or a CAIR SO_2 unit.

§ 97.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.222;

(2) The certification in § 97.283(a)(2);

(3) The unit's baseline heat input under § 97.284(c);

(4) The unit's baseline SO_2 emission rate under § 97.284(d);

(5) A statement whether the unit is to be allocated CAIR SO_2 allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g));

(6) A statement that the unit may withdraw from the CAIR SO_2 Trading Program only in accordance with § 97.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR SO_2 opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.286 Withdrawal from CAIR SO_2 Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR SO_2 opt-in unit from the CAIR SO_2 Trading Program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO_2 Trading Program under § 97.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR SO_2 opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO_2 Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under § 97.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 Allowance Tracking System in accordance with subpart GGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO_2 allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of

this section. The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 Trading Program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal*. If the permitting authority denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR SO_2 Trading Program*. Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.283 for such CAIR SO_2 opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.284.

(g) *Inability to withdraw*. Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 Trading Program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 97.288(c).

§ 97.287 Change in regulatory status.

(a) *Notification*. If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO_2 opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions*. (1) If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204, the permitting authority will revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.223, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under § 97.204, CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204; and

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204 is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 97.288 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 97.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under § 97.204 contains the CAIR SO_2 allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

§ 97.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

(a) *Timing requirements*. (1) When the CAIR opt-in permit is issued under § 97.284(e), the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation*. For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under § 97.284(c); or

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g).

(2) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.283(a)(5)) providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this paragraph (subject to the conditions in §§ 97.284(h) and 97.286(g)), the permitting authority will allocate to the CAIR SO_2 opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d); or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g).

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.

(2) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 97.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 97.284(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-In Units

1. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO_2 opt-in units under subpart III of this part and allocation of CAIR SO_2 allowances to such units under § 97.288(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO_2 opt-in units under subpart III of this part and allocation of CAIR SO_2 allowances to such units under § 97.288(c):

[Reserved]

■ 5. Part 97 is amended by adding subparts AAAA through IIII to read as follows:

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

Sec.

97.301 Purpose.
97.302 Definitions.
97.303 Measurements, abbreviations, and acronyms.
97.304 Applicability.
97.305 Retired unit exemption.
97.306 Standard requirements.
97.307 Computation of time.
97.308 Appeal procedures.

Appendix A to Subpart AAAA of Part 97—States With Approved State Implementation Plan Revisions Concerning Applicability

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

97.310 Authorization and responsibilities of CAIR designated representative.
97.311 Alternate CAIR designated representative.
97.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
97.313 Certificate of representation.
97.314 Objections concerning CAIR designated representative.
97.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CCCC—Permits

97.320 General CAIR NO_X Ozone Season Trading Program permit requirements.
97.321 Submission of CAIR permit applications.
97.322 Information requirements for CAIR permit applications.
97.323 CAIR permit contents and term.
97.324 CAIR permit revisions.

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

97.340 State trading budgets.
97.341 Timing requirements for CAIR NO_X Ozone Season allowance allocations.
97.342 CAIR NO_X Ozone Season allowance allocations.
97.343 Alternative of allocation of CAIR NO_X Ozone Season allowances by permitting authority.

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

97.350 [Reserved]
97.351 Establishment of accounts.
97.352 Responsibilities of CAIR authorized account representative.
97.353 Recordation of CAIR NO_X Ozone Season allowance allocations.
97.354 Compliance with CAIR NO_X emissions limitation.
97.355 Banking.
97.356 Account error.
97.357 Closing of general accounts.

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

97.360 Submission of CAIR NO_X Ozone Season allowance transfers.
97.361 EPA recordation.
97.362 Notification.

Subpart HHHH—Monitoring and Reporting

97.370 General requirements.
97.371 Initial certification and recertification procedures.
97.372 Out of control periods.
97.373 Notifications.
97.374 Recordkeeping and reporting.
97.375 Petitions.

