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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; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

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

[OAR–2004–0076; FRL–7948–3]

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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 proposed rulemaking (NPR).

SUMMARY: Today, EPA is proposing 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 proposing its 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 requests that EPA establish control requirements to prohibit such significant contribution. The EPA's proposed response is based on extensive analyses conducted for the recently issued Clean Air Interstate Rule (CAIR). The EPA is proposing to deny the petition for sources in States not shown to be linked to nonattainment and maintenance problems in North Carolina under the CAIR. For sources in States that are linked to North Carolina under the CAIR, EPA is proposing in the alternative to deny the petition if EPA promulgates Federal implementation plans (FIPs) to address the interstate transport no later than the final section 126 response or to grant the petition if EPA does not promulgate the FIPs prior to or concurrently with the section 126 response. The EPA's preferred option is to promulgate the FIP concurrently with the final section 126 response.

In today's action, EPA is also proposing FIPs for all jurisdictions that are covered by the CAIR. The FIPs would 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. The EPA intends the FIP to satisfy the concerns cited in the section 126 petition and provide a Federal backstop for the CAIR. In no way should the FIP for CAIR be viewed as a sign of any concern about States meeting the SIP responsibilities under CAIR.

As the control requirements for both the section 126 action and the FIP, EPA is proposing Federal NO_X and SO_2 trading programs that provide emissions reductions equal to those required under the CAIR in affected States.

The Section 126 and FIP actions would not constrain States in their selection of control strategies to meet the CAIR. The EPA intends to withdraw section 126 or FIP requirements in a State if that State submits and EPA approves a SIP meeting the requirements of CAIR.

Today's action also proposes revisions to the CAIR in order to address the interaction between the EPA-administered Federal CAIR trading programs proposed today and the EPA-administered State CAIR 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 proposing revisions to the CAIR to correct certain minor errors.

Today's action also proposes 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 State CAIR trading programs, also apply to the EPA-administered trading programs under the section 126 and FIP actions. In addition, we are proposing certain minor revisions to the Acid Rain Program that would apply to all affected units.

DATES: Comments must be received on or before October 24, 2005. Public hearings will be held on September 15, 2005 in Washington, DC and on September 14, 2005 in Research Triangle Park, North Carolina. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0076, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov.*
- Mail: Air Docket, Attention: Docket No. OAR–2004–0076, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No.: OAR–2004–0076. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to the

SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, 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 in EDOCKET or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, 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 Strategies and Standards Division, C539–02, 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 Strategies and Standards Division, C539–02, 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 Petersen, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, telephone (202) 564–4097, e-mail at *petersen.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.* For questions regarding analyses required by statutes and executive orders, please contact Ron Evans, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C339–01, Research Triangle Park, NC, 27711, telephone (919) 541–5488, e-mail at *evans.ron@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.
	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 could potentially be 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 proposed §§ 97.102, 97.104, 97.105, 97.202, 97.204, 97.205, 97.302, 97.304, and 97.305 for purposes of the section 126 and FIP actions. 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. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit comments that include CBI to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov,* Attention Docket ID No. OAR–2004–0076.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

III. Availability of Related Information

The EPA has conducted a separate rulemaking that contains actions and information related to this proposal, ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)'' (see proposal at 69 FR 4566, January 30, 2004; supplemental proposal at 69 FR 32684, June 10, 2004; notice of data availability at 69 FR 47828, August 6, 2004; and final rule at 70 FR 25162; May 12, 2005). Documents related to the CAIR are available for inspection in docket OAR–2003–0053 at the address and times given above. The EPA has established a Web site for the CAIR at *http://www.epa.gov/cleanairinterstaterule* or more simply *http://www.epa.gov/cair/* which will also include information on the section 126 rulemaking actions. The rulemaking docket for the CAIR contains information and analyses that are relied upon in today's proposed actions. Therefore, EPA is including by reference the entire CAIR record for purposes of the section 126 and FIP rulemakings. The EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically on the revisions to CAIR that EPA is proposing in today's action. Section VII in this preamble discusses the proposed changes to CAIR.

IV. Public Hearing

The EPA will be holding two public hearings on today's proposal. On September 14, 2005, a public hearing will be held at the EPA, Building C, Room C111A–B, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. On September 15, 2005, a public hearing will be held at EPA Headquarters, 1200 Pennsylvania Ave, NW., Room 1117 (EPA East), Washington, DC. The metro stop is Federal Triangle. Because these hearings are being held at U.S. government facilities, everyone planning to attend one of the hearings should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The public hearings will begin at 9 a.m. and continue until 5 p.m., if necessary, depending on the number of speakers. The EPA may end the hearing early if all registered speakers have had an opportunity to speak, but no earlier than 2 p.m. Persons wishing to present oral testimony that have not made arrangements in advance should register by 2 p.m. the day of the hearing. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at the hearing, please notify Joann Allman, U.S. EPA, Office of Air Quality Planning and Standards, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov*, by September 8, 2005. For updates and additional information on the public hearings, please check EPA's Web site for this rulemaking at *http://www.epa.gov/cair*.

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

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I. Background and Summary of Proposal

A. Summary of Proposal

Today, EPA is proposing two actions to address 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 proposing its response to a petition submitted to EPA by the State of North Carolina under section 126 of the CAA. The 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. OAR–2004–0076–0002.)

The EPA's proposed response is based on extensive analyses conducted for the CAIR (70 FR 25162; May 12, 2005). The EPA is proposing to deny the petition for sources in States not shown in the CAIR to be linked to (that is, to significantly contribute to) nonattainment and maintenance problems in North Carolina. For sources in States that are linked to North Carolina under the CAIR for the $PM_{2.5}$ NAAQS, EPA is proposing in the alternative (1) to deny the petition in the event that EPA promulgates FIPs no later than the final section 126 response to address the interstate transport or (2) to grant the petition if EPA does not promulgate a FIP prior to or concurrently with the section 126 response. The EPA's preferred approach is to promulgate the FIP concurrently with the final section 126 response and deny the petition. The FIP would 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 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 EPA is proposing to deny the petition with respect to the 8-hour ozone NAAQS, because there are no States linked to North Carolina under the CAIR for that NAAQS. The States named in the petition with respect to the 8-hour ozone NAAQS are: Georgia, Maryland, South Carolina, Tennessee, and Virginia.

In today's action, EPA is also proposing 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 problems. Today's FIP proposal includes emissions reductions requirements for Delaware and New Jersey that would address their significant contribution to nonattainment or maintenance problems for the $PM_{2.5}$ NAAQS if EPA ultimately finds that these States significantly contribute to $PM_{2.5}$ problems in downwind States based on the approach in the proposed rule cited above.

The FIPs would 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 satisfy the concerns cited in the section 126 petition 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 the SIP responsibilities under CAIR. There are no sanctions associated with these FIPs and EPA does not intend CAIR FIPs to have any other negative consequences for the affected States. The EPA is proposing FIP approaches that are flexible and intended to provide States options for getting their SIPs in place.

As the control remedy for both the section 126 action (should EPA make positive findings under section 126(b)) and the FIP, EPA is proposing Federal NO_X and SO_2 cap and trade programs that provide the emissions reductions required by the CAIR. The trading programs are designed after the model cap and trade programs that EPA provided as a control option for States to meet the CAIR. The EPA intends to integrate the Federal trading programs with the EPA-administered State CAIR trading programs that are based on the model rules so that sources could trade with one another under the respective emissions caps.

The EPA emphasizes that the section 126 response and FIP would 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 the section 126 or FIP requirements that could impact a State's ability to regulate their sources in a different manner) until more than a year after the CAIR SIP submission deadline.[1] This would allow EPA time

[1] The CAIR requires affected sources to begin monitoring one 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 would take any necessary actions to implement the monitoring provisions of the proposed Federal trading rules in time for monitoring to begin in 2008. To the extent that a State chooses to control EGUs to meet its CAIR obligations, the monitoring requirements

Continued

to take rulemaking action to approve timely SIPs and, thus, the FIP or section 126 requirements would not go into place. In addition, States could replace the FIP or section 126 requirements at a later time.

In today's action, EPA is also proposing 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 section 126 and FIP actions. In addition, EPA is proposing some revisions to the CAIR in order to correct certain minor errors.

The EPA is also proposing revisions to the 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 States CAIR trading programs, also apply to the EPA-administered trading programs under the section 126 and FIP actions. In addition, EPA is proposing some minor revisions that would apply to all affected units under the Acid Rain Program.

For purposes of the section 126 and FIP rulemakings, the EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically on revisions to the CAIR that EPA is proposing in today's action. Section VII of this preamble discusses the proposed changes to the CAIR.

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.

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 $PM_{2.5}$ 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.htm1*.

The secondary or welfare-based $PM_{2.5}$ standards are designed to protect against major environmental effects caused by PM such as visibility impairment—including in Class I areas which include national parks and wilderness areas across the country—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).

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. 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 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, a lifetime). Recent epidemiological studies have shown a correlation between acute ozone exposures and increased risk of premature death.

People who are particularly susceptible to the effects of ozone include people with respiratory diseases, such as asthma, and people with unusual sensitivity to ozone. 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. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production (e.g., soybean) and visible injury to some leaf crops (e.g., lettuce, spinach, tobacco), as well as visible injury to ornamental plants (i.e., grass, flowers, shrubs). Other types of welfare loss may not be quantifiable (e.g., reduced aesthetic value of trees growing in heavily visited national parks). More detailed information on health effects of ozone can be found at the following EPA Web

would be identical whether EPA regulated EGUs through the proposed Federal trading programs or the State regulated EGUs through their SIP.

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).

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 110(a)(2)(D) is the underlying provision for EPA's CAIR and today's proposed section 126 and FIP actions. Under the CAIR, EPA established the amount of SO_2 and NO_X emissions that each CAIR-affected State must prohibit through SIP revisions to address interstate transport with respect to the $PM_{2.5}$ and 8-hour ozone NAAQS.

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)(ii) * * * or 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)(ii)[2] or 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 proposal, 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) 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) 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). Because a section 126 finding turns on the existence of a section 110(a)(2)(D) deficiency, in the May 1999 Section 126 Rule, we determined which petitions had technical merit, but we stopped short of granting the findings for 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. Thus, the Section 126 Rule included a provision under which the rule would be automatically withdrawn for sources in a State once that State submitted and EPA fully approved a SIP that complied with the NO_X SIP Call or if EPA promulgated a FIP to achieve the emissions reductions. (See 64 FR 28271–28274.) The reason

[2] While the text of section 126 refers to section 110(a)(2)(D)(ii), EPA believes that this cross-reference is a scrivener's error that occurred during the 1990 Amendments to the CAA and that 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 (DC Cir. 2001).

for this withdrawal would be the fact that the affected State's SIP revision or EPA's promulgated FIP would fulfill the section 110(a)(2)(D) requirements, so that there would no longer be any basis for the section 126 finding with respect to that State. 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) 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 (DC Cir. 2001).) Similarly, in today's rulemaking, we are proposing to deny the section 126 petition if we approve SIPs which satisfy the emission reduction requirements of the CAIR, or if we promulgate a FIP which includes the emission reduction requirements of the CAIR.

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. The EPA is proposing the same approach here in the event that it grants North Carolina's section 126 petition.

