

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

- 96.340 State trading budgets.
- 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.
- 96.342 CAIR NO_x Ozone Season allowance allocations.

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

- 96.350 [Reserved]
- 96.351 Establishment of accounts.
- 96.352 Responsibilities of CAIR authorized account representative.
- 96.353 Recordation of CAIR NO_x Ozone Season allowance allocations.
- 96.354 Compliance with CAIR NO_x emissions limitation.
- 96.355 Banking.
- 96.356 Account error.
- 96.357 Closing of general accounts.

Subpart GGGG—CAIR NO_x Ozone Season Allowance Transfers

- 96.360 Submission of CAIR NO_x Ozone Season allowance transfers.
- 96.361 EPA recordation.
- 96.362 Notification.

Subpart HHHH—Monitoring and Reporting

- 96.370 General requirements.
- 96.371 Initial certification and recertification procedures.
- 96.372 Out of control periods.
- 96.373 Notifications.
- 96.374 Recordkeeping and reporting.
- 96.375 Petitions.

Subpart IIII—CAIR NO_x Ozone Season Opt-in Units

- 96.380 Applicability.
- 96.381 General.
- 96.382 CAIR designated representative.
- 96.383 Applying for CAIR opt-in permit.
- 96.384 Opt-in process.
- 96.385 CAIR opt-in permit contents.
- 96.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.
- 96.387 Change in regulatory status.
- 96.388 CAIR NO_x Ozone Season allowance allocations to CAIR NO_x Ozone Season opt-in units.

AUTHORITY: 42 U.S.C. 7401, 7403, 7410, 7601, and 7651, *et seq.*

SOURCE: 63 FR 57514, Oct. 27, 1998, unless otherwise noted.

Subpart A—NO_x Budget Trading Program General Provisions

§ 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for § 96.4(b)), subparts B through D, subpart F (except for § 96.55(c)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

§ 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

Environmental Protection Agency

§96.2

Account number means the identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in §72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H 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 H 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.

CAA means the CAA, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of 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.

Commence commercial operation means, with regard to a unit that serves a generator, 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 §96.5, for a unit that is a NO_x Budget unit under §96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in §96.5 or subpart I of this part, for a unit that is not a NO_x Budget unit under §96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under §96.4 shall be the unit's date of commencement of commercial operation.

Commence operation means 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 §96.5, for a unit that is a NO_x Budget unit under §96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in §96.5 or subpart I of this part, for a unit that is not a NO_x Budget unit under §96.4 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under §96.4 shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a NO_x Allowance Tracking System account, established by the Administrator for a NO_x Budget unit under subpart F of this part, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.

Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NO_x Budget source's or a NO_x Budget unit's compliance or non-compliance with this part and that is signed by the NO_x authorized account

representative in accordance with subpart B of this part.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:

- (1) Flow monitor;
- (2) Nitrogen oxides pollutant concentration monitors;
- (3) Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;
- (4) A continuous moisture monitor when such monitoring is required by subpart H of this part; and
- (5) An automated data acquisition and handling system.

Control period means the period beginning May 1 of a year 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 NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.

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:

- (1) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a

unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

- (2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

General account means a NO_x Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

Generator means a device that produces electricity.

Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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 from 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 equal to or greater 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 ability of a unit to combust a stated maximum amount of fuel per hour on a

steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NO_x emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Maximum rated hourly heat input means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO_x emissions limitation means, with regard to a NO_x Budget opt-in source, 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 the maximum electrical generating output (in

MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and part 70 or 71 of this chapter.

NO_x allowance means an authorization by the permitting authority or the Administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

NO_x allowance deduction or *deduct NO_x allowances* means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

NO_x allowances held or *hold NO_x allowances* means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NO_x Allowance Tracking System account.

NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

NO_x Allowance Tracking System account means an account in the NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

NO_x allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in

order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.

NO_x authorized account representative means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO_x allowances held in the general account.

NO_x Budget emissions limitation means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under §96.54(a) and (b), adjusted by any deductions of such NO_x allowances to account for actual utilization under §96.42(e) for the control period or to account for excess emissions for a prior control period under §96.54(d) or to account for withdrawal from the NO_x Budget Program, or for a change in regulatory status, for a NO_x Budget opt-in source under §96.86 or §96.87.

NO_x Budget opt-in permit means a NO_x Budget permit covering a NO_x Budget opt-in source.

NO_x Budget opt-in source means a unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt-in permit has been issued and is in effect under subpart I of this part.

NO_x Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

NO_x Budget source means a source that includes one or more NO_x Budget units.

NO_x Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to §51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NO_x Budget unit means a unit that is subject to the NO_x Budget Trading Program emissions limitation under §96.4 or §96.80.

Operating means, with regard to a unit under §§96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under §96.83(a).

Operator means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt-in permit under §96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in means to be elected to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt-in permit under subpart I of this part.

Overdraft account means the NO_x Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO_x Budget source where there are two or more NO_x Budget units.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under §96.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under §96.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in permit under §96.83 is submitted and not denied or withdrawn under a

Environmental Protection Agency

§96.2

life-of-the-unit, firm power contractual arrangement. However, 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, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under §96.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to 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 NO_x Budget Trading Program in accordance with subpart C of this part.

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 writing or by authorized electronic transmission), as indicated in an official correspondence 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 NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, 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 appendix A of part 60 of this chapter.

Serial number means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator, under §96.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the 48 contiguous States and the District of Columbia specified in §51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NO_x Budget Trading Program pursuant to §51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

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," "service," or "mailing" 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 CAA 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 CAA and part 70 or 71 of this chapter.

Ton or tonnage means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation,

§ 96.3

total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Unit load means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

(2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NO_x Budget 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 if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

§ 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
hr—hour.
Kwh—kilowatt hour.
lb—pounds.
mmBtu—million Btu.
MWe—megawatt electrical.
ton—2000 pounds.
CO₂—carbon dioxide.
NO_x—nitrogen oxides.

40 CFR Ch. I (7–1–07 Edition)

O₂—oxygen.

§ 96.4 Applicability.

(a) The following units in a State shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this part:

(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(2) Any unit that is not a unit under paragraph (a) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

(b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NO_x mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NO_x Budget unit.

(1) For each control period under paragraph (b) of this section, the federally enforceable permit must:

(i) Restrict the unit to burning only natural gas or fuel oil.

(ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions.

(iii) Require that the unit's potential NO_x mass emissions shall be calculated as follows:

(A) Select the default NO_x emission rate in Table 2 of § 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or