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

97.380 Applicability.
97.381 General.
97.382 CAIR designated representative.
97.383 Applying for CAIR opt-in permit.
97.384 Opt-in process.
97.385 CAIR opt-in permit contents.
97.386 Withdrawal from CAIR NO_X Ozone Season Trading Program.
97.387 Change in regulatory status.
97.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Ozone Season Opt-In Units

Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

§ 97.301 Purpose.

This subpart and subparts BBBB through IIII set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_X Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to CAIR NO_X Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_X Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_X Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_X Ozone Season emissions limitation for such control period in accordance with § 97.354.

Alternate CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil-or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB, FFFF, and IIII of this part, to transfer and otherwise dispose of CAIR NO_X Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season allowance means a limited authorization issued by a permitting authority or the Administrator under subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Ozone Season Trading Program or a limited authorization issued by a

permitting authority for a control period during 2003 through 2008 under the NO_X Budget Trading Program in accordance with § 51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in § 51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_X Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or under the NO_X Budget Trading Program as described in the prior sentence shall not be a CAIR NO_X Ozone Season allowance.

CAIR NO_X Ozone Season allowance deduction or *deduct CAIR NO_X Ozone Season allowances* means the permanent withdrawal of CAIR NO_X Ozone Season allowances by the Administrator from a compliance account, *e.g.,* in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_X Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_X Ozone Season allowances under the CAIR NO_X Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_X Ozone Season Allowance Tracking System account means an account in the CAIR NO_X Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X Ozone Season allowances.

CAIR NO_X Ozone Season allowances held or *hold CAIR NO_X Ozone Season allowances* means the CAIR NO_X Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_X Ozone Season Allowance Tracking System account.

CAIR NO_X Ozone Season emissions limitation means, for a CAIR NO_X Ozone Season source, the tonnage equivalent, in NO_X emissions in a control period, of the CAIR NO_X Ozone Season allowances available for deduction for the source under § 97.354(a) and (b) for the control period.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 97.304 and, except for purposes of § 97.305 and subpart EEEE of this part, a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_X source means a source that is subject to the CAIR NO_X Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_X Ozone Season Trading Program requirements applicable to a CAIR NO_X Ozone Season source, to each CAIR NO_X Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that is subject to the CAIR SO_2 Trading Program.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct

burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.305 and § 97.384(h).

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 97.304.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.384(h).

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is replaced by a unit at the same source (*e.g.,* repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate, except as provided in § 97.384(h).

(2) Notwithstanding paragraph (1) of this definition and solely for purposes of subpart HHHH of this part, for a unit that is not a CAIR NO_X Ozone Season unit under § 97.304(d) on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition and subsequently becomes such a CAIR NO_X Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 97.304(d).

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.,* repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_X Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_X Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with § 97.354.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period or *ozone season* means the period beginning May 1 of a calendar year, except as provided in § 97.306(c)(2) and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source during a control period that exceeds the CAIR NO_X Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_X Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_X emissions limitation means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_X Ozone Season unit or a CAIR NO_X Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit;

(ii) Any holder of a leasehold interest in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit; or

(iii) Any purchaser of power from a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person

who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X Ozone Season unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_X Ozone Season allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program in accordance with subpart CCCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit(s maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, *record*, or *recorded* means, with regard to CAIR NO_X Ozone Season allowances, the movement of CAIR NO_X Ozone Season allowances by the Administrator into or between CAIR NO_X Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in (75.22 of this chapter.

Replacement, *replace*, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR NO_X Ozone Season allowance, the unique identification number assigned to each CAIR NO_X Ozone Season allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the States or the District of Columbia that is subject to the CAIR NO_X Ozone Season Trading Program pursuant to (52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
H_2O—water.
Hg—mercury.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.
lb—pound.
mmBtu—million Btu.
MWe—megawatt electrical.
MWh—megawatt hour.
NO_X—nitrogen oxides.
O_2—oxygen.
ppm—parts per million.
scfh—standard cubic feet per hour.
SO_2—sulfur dioxide.
yr—year.