4. What Is the Clean Air Interstate Rule?

The EPA developed the Clean Air Interstate Rule (CAIR) to address interstate pollution transport with respect to the newly adopted $PM_{2.5}$ and 8-hour ozone NAAQS. The EPA published the proposals for CAIR (previously referred to as the Interstate Air Quality Rule) on January 30, 2004 (69 FR 4566) and June 10, 2004 (69 FR 32684), a notice of data availability on August 6, 2004 (69 FR 47828), and the final rule on May 12, 2005 (70 FR 25162). The EPA is providing this description of the CAIR to help place today's proposal in context. As stated above, EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that EPA is taking comment specifically on the revisions to CAIR that EPA is proposing in today's action (Section VII in this preamble discusses the proposed changes to CAIR).

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,[3] 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). 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.

If EPA ultimately includes Delaware and New Jersey in the CAIR with respect to the $PM_{2.5}$ NAAQS (see proposal at 70 FR 25408), EPA estimates that the CAIR would reduce SO_2 emissions by 3.6 million tons in 2010 and by 3.9 million tons in 2015; and would 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 (including Delaware and New Jersey for the $PM_{2.5}$ NAAQS) 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;[4] 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 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 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 Federal implementation plan (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. The EPA

[3] 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.

[4] It should be noted that the banking provisions of the cap and trade program which encourage sources to make significant reductions before 2010 also allow sources to operate above these cap levels until all of the banked allowances are used, therefore EPA does not project that these caps will be met in 2010 or 2015.

intends to issue guidance regarding how States outside the CAIR region could satisfy the section 110(a)(2)(D) requirement. 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 proposing a FIP for States affected by the CAIR. The EPA intends to promulgate the CAIR FIP by March 15, 2006 along with the final section 126 response. 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).

D. Summary of North Carolina's Section 126 Petition

1. What Sources Does the Petition Target?

The North Carolina petition requests relief from 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 section VII of today's preamble for clarification of the EGU definition.[5])

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. 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 that could operate to deprive North Carolina of the benefits of the control remedy in the subset of States that affect North Carolina (Petition, pp. 25–28). We address this issue below in section 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 additional 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 Litigation 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 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 requires that no later than August 1, 2005, EPA must sign for publication the proposed action to grant or deny the petition. If EPA proposes to approve any part of the petition, the proposal must include the proposed remedy. No later than March 15, 2006, EPA must take final action to grant or deny the petition. If EPA grants any part of the petition (*i.e.*, makes a section 126(b) finding), the final action must include the remedy. The consent decree also requires EPA to hold a public hearing on the proposal during the week of September 12, 2005 in North Carolina. Today's proposal meets the first deadline set forth in the consent decree. The EPA has scheduled two public hearings during the week of September 12, 2005, one to be held in

[5] As noted in section VII below, EPA is proposing to amend the definition of EGU to remove certain ambiguities regarding the definition's application to solid waste incinerators and to existing units that formerly generated electricity for sale but have not done so since before November 15, 1990. We understand the North Carolina section 126 petition as applying only to the sources included in the clarified definition and not to sources we are proposing to exclude from the definition of EGU.

North Carolina and the other in Virginia (see **DATES** above for further information on the hearings).

F. How Is EPA Addressing the Section 126-Related Comments Received During the CAIR Rulemaking?

In the January 30, 2004 CAIR proposal, EPA set forth its general view of the approach it expected to take in responding to any section 126 petition that might be submitted that relies on essentially the same record as the CAIR (69 FR at 4580). That approach is the one EPA used in addressing section 126 petitions that were submitted to EPA in 1997 while EPA was developing the NO_X SIP Call to control ozone transport (as discussed in section I.C.3. above).

The EPA received comments on the CAIR proposal regarding its intended approach for acting on any future section 126 petitions that might be filed. Many commenters expressed support for the approach that EPA had outlined. Other commenters raised issues regarding the timing of emissions reductions under a new section 126 action. Some pointed out that the CAIR compliance date would be later than the 3 years allowed for compliance under section 126. Some were concerned that the proposed CAIR compliance date was later than many attainment dates and, therefore, States may need section 126 petitions in order to get earlier upwind reductions in order to meet their attainment dates. Some questioned the legal basis for linking the two rules. Several commenters expressed concern that EPA would be restricting the use of or weakening the section 126 authority. A number of commenters urged EPA not to prejudge any petition, but to evaluate each on its own merit. Some thought that any petitions submitted prior to designations or before States had had the opportunity to prepare SIPs would be premature and should be denied. Others suggested that the CAIR might not solve all the transport problems and that States would need to retain the section 126 tool to seek further reductions.

As discussed above, after issuing the CAIR proposal, EPA received, on March 19, 2004, the section 126 petition from North Carolina. In the final CAIR, we stated that when we propose action on the North Carolina petition, we would set forth our view of the interaction between section 110(a)(2)(D) and section 126 . Section II below explains EPA's view of this interaction.

In addition, we said we would take into consideration and respond to the section 126-related comments we received on the CAIR. The EPA has reviewed all the comments and will be providing responses to the relevant ones in the docket for this rulemaking action.

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

As described in section I.C.2 above, section 126 of the CAA is integrally related to the CAA's ''good neighbor'' provision, section 110(a)(2)(D), which requires States to adopt implementation plans to prohibit emissions from sources within the State that significantly contribute to other States' nonattainment of a NAAQS, or which interfere with other States' ability to maintain a NAAQS. Under section 126, a downwind State ''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 CAA section 110(a)(2)(D).'' Should EPA make a finding that a source or group of sources is emitting in violation of the section 110(a)(2)(D) prohibition, existing sources in violation may operate no longer than 3 months unless the sources comply with emission limitations and compliance schedules provided by the Administrator which bring about compliance ''as expeditiously as practicable, but in no case later than three years after the date of such finding.'' See section 126(c).

The EPA's determination whether or not to grant a section 126 petition consequently turns on whether SIPs are in violation of section 110(a)(2)(D). See *Appalachian Power* v. *EPA*, 249 F. 3d 1032, 1045–46 (DC Cir., 2001), holding that the determination of whether the ''prohibition'' on excessive interstate transport of air pollutants is being violated is the same under section 110(a)(2)(D) and section 126; see also North Carolina Petition p. 22 (''the operative legal standard under sections 110 and 126 is identical''). Moreover, because of this interrelation and identity, EPA has construed section 126 as applying on a statewide contribution basis when dealing with issues of interstate transport of ozone precursors. This means that a finding by EPA that a SIP is in violation of section 110(a)(2)(D)(i) is a sufficient basis for a finding that sources within that State are in violation of that prohibition for purposes of section 126(b) (64 FR at 28282). No more individualized determination for a source or group of sources is necessary. *Id.* This is because sources' contribution to nonattainment is collective, so that even relatively small individual contributions are significant in the aggregate. *Id.* Thus, ''[i]f State-wide emissions contribute significantly to nonattainment downwind, then the State's section 126 sources may be subject to SIP controls; if State-wide emissions do not contribute significantly, then the State's section 126 sources would not be subject to SIP control.'' *Id.;* see *Appalachian Power,* 249 F. 3d 1049–50 (upholding this determination). Under this approach, therefore, if EPA determines that a State's SIP fails to meet the requirements of section 110(a)(2)(D)(i) with respect to a downwind State, it follows that the prohibition in section 126 is also violated with respect to that downwind State.

In the CAIR, EPA defined ''significant contribution'' as consisting of an air quality factor reflecting an upwind State's ambient impact on downwind nonattainment areas, and the cost-factor of availability of highly cost-effective controls (70 FR at 25174). The reductions required are expressed as Statewide budgets of $PM_{2.5}$ and ozone precursors (SO_2 and NO_X for $PM_{2.5}$, and NO_X for ozone) susceptible to reduction by highly cost effective controls. For $PM_{2.5}$, an upwind State must contribute at least 0.2 $\mu g/m^3$ $PM_{2.5}$ to at least one downwind nonattainment area (the ''link'') to satisfy the air quality part of the test. *Id.* at 25191. For ozone, the air quality component is satisfied if the maximum contribution by an upwind State is at least 2 parts per billion, the average contribution is greater than one percent, and certain other numerical criteria are met. *Id.* at 25175. The CAIR rule also stated that an upwind State's emissions can interfere significantly with a downwind State's maintenance of a NAAQS when EPA, or a State, can reasonably project based on available data that in the absence of CAIR controls, a current or projected nonattainment area will revert to nonattainment, after having achieved attainment, due to continued emissions growth or to other relevant factors. *Id.* at 25193; see also the response to comments document for the CAIR, section III.C.17, docket number OAR–2003–0053–2165.

The EPA is adopting this same approach in the present rulemaking. This, of course, is a consequence of EPA's interpretation (just explained) that a violation of 110(a)(2)(D)(i) also indicates that sources are emitting in violation of the section 110(a)(2)(D) prohibition for purposes of section 126(b). For the same reason, EPA is adopting the highly cost-effective component of the test from the CAIR rule, with the consequent emission budgets.

Once EPA finds under section 126(b) that a source (or sources) is operating in violation of the section 110(a)(2)(D)(i)

prohibition, the violation would be eliminated (assuming that sources continue to operate) by EPA approving a SIP containing provisions eliminating the significant contribution, or by EPA itself adopting a FIP which contains provisions eliminating that contribution, by the deadline for the section 126 sources. This means that a section 126(b) violation no longer exists once EPA approves a timely SIP, or adopts a timely FIP, requiring each State contributing significantly (in this case, to North Carolina) to reduce emissions to the levels reflecting elimination of the State's significant contribution, as specified in the CAIR. This result is again a consequence of the integral relationship of section 126(b) and section 110(a)(2)(D).

The EPA intends to apply these same principles in responding to future section 126 petitions from States in the CAIR region addressing CAIR pollutants. Thus, we would deny these petitions with respect to any State having an approved SIP meeting the CAIR emissions reductions requirements and with respect to States for which EPA has promulgated a CAIR FIP. In such a case there would be no underlying section 110(a)(2)(D) violation, and such a violation is the predicate for granting a section 126 petition.

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

As discussed in the preceding section, EPA is proposing to rely on the conclusions drawn in the final CAIR in determining whether emissions from sources in the States named in the petition contribute significantly to 8-hour ozone and/or $PM_{2.5}$ nonattainment and maintenance problems in North Carolina. 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 Proposed 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 preamble Table VI–9; 70 FR at 25249). Consequently, EPA is proposing to deny the section 126 petition with respect to the 8-hour ozone NAAQS.

B. What Is EPA's Proposed 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 $\mu g/m^3$ contribution threshold level rather than the proposed 0.15 $\mu g/m^3$ for the air quality portion of the significant contribution determination (70 FR 25190–25191). Based on the updated modeling and the 0.2 $\mu g/m^3$ contribution threshold level, EPA determined in CAIR that 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). As explained in section II above, under the collective contribution approach, 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 propose in response to the $PM_{2.5}$ portion of the section 126 petition, EPA is taking into consideration the FIP that is being proposed today in conjunction with this section 126 action (see section IV below). The FIP proposes control requirements for each of the States affected by the CAIR in order to achieve the emissions reductions required to address interstate transport. The EPA plans to issue the final FIP at the same time as the final section 126 action. Therefore, for EGUs in States linked to North Carolina in CAIR (and therefore, for which EPA is proposing a FIP), EPA is proposing in the alternative (1) to deny the petition if EPA issues the final FIP 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 does not promulgate the FIP prior to or concurrently with the final section 126 response. Because the FIP 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. As discussed in section VI, we are proposing the Federal CAIR NO_X and SO_2 cap and trade programs as the control remedy for both the section 126 action and the FIP. Therefore, whether the upwind sources in these 10 States are regulated under the section 126 action or the FIP, the emissions reductions requirements and compliance deadlines would be the same.

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 25247–48), EPA is proposing to deny the petition.