§ 97.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit(s combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1)(i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit(s potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Ozone Season Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_X Ozone Season Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with

the petition are found to have contained significant, relevant errors or omissions.

(d) Notwithstanding paragraphs (a) and (b) of this section, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_X Ozone Season Trading Program of all units that are not otherwise CAIR NO_X Ozone Season units under paragraphs (a) and (b) of this section and that are NO_X Budget units covered by the State's emissions trading program approved under § 51.121(p) of this chapter, such units shall be CAIR NO_X Ozone Season units as of the first date that they are NO_X Budget units under the NO_X Budget Trading Program under § 51.121(p) of this chapter.

§ 97.305 Retired unit exemption.

(a)(1) Any CAIR NO_X Ozone Season unit that is permanently retired and is not a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_X Ozone Season Trading Program, except for the provisions of this section, §§ 97.302, 97.303, 97.304, 97.306(c)(4) through (7), 97.307, 97.308, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate CAIR NO_X Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_X Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.306 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.322 in accordance with the deadlines specified in § 97.321; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_X Ozone Season source required to have a title V operating permit and each CAIR NO_X Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_X Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_X Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_X Ozone Season source and such CAIR NO_X Ozone Season unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_X Ozone Season source with the CAIR NO_X Ozone Season emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under § 97.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period

from all CAIR NO_X Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.370(b)(1), (2), (3), or (7) and for each control period thereafter.

(3) A CAIR NO_X Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_X Ozone Season allowance was allocated.

(4) CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with subparts EEEE, FFFF, GGGG, and IIII of this part.

(5) A CAIR NO_X Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.305 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_X Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_X Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_X Ozone Season emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_X Ozone Season unit at the source shall surrender the CAIR NO_X Ozone Season allowances required for deduction under § 97.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.313 for the CAIR designated representative for the source and each CAIR NO_X Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall submit the reports required under the CAIR NO_X Ozone Season Trading Program, including those under subpart HHHH of this part.

(f) *Liability.* (1) Each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit shall meet the requirements of the CAIR NO_X Ozone Season Trading Program.

(2) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season source or the CAIR designated representative of a CAIR NO_X Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_X Ozone Season units at the source.

(3) Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season unit or the CAIR designated representative of a CAIR NO_X Ozone Season unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_X Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X Ozone Season source or CAIR NO_X Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.307 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_X Ozone Season Trading Program are set forth in part 78 of this chapter.

Appendix A to Subpart AAAA of Part 97—States With Approved State Implementation Plan Revisions Concerning Applicability

The following States have State Implementation Plan revisions under § 51.123(ee)(1) of this chapter approved by the Administrator and providing for expansion of the applicability provisions to include all non-EGUs subject to the respective State's emission trading program approved under § 51.121(p) of this chapter:

[Reserved]

Subpart BBBB—CAIR Designated Representative for CAIR NO_X Ozone Season Sources

§ 97.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.311, each CAIR NO_X Ozone Season source, including all CAIR NO_X Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Ozone Season Trading Program concerning the source or any CAIR NO_X Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_X Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X Ozone Season units at the source and shall act in accordance with the certification statement in § 97.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X Ozone Season source represented and each CAIR NO_X Ozone Season unit at the source in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Ozone Season Allowance Tracking System account will be established for a CAIR NO_X Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 97.313 for a CAIR designated representative of the source and the CAIR NO_X Ozone Season units at the source.

(e)(1) Each submission under the CAIR NO_X Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_X Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.302, 97.310(a) and (d), 97.312, 97.313, 97.315, 97.351, and 97.382, whenever the term ''CAIR designated representative'' is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 97.313, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.313 amending the list of owners and operators to include the change.

§ 97.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include

the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_X Ozone Season source, and each CAIR NO_X Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_X Ozone Season source and of each CAIR NO_X Ozone Season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) ''I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X Ozone Season unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_X Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owners and operators of the source and of each CAIR NO_X Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.''

(iv) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_X Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X Ozone Season unit at the source; and CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X Ozone Season allowances by contract, CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.313 is received by the Administrator.

(b) Except as provided in § 97.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Ozone Season Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

§ 97.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.315(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.315 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a

superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

§ 97.320 General CAIR NO_X Ozone Season Trading Program permit requirements.

(a) For each CAIR NO_X Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.305, this subpart, and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_X Ozone Season Trading Program, CAIR NO_X Annual Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.321 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_X Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_X Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X Ozone Season unit commences commercial operation, except as provided in § 97.383(a).

(b) *Duty to reapply.* For a CAIR NO_X Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_X Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.383(b).

§ 97.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_X Ozone Season source;

(b) Identification of each CAIR NO_X Ozone Season unit at the CAIR NO_X Ozone Season source; and

(c) The standard requirements under § 97.306.

§ 97.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from the compliance account of the CAIR NO_X Ozone Season source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 97.324 CAIR permit revisions.

Except as provided in § 97.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD—[Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

§ 97.340 State trading budgets.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_X Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,597
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(b) Upon approval by the Administrator of a State's State implementation plan revision under § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_X Ozone Season Trading Program of all units that are not otherwise CAIR NO_X Ozone Season units under § 97.304(a) and (b) and that are NO_X Budget units covered by the State's emissions trading program approved under § 51.121(p), the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_X Ozone Season allowance allocations issued under § 51.123(ee)(1)(ii)(A) of this chapter for the year.

§ 97.341 Timing requirements for CAIR NO_X Ozone Season allowance allocations.

(a) The Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By April 30, 2009 and April 30 of each year thereafter, the Administrator will determine by order the CAIR NO_X Ozone Season allowance allocations, in accordance with § 97.342(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_X Ozone Season allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.342. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.342.

§ 97.342 CAIR NO_X Ozone Season allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_X Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial,

heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_X Ozone Season units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the applicable State trading budget under § 97.340 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units in a State that are not allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_X Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the applicable State trading budget under § 97.340.

(2) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

(3) In a CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit(s total tons of NO_X emissions during the control period immediately before such control period.

(4) The Administrator will review each CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Administrator will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section in the State an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the applicable State trading budget under § 97.340, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_X Ozone Season allowances were allocated under paragraphs (a) and (b) of this section,

paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_X Ozone Season unit under § 97.304 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_X Ozone Season allowances under § 97.353.

(2) If the Administrator already recorded such CAIR NO_X Ozone Season allowances under § 97.353 and if the Administrator makes such determinations before making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_X Ozone Season allowances were recorded under § 97.353 an amount of CAIR NO_X Ozone Season allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_X Ozone Season allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO_X Ozone Season allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_X Ozone Season allowances under § 97.353 and if the Administrator makes such determinations after making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_X Ozone Season allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_X Ozone Season allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.343 Alternative of allocation of CAIR NO_X Ozone Season allowances by permitting authority.

(a) Notwithstanding §§ 97.341, 97.342, and 97.353 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(2) of this chapter providing for allocation of CAIR NO_X Ozone Season allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.341 and 97.342 for the CAIR NO_X Ozone Season units in the State, and under § 97.353, the Administrator will record allocations made under such approved State implementation plan revision instead of allocations under §§ 97.341 and 97.342.

(b) In implementing paragraph(a) of this section and §§ 97.341, 97.342, and 97.353, the Administrator will ensure that the total amount of CAIR NO_X Ozone Season allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(ee)(2) of this chapter, for a control period for CAIR NO_X Ozone Season sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

The following States have State Implementation Plan revisions under § 51.123(ee)(2) of this chapter approved by the Administrator and providing for allocation of CAIR NO_X Ozone Season allowances by the permitting authority under § 97.344(a):

[Reserved]

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

§ 97.350 [Reserved]

§ 97.351 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.384(e), upon receipt of a complete certificate of representation under § 97.313, the Administrator will establish a compliance account for the CAIR NO_X Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Upon receipt by the Administrator of a complete application

for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_X Ozone Season Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ''I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.351(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.351(b)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_X Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_X Ozone Season sources compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR Ozone Season NO_X allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source in accordance with § 97.342(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_X Ozone Season allowances.* When recording the allocation of CAIR NO_X Ozone Season allowances for a CAIR NO_X Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_X Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X Ozone Season allowance is allocated.