The EPA notes that it is not including any regulatory text for the proposed findings because EPA's preferred alternative is to promulgate the CAIR FIP and fully deny the North Carolina section 126 petition.

C. What Are the Proposed Requirements for Sources for Which EPA Makes a Section 126(b) Finding?

The EPA is proposing, in sections V and VI below, NO_X and SO_2 Federal cap and trade programs that would apply to any new or existing EGU for which EPA ultimately makes a section 126(b) finding in response to the North Carolina petition. The proposed Federal cap and trade programs are largely the same as the model trading rules for EGUs that EPA provided in the CAIR as control options for States, although EPA is proposing certain differences that are primarily intended to account for Federal implementation and to facilitate transfer from the proposed Federal programs to State programs. (See section VI for a description of the differences). The same EGU budgets and compliance dates would apply.

As in the CAIR, the NO_X and SO_2 reductions would occur in two phases.

The first phase of NO_X reductions would start in 2009 (covering 2009–2014) and the first phase of SO_2 reductions would start in 2010 (covering 2010–2014); the second phase of reductions for both NO_X and SO_2 would start in 2015 (covering 2015 and thereafter).

Section 126(c) states, in relevant part, that: it shall be a violation of this section and the applicable implementation plan in such State

(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]) or 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.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(D)([i]) as expeditiously as practicable, but not later than three years after the date of such finding.

The Federal cap and trade programs that EPA is proposing would satisfy the section 126 requirements. The control requirements would ensure that the sources do not emit in violation of the section 110(a)(2)(D)(i) prohibition and would serve as the alternative set of requirements that the Administrator may apply for the purpose of allowing existing sources subject to a section 126(b) finding to operate for more than 3 months after the finding is made.

Under the consent decree, described in section I above, EPA must sign the final action on the petition by March 15, 2006. If EPA makes any findings at that time, and they become effective 60 days later, consistent with section 126(c), compliance with the control remedy must be required no later than May 14, 2009. The control remedy that EPA is proposing would satisfy the 3-year compliance period in section 126(c). First, the remedy would commence within the 3-year maximum timeframe set out in section 126(c), since as just explained, the phase I NO_X control requirements would take effect on January 1, 2009. Further controls on SO_2 and NO_X would be required as soon as technically feasible. The EPA views the proposed NO_X and SO_2 emissions reduction requirements as a single action, but one that cannot be fully implemented in 2009 and instead must be implemented in phases solely for reasons of feasibility. In analyses conducted for the CAIR, EPA determined that part of the NO_X and SO_2 emissions reductions cannot feasibly be implemented until 2015 and the first phase of SO_2 emission reductions cannot feasibly be implemented until 2010. In this regard, we note that section 126(c) on its face contemplates that control measures satisfying both section 126 and section 110(a)(2)(D) may stretch out beyond a 3-year period. Section 126(c) states that sources that are subject to a section 126(b) finding may continue to operate if they comply with ''emissions limitations and compliance schedules (*containing increments of progress*) provided by [EPA]'' (emphasis added); the reference to increments of progress can describe a situation where compliance is stretched out over periods exceeding 3 years provided initial action (*i.e.*, an initial increment of progress) occurs within 3 years. See also North Carolina Petition at pp. 28–29 supporting a phased approach to compliance and noting that a stepwise approach to regional emissions reductions is ''consistent with the requirement that a section 126 remedy 'contain[] increments of progress * * *' '' Section VII of this preamble describes the proposed section 126 control requirements in greater detail.

D. When and How Would EPA Withdraw Section 126 Findings and Control Requirements in a State if EPA Approves a SIP To Meet the CAIR?

Under today's proposal, by March 15, 2006, EPA would take final action to either make section 126 findings for sources in 10 States contributing significantly to North Carolina's nonattainment and maintenance problems for the $PM_{2.5}$ NAAQS or promulgate a FIP for all CAIR States for the $PM_{2.5}$ and/or 8-hour ozone NAAQS. The CAIR requires States to submit SIP revisions by September 11, 2006. Therefore, the Federal CAIR trading programs would be promulgated in advance of the SIP submission deadline. As stated previously, the section 126 response and FIP would not limit the options available to States to meet the requirements of CAIR. The EPA intends to withdraw the section 126 or the FIP requirements in a State in coordination with approval of an implementation plan for the State that meets the CAIR requirements. In the timing of the SIP approval, EPA would take into consideration whether the SIP approval would occur before or after EPA has begun recording allowances in source accounts under Federal CAIR trading programs.

It is EPA's preference that States regulate sources to control the interstate transport, including making decisions regarding NO_X allocations, should a State choose to participate in the State CAIR trading programs. Consequently, EPA does not intend to record NO_X allocations in sources' allowance accounts (or take any other steps to implement the section 126 or FIP requirements that could impact a State's ability to regulate their sources in a different manner) until December 1, 2007, more than a year after the CAIR SIP submission deadline.[6] This would allow EPA time to take rulemaking action to approve timely, compliant SIPs and withdraw the section 126 or FIP requirements.

If a SIP is approved that includes the EPA-administered State CAIR trading programs after EPA has recorded allowances for the Federal CAIR trading programs, EPA would work with the State to ensure a smooth transition from the Federal trading programs to the State trading programs. To preserve the integrity of the trading program budgets, once Federal allocations are recorded in source accounts for a particular control period, EPA does not intend to approve overlapping State allocations for the same control period. Rather, EPA will work with the States to approve State allocations for control periods that begin upon the expiration of a control period for which Federal allocations have been recorded in source accounts.

In section VI below, EPA proposes the schedule for recording Federal NO_X allocations in source accounts. Under this schedule, EPA seeks to balance two goals: (1) To provide adequate time for States to submit and for EPA to approve SIPs containing the NO_X allocations, and (2) to provide certainty to sources regarding their CAIR NO_X allocations in adequate time for sources to make compliance decisions. Under this schedule, EPA would record the allowances 1 year at a time for the first two control periods. Thus, for SIPs approved after EPA has recorded the 2009 allocations on December 1, 2007, but before EPA has recorded the 2010

[6] 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 would take any necessary actions to implement the monitoring provisions of the proposed Federal trading rules in time for monitoring to begin in 2008. To the extent that a State chooses to control EGUs to meet its CAIR obligations, the monitoring requirements would be identical whether EPA regulated EGUs through the proposed Federal trading programs or the State regulated EGUs through their SIP.

allocations on December 1, 2008, EPA would time the withdrawal of the FIP or section 126 requirements such that allocations would be made under the State CAIR trading program for the 2010 control period. There would be another opportunity for transitioning from the Federal to State trading programs for the 2011 control period. As discussed in section VI below, EPA is proposing to record NO_X allowances in source accounts by December 1, 2009 for the 2011–2013 control periods. Therefore, for SIPs approved after December 1, 2009, the transition from the Federal to State program would not occur until the 2014 control period. The EPA believes it is unlikely that there would be any outstanding SIPs to be approved after December 1, 2009. The EPA intends to work with States to help ensure that NO_X allowances can be allocated under the State CAIR trading programs beginning with the initial 2009 control period. In order to expedite the approval of the SIP allowance allocation methodology and provide additional flexibility to States, EPA is proposing an abbreviated SIP option as discussed in section VI. See section VI for a detailed discussion of EPA's proposed schedule for recording Federal NO_X allocations in source allowance accounts.

For States that choose to implement the CAIR requirements using a method other than the EPA-administered State CAIR trading programs, the EPA would also carefully consider the timing of the transition from the Federal trading programs to the State-implemented programs to avoid disruption of the Federal trading programs within any annual or ozone season control period.

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

A. What Is the Legal Framework for the Proposed FIP?

Section 110(c)(1) of the CAA requires the Administrator to promulgate a Federal Implementation Plan (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 issuing a SIP disapproval and it must do so within 2 years. However, EPA is relieved of this obligation 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 has broad authority to act when it has identified deficiencies in SIPs. This authority is of three general types. 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 to cure a SIP deficiency in any way not clearly prohibited by statute. 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 under the CAA in any way not clearly prohibited by an explicit provision of the CAA. 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)). See also *City of Santa Rosa* v. *EPA*, 534 F.2d 150, 153–154 (9th Cir., 1976) (upholding the Administrator's authority to promulgate a FIP imposing gas-rationing in Los Angeles on a massive scale). ''The authority to regulate pollution carries with it the power to do so in a manner reasonably calculated to reach that end.'' *Id.* at 155.

In addition, when EPA has determined that a State has not completely discharged its primary responsibility to protect its air quality, EPA is compelled to assume this task and thus the powers of the defaulting State accrue to EPA. 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 25167–68) 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 proposal contains no such FIP. The reader is referred to the CAIR for a more detailed discussion of the interaction of the CAIR with Indian country (70 FR 25167–68, 25315).

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

As described in the CAIR, EPA views seriously its responsibility to address the issue of regional transport of ozone and ozone precursor emissions.

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 specific 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 enable downwind States to achieve the NAAQS in order to provide clean air for their residents.

Therefore, EPA is proposing FIPs today in conjunction with the proposed action regarding North Carolina's section 126 petition concerning transport of $PM_{2.5}$ and 8-hour ozone precursors as discussed in section III of this proposal. The EPA intends to promulgate these FIPs at the same time as its response to North Carolina's section 126 petition, which must 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 rulemakings because they both address interstate transport, both will apply to EGUs, and because the States covered by the response to the section 126 petition are a geographical subset of the States covered by CAIR. In today's action, EPA is not proposing to promulgate FIPs for any States not covered by CAIR.

The EPA believes it is appropriate to finalize the FIP in March 2006 on the same schedule as EPA's response to the section 126 petition. Moving quickly to promulgate a FIP is consistent with Congress' intent that attainment occur in these downwind nonattainment areas ''as expeditiously as practicable'' (sections 181(a), 172(a)). 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 are affected by the North Carolina section 126 petition, will be required to achieve emissions reductions at the same time.

By proposing and 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, could 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 Agency proposes to provide States that are subject to today's proposed Federal requirements with the option to submit abbreviated SIP revisions covering specific elements of the Federal trading programs without submitting full SIP revisions to meet the requirements of CAIR. By proposing to accept such abbreviated SIP revisions, the Agency intends 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 to meet the requirements of CAIR. As there are no sanctions associated with the proposed FIP, EPA anticipates that some States may prefer to avoid spending the time and money necessary to submit a full SIP revision.

The Agency would accept abbreviated SIP revisions for any or all of the following 4 specific elements of the Federal trading programs: (1) Provisions for non-EGUs to opt-in to the Federal trading programs, (2) allocating annual and/or ozone season NO_X allowances to individual sources in the State, (3) allocating allowances from the annual NO_X Compliance Supplement Pool (CSP) to individual sources in the State, 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 to sources in their State and 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.

The EPA requests comment on the proposed 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 is found in Section VI.

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. We remain ready to work with the States to develop fully approvable SIPs. The FIP will not be promulgated for any State that has an approved SIP implementing the CAIR requirements in place prior to promulgation of the FIP. In addition, EPA will withdraw the FIP for any State once EPA approves a SIP that meets the CAIR requirements in that State.

Having the FIP in place early will provide 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 program. 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, EPA would in no way preclude a State from developing its own SIP to either adopt the trading rule with any discretionary elements allowed by the CAIR, or to meeting the State emissions budget through different measures of the State's choosing. The EPA will carefully consider 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 will enhance 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 would be designed by EPA to achieve the same total emissions reductions described in the CAIR, the specific control measures assigned in the FIP could be different from what a State might choose.