§ 97.354 Compliance with CAIR NO_X emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_X Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_X Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_X Ozone Season allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X Ozone Season allowance transfer correctly submitted for recordation under 97.360 and 97.361 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.361, of CAIR NO_X Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined

in accordance with subpart HHHH of this part, from all CAIR NO_X Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_X Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_X Ozone Season allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_X Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_X Ozone Season source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_X Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_X Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_X Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_X Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_X Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_X Ozone Season source or the CAIR NO_X Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart IIII.

(f) *Administrator(s action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_X Ozone Season allowances from or transfer CAIR NO_X Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.355 Banking.

(a) CAIR NO_X Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_X Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X Ozone Season allowance is deducted or transferred under § 97.342, § 97.354, § 97.356, or subpart GGGG or IIII of this part.

§ 97.356 Account error.

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

§ 97.357 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § § 97.360 and 97.361 for any CAIR NO_X Ozone Season allowances in the account to one or more other CAIR NO_X Ozone Season Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_X Ozone Season allowances into the account under § § 97.360 and 97.361 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

§ 97.360 Submission of CAIR NO_X Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_X Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_X Ozone Season allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_X Ozone Season allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_X Ozone Season allowance transfer, the Administrator will record a CAIR NO_X Ozone Season allowance transfer by moving each CAIR NO_X Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.360; and

(2) The transferor account includes each CAIR NO_X Ozone Season allowance identified by serial number in the transfer.

(b) A CAIR NO_X Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after

the Administrator completes the deductions under § 97.354 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_X Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.362 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_X Ozone Season allowance transfer under § 97.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_X Ozone Season allowance transfer that fails to meet the requirements of § 97.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_X Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting

§ 97.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_X Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.302 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR NO_X Ozone Season unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.302. The owner or operator of a unit that is not a CAIR NO_X Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_X Ozone Season unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_X Ozone Season unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 97.374(d), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) May 1, 2008.

(3) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under § 97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 97.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(5) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under § 97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_X Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 97.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, by the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(c) *Reporting data.* The owner or operator of a CAIR NO_X Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in

accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_X Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.375.

(2) No owner or operator of a CAIR NO_X Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_X Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_X Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.371(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_X Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_X Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.370(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.375 to determine whether the approval applies under the CAIR NO_X Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.370(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.370(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.373.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include

the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_X Ozone Season Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_X Ozone Season Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.372(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.,* NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in (72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in (72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.372 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification

or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.371 for each disapproved monitoring system.

§ 97.373 Notifications.

The CAIR designated representative for a CAIR NO_X Ozone Season unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.374 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.310(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR NO_X Ozone Season unit shall comply with requirements of § 75.73 (c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 97.383 and 97.384(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.371, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_X Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and shall report the NO_X mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;

(iii) Notwithstanding paragraphs (d)(1) (i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b); and

(iv) Notwithstanding paragraphs (d)(1) (i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(2) If the CAIR NO_X Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b); and

(D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in § 97.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CAIR NO_X Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons

with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 97.375 Petitions.

The CAIR designated representative of a CAIR NO_X Ozone Season unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

§ 97.380 Applicability.

A CAIR NO_X Ozone Season opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(3) (i), (ii), or (iii) of this chapter establishing procedures concerning CAIR Ozone Season opt-in units;

(b) Is not a CAIR NO_X Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 97.381 General.

(a) Except as otherwise provided in §§ 97.301 through 97.304, §§ 97.306 through 97.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_X Ozone Season opt-in unit shall be treated as a CAIR NO_X Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_X Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 97.382 CAIR designated representative.

Any CAIR NO_X Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_X Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_X Ozone Season units.