In selecting the control measures for the FIP, EPA is proposing 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 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 Would EPA Remove the FIP Requirements if EPA Approves a SIP To Meet the CAIR?

As discussed previously, EPA intends to finalize the FIP by March 15, 2006, 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's intended process for withdrawing the FIP or section 126 requirements is discussed above under section III.D.

V. Emission Reduction Requirements for the Proposed CAIR FIP and Proposed Section 126 Response

A. Overview of Emission Reduction Requirements

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 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 ozone season NO_X emission reduction requirements for States that contribute significantly to downwind 8-hour ozone nonattainment. The CAIR requires upwind States to revise their State implementation plans (SIP) 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.

The EPA determined the required amounts of CAIR emission reductions based on the application of highly cost-effective controls on electric generating units (EGUs). The States have flexibility in how to achieve the CAIR emission reductions.[7] The CAIR includes model rules for regionwide EGU emission cap and trade programs, which States can choose to adopt to obtain the required reductions in a flexible and cost-effective manner (the CAIR SIP model trading rules).

Today, EPA is proposing FIPs that are substantively the same as the CAIR SIP model cap and trade programs. The proposed FIPs would achieve the NO_X and SO_2 emission reductions required under the CAIR, by requiring EGUs in the affected States to reduce emissions through participation in Federal CAIR NO_X and SO_2 cap and trade programs. The EPA intends to integrate these Federal trading programs with the model trading programs that States may choose to adopt to meet the CAIR (see section VI.J in this preamble for a discussion of coordination between today's proposed Federal cap and trade programs and CAIR SIP cap and trade programs). The proposed Federal CAIR cap and trade programs would 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.

For States affected by the proposed section 126 remedy (see section III for affected States), the Federal CAIR cap and trade programs would achieve the required emission reductions. As explained in section I of this preamble, for sources in States that the Agency found to be contributing significantly to nonattainment or maintenance in North Carolina under CAIR, the Agency is proposing to deny the petition for sources in any such State if, prior to or concurrently with the final section 126 response, EPA promulgates a FIP to address the interstate transport from that State. The Agency is proposing, in the alternative, to grant the petition. The Agency intends to promulgate FIPs concurrently with the final section 126 response.

The regionwide emission reduction requirements and State emission budgets that are the basis for today's proposal were established in the CAIR rulemaking. The EPA is not requesting comment on its determination of the CAIR regionwide emission reduction requirements or State emission budgets, nor is the EPA requesting comment on the CAIR regionwide requirements or State budgets themselves.

On May 12, 2005, the Agency proposed to find that Delaware and New Jersey contribute significantly to downwind $PM_{2.5}$ nonattainment and

[7] The amounts of State-by-State emission reductions required by CAIR are determined based on State EGU emission budgets. Determination of a State's emission reduction requirements depends on the source categories that the State chooses to control and, if the State controls only EGUs, on whether it chooses to participate in the EPA-administered EGU emissions cap and trade programs. See section V in the CAIR NFR preamble (70 FR 25229) as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005, for detailed discussion of the relationship between CAIR EGU emissions budgets and the State emission reduction requirements. Also see § 51.123 and § 51.124 (70 FR 25319–25333).

thus proposed to require annual SO_2 and NO_X controls in these two States (70 FR 25408). (In the CAIR NFR, the Agency found Delaware and New Jersey to contribute to downwind 8-hour ozone nonattainment but not to downwind $PM_{2.5}$ nonattainment). Based on the proposal to require annual SO_2 and NO_X controls in Delaware and New Jersey, today's FIP proposal includes requirements for annual SO_2 and NO_X control in these two States. The EPA determined these required amounts of emission reductions based on the application of highly cost-effective controls on EGUs, and the proposed FIP would achieve these reductions by requiring EGUs to participate in the Federal CAIR cap and trade programs.

The proposed CAIR FIP would require annual SO_2 and NO_X and ozone season NO_X emission reductions (and the proposed section 126 remedy would require annual SO_2 and NO_X reductions) from EGUs in affected States, through participation in regionwide Federal cap and trade programs. The Agency intends the applicability provisions in today's proposal to be identical to the applicability provisions in the CAIR model cap and trade programs. As discussed elsewhere in today's preamble, the Agency is proposing two revisions to the applicability provisions in the CAIR model cap and trade programs. The applicability provisions that EPA is proposing in today's action for the FIP and section 126 remedy would be identical to the applicability provisions in the CAIR model programs if the two proposed revisions to the applicability provisions in the CAIR model programs are finalized. (See section VI.C in today's preamble for a discussion of the proposed applicability provisions for today's action, and see section VII for the proposed revisions to the applicability provisions in the CAIR model programs.)

In this section, EPA describes the approaches for determining regionwide emission caps and State emission budgets taken in the CAIR rulemaking. In section VI in this preamble, the Agency explains in detail the proposed Federal CAIR cap and trade programs for the CAIR FIP and section 126 response.

In today's action, the Agency is proposing a federally-administered program to meet the CAIR emission reduction requirements on the timeline established in CAIR. Today's proposal does not establish those emission reduction requirements or schedule, which were established by the CAIR rulemaking. Thus, the Agency is not requesting comment on the emission reduction requirements or the schedule for implementing the emissions reductions.

The Agency is taking this action to satisfy the concerns of North Carolina cited in its section 126 petition and 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 these FIPs, and EPA does not intend CAIR FIPs to have any other negative consequences for the affected States. To the contrary, EPA is proposing 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. What Is EPA's Approach for Determining Regionwide NO_X and SO_2 Emissions Caps and State Emissions Budgets?

1. Determination of Regionwide Caps for SO_2 and NO_X

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). In determining the amounts of SO_2 and NO_X emissions that must be eliminated for compliance with CAIR, EPA evaluated the amounts of SO_2 and NO_X emissions in upwind States that contribute significantly to downwind $PM_{2.5}$ nonattainment and the amounts of NO_X emissions in upwind states that contribute significantly to downwind 8-hour ozone non-attainment. The EPA determined the amounts of emissions that must be reduced to eliminate significant contributions from upwind States, by applying highly cost-effective control measures to EGUs and determining the emissions reductions that would result (70 FR 25195–25229).

EPA used the Integrated Planning Model (IPM) to analyze the cost effectiveness of the CAIR emission reduction requirements.[8] The EPA modeled the cost effectiveness of CAIR assuming interstate emissions trading. While the Agency does not require States to participate in the CAIR SIP regionwide interstate EGU cap and trade programs, we believe it is reasonable to evaluate control costs assuming States choose to participate in such programs since participation will result in less expensive emission reductions. The Agency modeled the CAIR requirements as three regionwide EGU cap and trade programs (an annual SO_2 program, an annual NO_X program, and an ozone season NO_X program). Section IV.A.1 in the CAIR NFR preamble provides more discussion of EPA's cost modeling methodology for the CAIR rulemaking (70 FR 25196–25197). The Agency also evaluated the feasibility of achieving the CAIR emission reduction requirements in the CAIR time-frame, as discussed in section IV.C. in the CAIR NFR preamble (70 FR 25215–25225).

For SO_2, the regionwide annual cap for 2015 and later (the second CAIR phase) is based on a 65 percent reduction of title IV Phase II allowances allocated to units in the 23 States and the District of Columbia that are required by CAIR to implement annual SO_2 controls. The regionwide annual SO_2 cap for the years 2010–2014 (the first CAIR phase) is based on a 50 percent reduction from those same title IV allocation amounts. The EPA determined these regionwide caps to be highly cost effective by analyzing the cost of controlling emissions from EGUs. Details of EPA's analysis are in section IV in the CAIR NFR preamble (70 FR 25195–25229).

Both the annual and the ozone season NO_X regionwide caps were determined by applying uniform NO_X emission rates to recent historic heat input for EGUs in the affected States (23 States and the District of Columbia for annual NO_X, 25 States and the District of Columbia for ozone season NO_X). For 2015 and later (the second CAIR phase), the Agency applied an emission rate of 0.125 lb/mmBtu to recent historic heat input. For the years 2009–2014 (the first CAIR phase) the Agency applied an emission rate of 0.15 lb/mmBtu. The heat input amounts used in these calculations were the highest annual heat input (or ozone season heat input for the ozone season caps) from Acid Rain Program units for any year from 1999 to 2002 for each State. The EPA determined the resulting regionwide caps to be highly cost effective by analyzing the cost of controlling emissions from EGUs. Details of EPA's analysis are in section IV in the CAIR NFR preamble (70 FR 25195–25229).

[8] 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.

2. Determination of State by State Emissions Budgets for SO_2 and NO_X

a. Determination of State SO_2 Emissions Budgets

In CAIR, the EPA determined State annual SO_2 emissions budgets for 2015 and later based on a 65 percent reduction from title IV Phase II allowances allocated to units in the affected States and the District of Columbia, and for the years 2010–2014 based on a 50 percent reduction from the title IV allocation amounts. Section V.A.1.a of the CAIR NFR preamble, 70 FR 25229–25230, describes the approach for determining State budgets. The Agency is not inviting comment on the CAIR State SO_2 budgets. The EPA employed the same approach to determining proposed State SO_2 budgets for Delaware and New Jersey in its proposal to include these two States in CAIR for annual SO_2 controls (70 FR 25416).

Today's proposed FIP and section 126 remedy would achieve the required SO_2 emission reductions through a regionwide Federal SO_2 cap and trade program for EGUs. As discussed further in section VI, below, the Federal CAIR SO_2 cap and trade program would rely on title IV allowances, which sources would retire at specified ratios greater than 1-to-1 for compliance with the proposed Federal CAIR 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 and are not directly relevant for today's proposal.

The CAIR State SO_2 budgets were established to provide States flexibility in selecting a control remedy to meet the requirements of CAIR. States can choose to participate in the EPA-administered CAIR SO_2 trading program, in which case sources would comply by retiring title IV allowances at the specified retirement ratios, and the CAIR State SO_2 budgets would not be directly relevant. For States that do not choose to participate in the EPA-administered SO_2 trading program, however, the CAIR State SO_2 budgets are used to determine the State's emission reduction requirements.[9] The EPA determined title IV allowance retirement ratios for the CAIR SIP model SO_2 trading program based on the ratio of the total of all States' CAIR SO_2 budgets (for 2010 and 2015) to the total of such States' title IV Phase II allowance levels.

In the CAIR FIP and 126 remedy, the EPA is proposing to use a Federal SO_2 trading program approach that is substantively identical to the CAIR SIP SO_2 model trading rule and relies on retirement of title IV allowances at the same specified ratios. Thus, State SO_2 emission budgets would not affect the distribution of SO_2 allowances and are not directly relevant for today's proposal.

For further discussion regarding achieving the required SO_2 reductions in today's proposed Federal program through retirement ratios for title IV allowances, see section VI in today's preamble. Also see the CAIR NFR preamble in section V.A.1.c (70 FR 25230) as well as section VII (70 FR 25255–25273).

b. Determination of State Annual and Ozone Season NO_X Emissions Budgets

In CAIR, EPA determined State annual and ozone season NO_X emissions budgets by apportioning the CAIR regionwide annual and ozone season NO_X caps to States based on each State's share of fuel-adjusted average recent historic heat input. For each CAIR State, for each year (1999 through 2002), the Agency summed heat input by fuel type, adjusted the heat input using fuel adjustment factors, and determined the average fuel-adjusted heat input for each State. The fuel adjustment factors that the Agency used to adjust heat input are 1.0 for coal, 0.4 for gas, and 0.6 for oil.

The EPA summed the average adjusted heat inputs for each State in the CAIR region (either the annual NO_X region or the ozone season NO_X region, as appropriate), and divided each State's average adjusted heat input by the regionwide total average adjusted heat input, to determine each State's proportion of the total. The Agency multiplied each State's proportion by the regionwide caps, to determine each State's proportional share of the regionwide caps. The EPA used the same methodology to determine both annual and ozone season NO_X State budgets, except that for annual budgets the annual heat input was used, whereas for ozone season budgets the ozone season heat input was used. (See section V of the CAIR NFR preamble for discussion of the Agency's determination of CAIR State emissions budgets, 70 FR 25229–25233.) The Agency is not inviting comment on the CAIR State annual and ozone season NO_X budgets.

For its proposal to include Delaware and New Jersey in CAIR for annual NO_X controls, the Agency proposed to determine annual State NO_X budgets for these two States by first calculating a total ''regional'' cap for the two States, using the same methodology used in CAIR to develop regionwide NO_X caps (the regionwide NO_X cap methodology is described above). The EPA proposed to determine State annual NO_X budgets for these two States by apportioning the regional Delaware and New Jersey cap back to the two States using the same fuel-adjusted heat input basis as was used in the CAIR NFR, as described above (also see section IV.B. in the proposal to include Delaware and New Jersey in CAIR for $PM_{2.5}$ purposes, 70 FR 25416).

In today's proposed Federal CAIR NO_X cap and trade programs for EGUs, the State annual and ozone season EGU NO_X budgets are the same as the budgets in the CAIR NFR (annual NO_X budgets for Delaware and New Jersey in today's proposal are the same as the annual NO_X budgets for these two States in the proposal to include them in CAIR for $PM_{2.5}$ purposes).

For each State affected by the proposed Federal CAIR NO_X trading programs, the State NO_X budgets are the total amount of allowances[10] that the Agency will allocate to sources in the State. See section VI in this preamble for EPA's proposed methodology for allocating NO_X allowances to affected sources. The EPA's proposed allocation methodology for NO_X allowances in the annual NO_X and the ozone season NO_X cap and trade programs is in contrast with the approach taken in the case of SO_2 allowances, which are already allocated under title IV of the Clean Air Act to sources in perpetuity, as explained above.

C. What Are the State EGU Emission Budgets for the CAIR FIP and the Section 126 Response?

1. What Are the Annual State EGU SO_2 Emissions Budgets?

As explained above, the required SO_2 emission reductions would be achieved solely based on the requirement that sources retire title IV SO_2 allowances (which were already allocated to sources by Congress) at specified ratios greater than 1-to-1. Because State SO_2 emission budgets do not affect the distribution of SO_2 allowances and are

[9] See section V in the CAIR NFR preamble (70 FR 25229–25233) as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005, for detailed discussion of the relationship between CAIR EGU emissions budgets and the State emission reduction requirements. Also see § 51.123 and § 51.124 (70 FR 25319–25333).

[10] As in CAIR, an annual NO_X allowance would authorize the emission of a ton of NO_X during a calendar year and an ozone season NO_X allowance would authorize the emission of a ton of NO_X during an ozone season. See section VI in this preamble for further discussion and see the proposed regulatory text for definitions.

not directly relevant for today's proposal, the Agency is not including State SO_2 budgets in today's proposal. See section VI in this preamble for discussion of the proposed Federal CAIR SO_2 trading program.

2. What Are the Annual State EGU NO_X Emissions Budgets?

a. For States Affected by the CAIR FIP

For the proposed Federal CAIR annual NO_X cap and trade program, State NO_X emissions budgets—for the 23 States and the District of Columbia that are required by CAIR to control annual NO_X—are provided in Table V–1, below. These annual NO_X budgets are the same as the budgets shown in Table V–2 of the CAIR NFR preamble (70 FR 25231). Table V–1, below, also includes annual NO_X budgets that EPA proposed for Delaware and New Jersey (these are the same budgets that were included in Table IV–1 in ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule: Proposed Rule'' (70 FR 25416)). See section VI in this preamble for EPA's proposed methodology for allocating annual NO_X allowances to sources in the Federal CAIR cap and trade programs.

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

[In 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
Total	1,521,707	1,268,091

b. For States Affected by the Section 126 Response

For the proposed Federal CAIR annual NO_X cap and trade program—for the ten States affected by the proposed section 126 remedy (see section III in this preamble for affected States)—the annual State NO_X emissions budgets are the same as the budgets shown in Table V–1, above. See section VI in this preamble for EPA's proposed methodology for allocating annual NO_X allowances to sources in the Federal CAIR cap and trade programs.

3. What Are the Ozone Season EGU NO_X Emissions Budgets?

a. For States Affected by the CAIR FIP

For the proposed Federal CAIR ozone season NO_X cap and trade program, State EGU NO_X emissions budgets—for the 25 States and the District of Columbia that are required to control ozone season NO_X—are shown by State in Table V–2, below. These ozone season budgets are identical to the budgets in Table V–4 in the CAIR NFR preamble (70 FR 25233). See section VI in this preamble for EPA's proposed methodology for allocating ozone season NO_X allowances to individual sources for the Federal CAIR ozone season NO_X cap and trade program.

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

[In tons]

State*	State NO_X Ozone season budget 2009–2014	State NO_X Ozone season budget 2015 and thereafter
Alabama	32,182	26,818

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

[In tons]

State*	State NO_X Ozone season budget 2009–2014	State NO_X Ozone season budget 2015 and thereafter
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
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.

b. For States Affected by the Section 126 Response

As explained in section III in this preamble, the EPA is proposing to deny the ozone portion of the section 126 petition. Therefore, the Agency is not proposing ozone season NO_X State budgets for purposes of the section 126 remedy.

4. What Are the Amounts of Allowances Available in the State Annual NO_X Compliance Supplement Pools?

The CAIR established State Compliance Supplement Pools (CSP) of annual NO_X allowances of vintage 2009. Under CAIR, a State that elects to achieve its CAIR annual NO_X reduction requirements by creating an annual NO_X cap and trade program can allocate CSP allowances (using mechanisms specified in CAIR) to its sources for use in complying with such an annual NO_X program (see section VII in the CAIR NFR preamble for discussion, 70 FR 25255–25273).

Today's proposed Federal CAIR annual NO_X cap and trade program includes the same State CSP amounts as were established in CAIR. See section V in the CAIR NFR preamble (70 FR 25231–25232), as well as the technical support document entitled ''Regional and State SO_2 and NO_X Emissions Budgets,'' March 2005 (in the CAIR docket) for discussion of the Agency's process for determining the annual NO_X CSP amounts for each CAIR State. The Agency is not inviting comment on the CSPs established in CAIR.

For the proposed Federal CAIR annual NO_X cap and trade program, the CSP amount for each State is provided in Table V–3, below. These are the same CSP amounts as shown in the CAIR NFR preamble, Table V–3 (70 FR 25232). The CSP amounts for Delaware and New Jersey—if these two States are part of the final CAIR annual NO_X requirements as the Agency has proposed—are also shown in Table V–3 below, as well as in Table V–3 in the CAIR NFR preamble (70 FR 25232) and in Table IV–3 in ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule: Proposed Rule'' (70 FR 25417). See section VI in this preamble for EPA's proposed methodology for allocating CSP allowances to sources for the Federal CAIR annual NO_X cap and trade program.

TABLE V–3.—CAIR ANNUAL NO_X COMPLIANCE SUPPLEMENT POOLS

[In 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

TABLE V–3.—CAIR ANNUAL NO_X COMPLIANCE SUPPLEMENT POOLS—Continued

[In tons]

State	Compliance supplement pool
Total	199,997

VI. Proposed Federal CAIR NO_X and SO_2 Cap and Trade Programs for EGUs

A. Purpose of Federal CAIR NO_X and SO_2 Cap and Trade Programs and Relationship to the Section 126 Petition and the CAIR

In today's action, EPA is proposing Federal CAIR NO_X and SO_2 cap and trade programs for EGUs as the control remedy for both the CAIR FIP and the section 126 response, should EPA make any section 126(b) findings (see section VI.C., below, for applicability provisions).

The Agency is proposing regulatory text for the CAIR FIP rules in today's action. Regulatory text for the section 126 remedy would be largely the same. The proposed new Federal NO_X and SO_2 cap and trade programs will be located in part 97 in title 40 of the CFR.

The Agency proposes three separate Federal CAIR cap and trade programs: (1) SO_2; (2) NO_X; and (3) ozone season NO_X. 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.

Participation in the proposed Federal CAIR NO_X and SO_2 cap and trade programs would be mandatory for all sources covered by the final CAIR FIP or by a final section 126(b) finding in response to the North Carolina petition. Note that, as discussed in section I in today's preamble, EPA is proposing to deny the section 126 petition with respect to the 8-hour ozone NAAQS, therefore the section 126 remedy would not include an ozone season NO_X program.

The emission sources that the Agency is proposing to include in the Federal CAIR NO_X and SO_2 cap and trade programs—EGUs fitting the applicability requirements described in section VI.C, below—are the same types of sources included in the CAIR NO_X Annual Trading Program, CAIR NO_X Ozone Season Trading Program, and CAIR SO_2 Trading Program (contained in part 96) that EPA promulgated as model trading rules that States may elect to use in responding to the CAIR. The emission sources identified in today's proposal are the sources for which EPA assumed emission reductions in determining the regionwide emission reduction requirements and calculating the State emission budgets in CAIR. (As discussed in section VII, below, EPA is proposing certain revisions clarifying the EGU definition in CAIR, and the proposed applicability provisions in the Federal CAIR trading programs are consistent with those proposed revisions.)

The CAIR established State EGU emissions budgets that each State would use to determine its required emissions reductions. The proposed Federal CAIR 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. The proposed section 126 remedy is limited to the set of States that North Carolina named in its petition and for which EPA makes a positive determination (see section III, above). The named States are a geographic subset of the CAIR States. Each of the three actions—the CAIR, the proposed CAIR FIP, and the proposed section 126 remedy—aim to reduce the transport of $PM_{2.5}$ precursors by controlling emissions from sources in a given State that are found to be contributing significantly to nonattainment and maintenance in another State. The CAIR and the proposed CAIR FIP also aim to reduce transport of ozone precursors by controlling emissions from sources in a given State that are found to be contributing significantly to nonattainment and maintenance in another State.

The EPA intends that if States choose to meet their emission reduction obligations under CAIR by adopting the SIP model cap and trade rules and participating in the EPA administered trading programs, such participation will be fully integrated with Federal CAIR NO_X and SO_2 cap and programs that EPA may promulgate in a final FIP or in a final section 126 response. Integration is possible because, as noted above, the CAIR, a corresponding FIP, and the section 126 remedy all seek to mitigate transport of emissions from upwind sources that significantly contribute to downwind nonattainment of the $PM_{2.5}$ NAAQS, and the CAIR and a corresponding FIP both seek to mitigate such transport with regard to the 8-hour ozone NAAQS. Further, the sources covered in the CAIR SIP model cap and trade programs are the same types of sources named in the section 126 petition (except that the petition names a subset of the States affected by CAIR), and are the same as the sources that EPA proposes to regulate in the proposed FIP and section 126 remedy.

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 represents the same 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 proposed rule meets those criteria. The Agency also believes that, because today's proposal 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 design CAIR FIP and section 126 trading programs that are integrated with the CAIR SIP trading programs.