§ 97.383 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.322;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_X Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.322;

(3) A monitoring plan in accordance with subpart HHHH of this part;

(4) A complete certificate of representation under § 97.313 consistent with § 97.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under § 97.380(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.388(c) is requested, this statement shall include a statement that the owners and operators intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_X Ozone Season opt-in unit shall submit a complete CAIR permit application under § 97.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program in accordance with § 97.386 or the unit becomes a CAIR NO_X Ozone Season unit under § 97.304, the CAIR NO_X Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_X Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_X Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.383 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with

§ 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 97.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Ozone Season Trading Program in accordance with § 97.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline NO_X emission rate.* The unit's baseline NO_X emission rate shall equal:

(1) If the unit's NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section; or

(3) If the unit's NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit's NO_X emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 and meets the elements certified in § 97.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X Ozone Season opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 97.380 or meets the elements certified in § 97.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_X* Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X Ozone Season opt-in unit, and a CAIR NO_X Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_X* Ozone Season opt-in unit. (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 97.388(c) and such unit is repowered after its date of entry into the CAIR NO_X Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X Ozone Season opt-in unit replacing the original CAIR NO_X Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X Ozone Season opt-in unit, and the original CAIR NO_X Ozone Season opt-in unit shall no longer be treated as a CAIR NO_X Ozone Season opt-in unit or a CAIR NO_X Ozone Season unit.

§ 97.385 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.322;

(2) The certification in § 97.383(a)(2);

(3) The unit's baseline heat input under § 97.384(c);

(4) The unit's baseline NO_X emission rate under § 97.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_X Ozone Season allowances under § 97.388(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Ozone Season Trading Program only in accordance with § 97.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_X Ozone Season opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.386 Withdrawal from CAIR NO_X Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_X Ozone Season opt-in unit may withdraw from the CAIR NO_X Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_X Ozone Season Trading Program under § 97.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_X Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_X Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X Ozone Season opt-in unit must meet the requirement to hold CAIR NO_X Ozone Season allowances under § 97.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X Ozone Season opt-in unit may submit a CAIR NO_X Ozone Season allowance transfer for any remaining CAIR NO_X Ozone Season allowances to another CAIR NO_X Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit that the CAIR NO_X Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_X Ozone Season opt-in unit shall continue to be a CAIR NO_X Ozone Season opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_X Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_X Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_X Ozone Season Trading Program.* Once a CAIR NO_X Ozone Season opt-in unit withdraws from the CAIR NO_X Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.383 for such CAIR NO_X Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.384.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_X Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 97.388(c).

§ 97.387 Change in regulatory status.

(a) *Notification.* If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under

§ 97.304, the permitting authority will revise the CAIR NO_X Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.323, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit that becomes a CAIR NO_X Ozone Season unit under § 97.304, CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for any control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304; and

(B) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 is not September 30, the CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 97.388 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X Ozone Season unit that becomes a CAIR NO_X Ozone Season unit under (97.304 contains the CAIR NO_X Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, the CAIR NO_X Ozone Season opt-in unit will be allocated CAIR NO_X Ozone Season allowances under § 97.342.

(ii) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304 is not September 30, the following amount of CAIR NO_X Ozone Season allowances will be allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 97.342 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304:

(A) The amount of CAIR NO_X Ozone Season allowances otherwise allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 97.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 97.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.384(e), the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than July 31 of the control period after the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline heat input determined under § 97.384(c); or

(ii) The CAIR NO_X Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g).

(2) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(i) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.383 (a)(5)) providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under this paragraph (subject to the conditions in §§ 97.384(h) and 97.386(g)), the permitting authority will allocate to the CAIR NO_X Ozone Season opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g).

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(C) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation*. If provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(1) of this section.

(2) By September 1 of the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g) and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(2) of this section.

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Ozone Season Opt-in Units

1. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_X Ozone Season allowances to such units under § 97.388(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_X Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_X Ozone Season allowances to such units under § 97.388(c):

[Reserved]

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