Under this scenario of common trading programs (*i.e.*, integrated FIP-section 126–SIP for NO_X annual, NO_X ozone season, and SO_2 trading programs), sources subject to Federal CAIR trading programs under the FIP or the section 126 remedy, and sources in States choosing to participate in the EPA-administered CAIR SIP trading programs could 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 submitted a SIP including CAIR EPA-administered emissions trading programs after EPA had established Federal programs under a FIP or section 126 response, disruptions to sources that would shift from regulation under a FIP or section 126 remedy to regulation under a SIP would be minimized.

The EPA proposes, in part 97, to establish the geographic boundaries of the common trading programs as those States submitting SIPs in response to the CAIR, or subject to FIPs, and/or the sources in States for which EPA makes a positive finding for the section 126 petition. The EPA would administer these common trading programs in collaboration with affected States.

Today, the Agency proposes Federal CAIR NO_X and SO_2 cap and trade programs for the FIP or section 126 remedy that are virtually the same as the CAIR SIP model trading programs (which are the model trading programs that States may choose to adopt in response to CAIR). Although EPA intends the proposed Federal CAIR cap and trade programs to be as similar as possible to the CAIR SIP model trading rules, the Agency is proposing certain differences as described below. The differences arise primarily from the need for Federal implementation of the programs rather than State implementation and to facilitate transfer from Federal to State-implemented programs. For example, under today's proposal, the Agency determines NO_X allowance allocations for each unit in the Federal CAIR annual and ozone season NO_X cap and trade programs, rather than EPA simply providing a recommended methodology for States to use to determine allocations in CAIR SIP NO_X trading programs. Note that today's proposed Federal CAIR 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.

As noted in section IV in this preamble, the Agency proposes to provide States that are subject to today's proposed Federal requirements with the option to submit abbreviated SIP revisions covering specific elements of the Federal trading programs without submitting full SIP revisions to meet the requirements of CAIR. The Agency would accept abbreviated SIP revisions for the following 4 specific elements of the Federal trading programs: (1) Provisions for non-EGUs to opt-in to the Federal trading programs, (2) allocating annual and/or ozone season NO_X allowances to individual sources in the State, (3) allocating allowances from the annual NO_X Compliance Supplement Pool (CSP) to individual sources in the State, 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. The Agency discusses each of these elements further below.

By proposing to accept such abbreviated SIP revisions, the Agency intends 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 to meet the requirements of CAIR.

As explained in the CAIR NFR, States have until September 11, 2006 to submit to the Agency revisions to their SIPs that meet the requirements of CAIR. The Agency proposes that, for abbreviated SIP revisions addressing the specific elements identified in today's proposal, States have until March 31, 2007 to make their submissions. The EPA proposes to allow States to submit abbreviated SIP revisions later than full revisions because the Agency anticipates that we will be able to complete the approval process more quickly for abbreviated SIP revisions due to their narrower scope. If States submit approvable full or abbreviated SIP revisions by these dates, the Agency believes it will be able to approve the revisions in time to record State NO_X allocations in source accounts by December 2007 for the first NO_X control period for any State submitting revisions that include NO_X allocations. See section VI.D. in this preamble for a detailed discussion of timing considerations with respect to NO_X allocations.

The Agency proposes to include appendices in part 97 that will list any States with approved abbreviated SIP revisions covering non-EGUs opt-ins, allocating NO_X allowances, distributing CSP allowances, or including non-CAIR NO_X SIP Call trading sources in the Federal CAIR ozone season NO_X trading program.

The EPA requests comment on the proposed option for States to submit abbreviated SIPs covering specific elements of the Federal trading programs.

B. Overall Structure of the Proposed Federal CAIR Cap and Trade Programs

In the CAIR NFR, the Agency provided model rules for the CAIR NO_X, CAIR ozone season NO_X, and CAIR SO_2 trading programs that States can use to meet the emission reduction requirements in the CAIR (in part 96). The proposed Federal CAIR cap and trade programs are based on these model rules. The EPA designed these rules to be similar to the NO_X SIP Call model trading rules (also in part 96) and to coordinate with the Acid Rain Program.

The Agency proposes in today's action that the mandated emission reductions will be achieved from EGUs (see section VI.C, below, for discussion of proposed applicability provisions). Descriptions of each of the proposed Federal CAIR cap and trade programs (*i.e.*, the SO_2 program, NO_X annual program, and NO_X ozone season program) are presented below.

The proposed Federal CAIR 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 would be required to monitor and report their emissions using part 75. Source information management, emissions data reporting, and allowance trading would be accomplished using on-line systems similar to those currently used for the Acid Rain SO_2 and NO_X SIP Call Programs.

Penalty provisions for excess emissions under the CAIR SIP model trading programs are described in the CAIR NFR preamble (70 FR 25274). The Agency intends the penalty provisions for excess emissions in today's proposal to be identical to the provisions in the CAIR. As discussed in section VII in today's preamble, the Agency is proposing revisions to 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 excess emissions penalty provisions in today's proposed Federal NO_X and SO_2 cap and trade programs would be identical to the penalty provisions in the CAIR if the proposed revisions to the CAIR SO_2 trading program penalties are finalized.

1. SO_2 Program

The proposed Federal CAIR SO_2 cap and trade program would require affected sources to hold SO_2 allowances sufficient to cover their emissions for each control period. This proposed program is based on the existing Acid Rain Program and would rely on title IV SO_2 allowances, in the same way that the CAIR SO_2 model trading rule relies on title IV allowances.

As in the CAIR SIP SO_2 model trading program, SO_2 reductions for the Federal CAIR SO_2 cap and trade program would be achieved by requiring sources to retire, in most cases, more than one title IV allowance for each ton of SO_2 emissions. Sources could use pre-2010 title IV SO_2 allowances for compliance with the Federal CAIR SO_2 cap and trade program at a 1-to-1 ratio (i.e., SO_2 allowances of vintage 2009 and earlier would offset one ton of SO_2 emissions). Allowances of vintages 2010 through

2014 would offset 0.5 tons of emissions (i.e., such allowances would 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 would offset 0.35 tons of emissions (i.e., such allowances would need to be retired at a ratio of 2.86-to-1, in other words 2.86 allowances for every ton of emissions). Thus, the emission value of an SO_2 allowance would be independent of the year in which it is used, but rather would be based on its vintage (i.e., the year in which the allowance is issued). These SO_2 allowance retirement ratios are identical to the retirement ratios in the CAIR NFR (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 proposes to use the single term, ''CAIR SO_2 allowance'' to refer to an SO_2 allowance under a CAIR SIP, CAIR FIP, or section 126 response.[11] A CAIR SO_2 allowance could be used for compliance with the SO_2 allowance-holding requirement in a CAIR SIP, CAIR FIP, or section 126 SO_2 trading program. Sources in States governed by any of these three SO_2 trading programs could trade CAIR SO_2 allowances with each other.The CAIR SIP SO_2 model trading rule (upon which the proposed Federal CAIR SO_2 program is based) is included in subparts AAA through III of part 96 (70 FR 25362–25382). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

2. NO_X Program

The proposed Federal CAIR annual NO_X cap and trade program would require affected sources to hold annual NO_X allowances sufficient to cover their emissions for each control period. The proposed program would rely on CAIR annual NO_X allowances that would be allocated to affected sources by the EPA (see section VI.D. for the Agency's proposed NO_X allocation methodology). As in CAIR, an annual NO_X allowance would authorize the emission of one ton of NO_X (see the proposed regulatory text for definitions).

As in the CAIR annual NO_X program, the Agency is proposing a Compliance Supplement Pool (CSP) of allowances that would be allocated to sources and could then be used for compliance with the Federal CAIR annual NO_X cap and trade program. As explained in the CAIR NFR, the Agency apportioned a regionwide pool of about 200,000 CSP allowances to the CAIR States (see 70 FR 25231–25232). Those State CSP amounts are provided in Table V–3 in this preamble. The Agency is not inviting comment on the apportionment of CSP allowances as determined in CAIR.

For the Federal annual NO_X cap and trade program in today's action, the Agency proposes that, for each affected State, we would allocate to sources in that State an amount of CSP allowances up to the amount that was apportioned to the State in CAIR. The Agency's proposed methodology to allocate CSP allowances to sources is described below, in section VI.D.

The Agency proposes that ozone season NO_X allowances issued under the NO_X SIP Call or under the Federal CAIR ozone season cap and trade program could not be used for compliance with the Federal CAIR annual NO_X reduction requirement (which is the same restriction as in the CAIR SIP model trading rules).

The Agency proposes to use the single term, ''CAIR NO_X allowance'' to refer to a NO_X allowance issued under a CAIR SIP, CAIR FIP, or section 126 response. A CAIR NO_X allowance could be used for compliance in a CAIR SIP, CAIR FIP, or section 126 NO_X trading program. Sources in States governed by any of these three annual NO_X trading programs could trade CAIR NO_X allowances with each other.

The CAIR SIP NO_X annual model trading rule (upon which the proposed Federal CAIR NO_X annual program is based) is included in subparts AA through II of part 96 (70 FR 25339–25362). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

3. Ozone Season NO_X Program

The proposed Federal CAIR ozone season NO_X cap and trade program would require affected sources to hold CAIR ozone season NO_X allowances sufficient to cover their emissions for each control period. For the proposed ozone season program, the control period would extend from May 1 through September 30 for each year of the program. As in CAIR, a NO_X ozone season allowance would authorize the emission of one ton of NO_X during the ozone season (see the proposed regulatory text for definitions).

The proposed program would rely on CAIR ozone season NO_X allowances that would be allocated to affected sources by the EPA (see section VI.D. for the Agency's proposed NO_X allocation methodology). In addition, pre-2009 NO_X SIP Call allowances could be banked into the proposed Federal CAIR ozone season NO_X program and used by affected sources for compliance with that program. The Agency proposes that NO_X allowances issued under the Federal CAIR annual NO_X program could not be used for compliance with the Federal CAIR ozone season NO_X reduction requirement (which is the same restriction as in the CAIR SIP model trading rules).

As discussed in the CAIR NFR, certain emissions sources that do not fit 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, EPA will no longer administer the NO_X SIP Call ozone season cap and trade program after the 2008 ozone season (see 70 FR 25290). The CAIR NFR provides that States that choose to participate in the CAIR EPA-administered ozone season NO_X 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 revision. 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 proposing that States may choose to submit an abbreviated SIP revision to bring their non-CAIR NO_X SIP Call trading sources into the proposed Federal CAIR ozone season NO_X cap and trade program. The abbreviated SIP revision would increase a State's ozone season NO_X trading budget under the proposed Federal CAIR ozone season NO_X 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 proposes to use the single term, ''CAIR Ozone Season NO_X allowance'' to refer to an ozone season NO_X allowance issued under a CAIR SIP or CAIR FIP. A CAIR ozone season NO_X allowance could be used for compliance in a CAIR SIP or CAIR FIP ozone season NO_X trading program. Sources in States governed by either of these ozone season NO_X trading programs could trade CAIR Ozone Season NO_X allowances with each other.

The CAIR SIP NO_X ozone season model trading rule, upon which the proposed Federal CAIR NO_X ozone

[11] A CAIR SO_2 allowance is a title IV SO_2 allowance. For purposes of compliance with the EPA-administered SIP SO_2 trading program or with the Federal SO_2 trading program in today's proposal, the value of such SO_2 allowances are discounted based on the allowance vintage year, as explained above.

season program is based, is included in subparts AAAA through IIII of part 96 (70 FR 25382–25405). Section VIII in the CAIR NFR preamble describes the CAIR model cap and trade programs (70 FR 25273–25289).

C. Sources Affected Under the Proposed Federal CAIR Cap and Trade Programs

Under the proposed Federal CAIR cap and trade programs, only EGUs are subject to the proposed rules. The Agency intends the applicability provisions for the proposed Federal CAIR trading programs to be identical to the applicability provisions for the CAIR SIP model trading programs.

In today's action, the Agency is proposing two revisions to the applicability provisions that were finalized in the CAIR SIP model trading rules (see section VIII.C. in the CAIR NFR preamble for applicability discussion at 70 FR 25276–25278 and see section VII in today's preamble for proposed changes to the CAIR EGU definition). The applicability provisions in today's proposed Federal CAIR trading programs are identical to the applicability provisions that would apply for CAIR if the Agency finalizes its proposed revisions to the CAIR model trading rules.

The proposed revisions to the applicability provisions in CAIR are intended to provide clarity and also to align the provisions more closely with the provisions in the title IV Acid Rain Program. The proposed revisions include adding an exemption for certain solid waste incinerators and exempting existing units that have not served a generator since before November 15, 1990. Each of these revisions is discussed below.

The status of solid waste incinerators under the CAIR as finalized is unclear. The Agency proposes a revision to the applicability provisions that would establish a specific exemption for certain solid waste incinerators. In the CAIR NFR, the Agency applied the CAIR model trading programs to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale (with exclusions for certain cogeneration units). Under the current definition, units would be considered fossil-fuel-fired if they burned any fossil fuel. Because solid waste incinerators usually use fossil fuel, at least to start up, and because they may burn fossil-fuel derived products (such as tires), they are often considered fossil-fuel-fired. Therefore, to the extent that such incinerators are connected to a generator of capacity greater than 25 MWe that generated electricity for sale, they would be considered affected units under CAIR. However, in the record for the CAIR, EPA stated that the CAIR requirements do not reflect any emission reductions from solid waste incinerators [12]. Therefore, the EPA is proposing an exemption for certain solid waste incinerators. The proposed exemption is analogous to an exemption for such units under the Acid Rain Program. The Agency proposes this exemption as a revision to the applicability provisions in the CAIR and proposes the identical exemption for the Federal CAIR trading programs.

In addition, the status, under CAIR, of units that formerly generated electricity for sale but stopped doing so many years ago warrants further clarification. As finalized in CAIR, the applicability provisions include units serving ''* * * at any time, since the start-up of the unit's combustion chamber, a generator * * *'' The Agency is proposing to revise the applicability provisions to exempt existing units that have not served a generator since before November 15, 1990. This proposed exemption is analogous to the approach under the Acid Rain Program. The Agency proposes this exemption as a revision to the applicability provisions in the CAIR and proposes the identical exemption for the Federal CAIR trading programs.

The Agency proposes that, in any jurisdiction for which a final CAIR FIP or section 126 response is promulgated, the following units will be subject to the Federal CAIR trading programs (*i.e.,* to the Federal CAIR SO_2, NO_X annual, or NO_X ozone season programs, as appropriate).

Except for a unit that qualifies as a cogeneration unit or a solid waste incinerator (see below), an affected unit is 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.

Cogeneration Unit Exemption

As in the CAIR NFR, certain cogeneration units would be exempt from the proposed Federal CAIR cap and trade 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, would be subject to the requirements of the proposed Federal CAIR trading rules. Otherwise, the unit would qualify for an exemption under the Federal rules. This cogeneration unit exemption is identical to the exemption in the CAIR NFR. (Note that some language to clarify application of the exemption is proposed for the CAIR SIP trading programs and the same language is also included in the proposed Federal trading programs.) 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

As explained above, the Agency is proposing today to provide an exemption for certain solid waste incinerators in the Federal CAIR cap and trade programs and to revise the provisions in the CAIR to exempt certain solid waste incinerators.

Specifically, the Agency proposes that, for 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, the unit is not subject to the Federal CAIR cap and trade programs.

The Agency also proposes that, for a solid waste incineration unit commencing operation on or after January 1, 1985, for which the average annual fuel consumption of non-fossil fuels for the first 3 calendar years of operation exceeds 80 percent and during any 3 consecutive calendar years after 1990 the average annual fuel consumption of non-fossil fuels exceeds 80 percent, the unit is not subject to the Federal CAIR cap and trade programs.

[12] ''Corrected Response to Significant Public Comments on the Proposed Clean Air Interstate Rule,'' April 2005, Docket # OAR–2003–0053–2172.

Individual Unit Opt-Ins

Today's proposal includes provisions for individual units to opt-in to the Federal CAIR trading programs. However, EPA proposes that those provisions 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 non-EGU opt-ins in the Federal CAIR trading programs.

The CAIR final rule includes provisions for individual unit opt-ins in the CAIR SIP model trading programs. As discussed in CAIR, States choosing to participate in the EPA-administered CAIR trading programs can choose whether or not to include opt-in provisions in their CAIR SIP revisions. If States choose to include opt-in provisions, they must include the provisions provided in the CAIR SIP model trading rules.

The Agency generally believes that States should have the option of including provisions for individual unit opt-ins in the CAIR SIP trading programs. The EPA considered requiring all States to have opt-in provision in the proposed Federal CAIR trading programs. By not requiring opt-in provisions in all States covered by the proposed Federal trading programs, the Agency seeks to preserve the States' flexibility to decide whether to allow opt-in units.

If EPA were to implement Federal CAIR trading programs with required provisions allowing individual units to opt-in, then some units may opt-in to the Federal programs. If the Agency subsequently approved a CAIR SIP revision that did not include opt-in provisions, then any units in the affected State that had opted-in under the Federal programs would be stranded. Such units would likely have made decisions—such as to install emission control equipment—based on participation in a trading program in which they would no longer be able to participate. The alternative to stranding such units would be for a State that would not otherwise choose to implement the opt-in provisions to implement such provisions at least for the past opt-in units. Thus, in order to preserve States' flexibility with regard to opt-ins the Agency does not propose to require the opt-in provisions to apply in all States under the Federal CAIR trading programs, but proposes that each State have the option of activating the opt-in provisions in the Federal CAIR programs through an abbreviated SIP revision.

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

D. Allocation of NO_X Emission Allowances to Sources

For States that choose under CAIR to participate in the EPA-administered annual and/or ozone season NO_X cap and trade programs (adopting the CAIR SIP model trading rules), the EPA provided in the CAIR NFR an example methodology for allocating NO_X allowances to individual sources. See section VIII.D. of the CAIR NFR preamble (70 FR 25278–25282).

For the Federal CAIR NO_X cap and trade programs, the Agency is proposing to use a NO_X allocation methodology that is consistent with the CAIR SIP model trading rules. Within each affected State, the Agency would allocate (i.e., distribute) to sources a total amount of allowances authorizing an emissions tonnage that equals the State's NO_X budget. The Agency's proposed NO_X allocation methodology is described below.

Timing of NO_X Allocations

For the reasons discussed in section IV in today's preamble, the EPA intends to finalize a CAIR FIP in March 2006. By finalizing a FIP, the EPA would in no way preclude a State from developing its own SIP either to adopt the CAIR model trading rules (with any discretionary elements allowed by the CAIR rule, including allocation of unit-by-unit NO_X allowances) or to meet the CAIR emission reduction requirements through different measures of the State's choosing.

The Agency's preference is for States to make decisions about NO_X allocations for their sources. The EPA intends to determine Federal unit-by-unit NO_X allocations (with opportunity for public comment). However, we intend to only record those Federal allocations in allowance accounts for sources located in a State without a timely, approved CAIR SIP (or timely, approved abbreviated CAIR SIP revision providing for State allocations).

In considering when to record Federal NO_X allocations in source accounts, the Agency seeks to balance the following two goals: (1) To provide certainty to sources regarding their CAIR NO_X allocations and time for sources to make compliance decisions, and (2) to provide States choosing to allocate CAIR NO_X allowances with time to do so and EPA with time to approve SIP revisions that include State allocations. Taking into consideration the CAIR SIP submittal dates (for full or abbreviated revisions), the amount of time needed by the Agency to approve SIP revisions, and the amount of time remaining before the initial CAIR control period, the EPA developed a proposed schedule for recording NO_X allocations in source accounts. The Agency's proposed NO_X allocation schedule is presented below. The EPA seeks comment on this proposed schedule.

The Agency will endeavor to work with States to ensure that we can approve SIP revisions and record State NO_X allocations in source accounts. The EPA intends to act in such a way that, once Federal 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 timely, approved abbreviated CAIR SIP revision containing allocations), we would not approve overlapping State allocations for that same control period.[13] Rather, EPA will work with the States to approve SIP revisions with State allocations for control periods that begin upon the expiration of a control period for which Federal allocations have been recorded in source accounts. It would be highly disruptive to the allowance market if Federal allocations that had been recorded and traded on the market could subsequently be rendered invalid due to approval of overlapping State allocations for the same control period.

The discussion in this section is focused on the timing for recordation of Federal allocations in coordination with approval of SIP revisions and recordation of State allocations—assuming States choose to participate in the EPA-administered CAIR NO_X trading programs. The Agency would also carefully consider the timing of a transition from Federal to State-implemented programs for any State choosing to use a method other than the EPA-administered State CAIR trading programs to meet their CAIR obligations.

As discussed further below, the EPA intends to record Federal allocations 1 year at a time for the initial control periods. In this manner, even if a State does not have an approved CAIR SIP

[13] As discussed in the CAIR NFR preamble (70 FR 25278), each State has the flexibility to allocate its allowances however they choose (within their State budgets) so long as certain timing requirements are met. Today's preamble discusses the approval of State allocations within the context of coordinating timing for recording Federal allocations—note that this discussion is not intended to imply any less flexibility for States in their choice of allocation methodology than the flexibility provided in CAIR.

revision in time for the Agency to record State allocations for the first control period, it would be possible to record State allocations for future control periods. The Agency strongly urges States to submit CAIR SIP revisions (full or abbreviated revisions) to the Agency in a timely manner, and we intend to work with States and ensure that we would not have overlapping allocations for any control period.

As explained in the CAIR NFR, the States have until September 11, 2006 to submit full CAIR SIP revisions to the Agency. For a State that chooses to participate in the EPA-administered CAIR SIP NO_X trading programs this SIP revision would be required to include the State's NO_X allocation methodology. The EPA anticipates that it may require about a year to approve a full SIP submission. The CAIR SIP rules require States to submit their first set of CAIR NO_X allocations to EPA by October 31, 2006.

As discussed above, the Agency is proposing that States may choose to submit an abbreviated SIP revision to allocate NO_X allowances to individual sources in their State (for the annual and/or ozone season Federal CAIR NO_X trading programs). In this way, a State could choose to allocate NO_X allowances to its sources while letting the FIP (or section 126 remedy) control all other aspects of the trading programs. Through an abbreviated SIP revision, a State can also ensure that its allocations will apply even though its full SIP revision is still undergoing EPA review. Note that States could also choose to address non-EGU opt-ins, allocation of CSP allowances, and/or inclusion of non-CAIR NO_X SIP Call trading sources in an abbreviated SIP revision. The Agency proposes that States would have until March 31, 2007 to submit their allocation methodology in an abbreviated SIP revision. The EPA proposes to allow States to submit abbreviated SIP revisions later than full revisions because we anticipate that we will be able to complete the approval process more quickly for abbreviated SIP revisions due to their narrower scope. The Agency proposes that the State would have until October 31, 2007 to submit their first set of CAIR NO_X allocations pursuant to an abbreviated SIP revision. The proposed dates for recording NO_X allocations, discussed below, would be the same whether the allocations are approved in a full SIP revision or in an abbreviated revision.

Assuming that States submit full CAIR SIP revisions by the September 2006 deadline and that EPA can approve the revisions in about a year, and assuming some additional time may be required for coordination between States and EPA before State allocations can be recorded in source accounts, it is reasonable to assume that EPA could record such State allocations by December 1, 2007. Likewise, assuming that States submit abbreviated SIP revisions that address allocations by the March 2007 deadline and that EPA can approve the abbreviated revisions in about 6 months, it is reasonable to assume that EPA could record such allocations by December 1, 2007.

Therefore, the EPA proposes to record NO_X allocations in source accounts for the 2009 control period by December 1, 2007. If a State's timely NO_X allocations are approved then the Agency would record State allocations for the 2009 control period. However, for any CAIR State for which a SIP is not approved by December 1, 2007, the EPA would record Federal NO_X allocations for 2009. Recording NO_X allocations by December 2007 for the 2009 control period provides affected sources with certainty of their allocations 1 year in advance of the beginning of the control period.

The Agency proposes to record Federal NO_X allocations in source accounts 1 year at a time for the 2009 and 2010 control periods in order to provide flexibility to States. If EPA records Federal allocations for the 2009 control period and subsequently approves a State's timely SIP revision including NO_X allocations (a full or abbreviated revision), the Agency would record the State's allocations for future years. The Agency does not intend to approve State NO_X allocations for a particular control period that would overlap with Federal allocations already recorded in source accounts. Provisions for withdrawal of CAIR FIPs and section 126 remedies are discussed elsewhere in this preamble.

The EPA proposes to record NO_X allocations in source accounts by December 1, 2008 for the 2010 control period. If a State's NO_X allocations are approved by then, the Agency may record State allocations for the 2010 control period. However, for any CAIR State for which a SIP is not approved by December 1, 2008, the EPA would record Federal NO_X allocations for 2010. Therefore, if a State obtained SIP approval after December 1, 2007 but before December 1, 2008, the State's NO_X allocations may be recorded in source accounts for the 2010 control period.

The Agency proposes to record NO_X allocations in source accounts by December 1, 2009 for the 2011–2013 control periods. Therefore, if a State obtained SIP approval after December 1, 2008 but before December 1, 2009, the State's NO_X allocations may be recorded in source accounts for the 2011–2013 control periods. However, for any CAIR State for which a SIP is not approved by December 1, 2009, the EPA would record Federal NO_X allocations for 2011–2013.

Beginning with the 2014 control period and for each control period thereafter, EPA proposes to record Federal NO_X allocations in source accounts by December 1 of each year for the control period in the fourth year after the recordation year, thereby providing allowances about 3 years in advance for sources to plan their compliance strategies. For example, EPA would record allocations for the 2014 control period by December 1, 2010.

The CAIR requires States to submit to the Agency their unit-by-unit NO_X allocations for a given year no less than 3 years prior to the applicable control year to ensure sources have time to plan for compliance (see CAIR NFR preamble at 70 FR 25278–25279)[14]. In today's proposal, EPA would record Federal NO_X allocations in source accounts (in absence of approved timely SIP revisions) with less than 3 years lead time for the first 4 control periods, *i.e.*, for 2009 through 2012. Beginning with the 2013 control period, however, we propose to record Federal allocations with about 3 years' lead time. This proposed schedule is intended to balance the need to provide sources their allocations in advance to facilitate planning for compliance, with the need to preserve opportunities for States to allocate allowances to sources if they choose. The EPA acknowledges that it is preferable for sources to have at least 3 years lead time to the extent feasible. We strongly urge States to submit timely CAIR SIP revisions so that we can approve revisions and record State allocations in source accounts according to the schedule in CAIR, which would provide at least 3 years notice for all but the first control period.

Table VI–1, below, summarizes the Agency's proposed timing for recording Federal NO_X allocations in source accounts. The table shows the timing scheme through the 2016 control period. Timing for subsequent control periods would follow the same pattern as is shown for 2014–2016, *i.e.*, allocations would by recorded by 3 years in advance of the control period.

[14] As discussed in the CAIR NFR (70 FR 25278), based on a SIP submission deadline in September 2006 there would be less than 3 years notice of allocations for the first control period.

TABLE VI–1.—PROPOSED TIMING FOR NO_X ALLOCATIONS[15]

CAIR control period	Date Federal NO_X allocations are recorded	Time between recordation date and beginning of control period
2009	December 1, 2007	1 year.
2010	December 1, 2008	1 year.
2011	December 1, 2009	1 year.
2012	December 1, 2009	2 years.
2013	December 1, 2009	3 years.
2014	December 1, 2010	3 years.
2015	December 1, 2011	3 years.
2016	December 1, 2012	3 years.

The Agency intends to publish its determination of Federal NO_X allocations for 2009–2014 in a single notice (with opportunity for comment) prior to December 1, 2007. The Agency would publish its determination of Federal NO_X allocations (with opportunity for comment) prior to December 1 of each year for future years. For example, we would publish Federal NO_X allocations for the 2015 control period during 2011.

The Agency intends to work with the States to ensure that for any State that chooses to allocate NO_X allocations—either through a full SIP revision or an abbreviated revision—the Agency will record the State's allocations (contained in an approved SIP revision) in source accounts rather than record Federal allocations, as soon as it is feasible. The proposed timing scheme for recording Federal NO_X allocations is intended to provide States with as much flexibility as is feasible given the available time, while also providing sources time to plan compliance strategies.

For States choosing to submit full SIP revisions for CAIR, the Agency suggests they could consider designating any of the four specific elements that we propose to accept in abbreviated SIP revisions (*e.g.*, NO_X allocations) as being submitted for purposes of both a full SIP revision and an abbreviated revision. Because the Agency anticipates that we would be able to approve abbreviated SIP revisions more quickly than full revisions, a State could, by designating its NO_X allocations as an abbreviated SIP revision (as well as being part of a full SIP revision), potentially allow for the allocations portion to be approved more quickly. This might have benefit, for example, in a situation in which it was not feasible to approve a State's full SIP revision before December 1, 2007. If the NO_X allocations portion of the revision could be approved by December 1, 2007, then the State's allocations may be recorded in source accounts. Until the full SIP were subsequently approved, the other elements of the trading programs would be controlled by the Federal CAIR programs. Provisions for withdrawal of CAIR FIPs and section 126 responses are discussed elsewhere in this preamble.

Today the Agency is proposing its NO_X allocation methodology for the Federal CAIR NO_X cap and trade programs. The EPA intends to publish its initial determination of unit-by-unit Federal CAIR NO_X allocations in a subsequent notice of data availability (NODA).[16] The public will have opportunity to comment on those initial allocations.

In the NODA, the Agency intends to publish its initial NO_X allocation determinations for the control periods 2009 through 2014. After public comment, the EPA would publish its final determinations of allocations for 2009 through 2014. Although EPA intends to publish its allocations for 2009 through 2014 in a single notice, the Agency intends to record allocations in source accounts one year at a time for 2009 and 2010 in order to provide flexibility to States.

Proposed NO_X Allocation Methodology

Today's proposed NO_X allocation approach for both annual and ozone season allowances is consistent with the example methodology presented in the CAIR SIP model trading rules. The proposed methodology is 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 uses input-based allocations, adjusting the heat input by factors based on fuel type, as described below. As in the example allocation methodology in the CAIR model rules, for existing units the Agency proposes 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 also asks for comment on using heat input based on 3 or 4 years of data rather than 5 years.

For new units that have established baselines, 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 as new units would be allocated from the pool of allowances shared with existing sources. New units that have not yet established baseline data would be allocated from a new unit set-aside.

The Agency would allocate 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, January 1, 2001 is 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 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 is established for existing units, this baseline heat input would not change).

New units that have entered service but have not yet started receiving allowances through the updating of allocations would receive allowances each year from a new unit set-aside. The allowances from the set-aside would be distributed based on a unit's actual emissions from the previous year, which would provide allowances for use in meeting the allowance-holding requirement during the interim period before the unit is 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

[15] The Agency does not intend to wait until December 1, 2007 to record State NO_X allocations for the 2009 control period but rather would record approved allocations as soon as feasible and according to the schedule in the CAIR SIP rules. The EPA proposes that we would not record Federal NO_X allocations for any State until December 1, 2007 for the 2009 control period in order to provide the opportunity for State allocations to be submitted and approved. The Agency proposes the same process for future years as well (*i.e.*, we would record State allocations for the 2010 control period as soon as is feasible and according to the schedule in the CAIR SIP rules, but would wait until December 1, 2008 to record Federal allocations for 2010 in order to provide opportunity for States to allocate).

[16] The Agency will determine Federal NO_X allocations based on the best available data. When EPA publishes its NO_X allocations, the unit-by-unit list of allocations would not constitute a list of affected sources and should not be interpreted as such.

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. Under the proposed CAIR Federal cap and trade programs, EPA would allocate allowances from the set-aside to all new units in any given year as a group. If there are more allowances requested than in the set-aside, allowances would be distributed on a pro-rata basis.

As in the CAIR SIP example methodology, after 5 years of operation, a new unit would have an adequate operating baseline of output data to be incorporated into the calculations for NO_X allocations to all affected units. The average of the highest 3 years from these 5 years would be multiplied by the applicable heat-input conversion factors to calculate the heat input value used to determine the new unit's allocation from the pool of allowances for all sources. New units would 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 would not update their heat input, which would eliminate the potential for a generation subsidy. Retired units would continue to receive allowances indefinitely, thereby creating an incentive to retire less efficient units.

The Agency seeks comment on its proposed NO_X allocation methodology.

Sources of Data for NO_X Allocations

To determine NO_X allocations for purposes of the Federal CAIR cap and trade programs, the Agency proposes to use heat input and fuel type data reported to EPA's Electronic Data Reporting (EDR) system, where available, and to use best available heat input and fuel type data (*e.g.*, data from the Energy Information Administration (EIA)) where EDR data is not available. The Agency proposes to use output data reported to EPA's EDR system.

Adjustments to Heat Input Data by Fuel Factors

As in the example allocation methodology in the CAIR SIP model rules, today's proposed approach would include adjustments to heat input by fuel type, using fuel adjustment factors that are based on average historic NO_X emissions rates by three 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.*, gas). The factors reflect the inherently different emissions rates of different fossil fuel-fired units.

Modified Output Approach for New Units

As in the CAIR example allocation approach, the Agency proposes to allocate to new units that have established baselines on a ''modified output'' basis, by multiplying the unit's gross output by a heat rate conversion factor of 7,900 Btu/kWh for coal units and 6,675 Btu/kWh for oil and gas units. A conversion rate for each fuel type will create consistent and level incentives for efficient generation, rather than favoring new units that may have higher heat rates. The conversion factors are based on assumptions in EIA's Annual Energy Outlook (AEO) 2004.

Cogeneration Units

As in the CAIR SIP example methodology, for new cogeneration units, allowances would be calculated by converting the available thermal output (Btu) of useable steam from a boiler to an equivalent heat input by dividing the total thermal output (Btu) by a general boiler/heat exchanger efficiency of 80 percent.

For new combustion turbine cogeneration units, allowances would be calculated 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 the same efficiency rate, then adding the electrical generation from the combustion turbine converted to an equivalent heat input by multiplying by the conversion factor of 3,413 Btu/kWh. This sum will yield the total equivalent heat input for the cogeneration unit. This approach focuses on the efficiency of a cogeneration unit in capturing energy in the form of steam or heat from the fuel input.

For additional discussion of the example NO_X allocation methodology in the CAIR SIP model trading rules, see section VIII.D. in the CAIR NFR preamble (70 FR 25278–25282).

Alternative allocation approach on which the Agency seeks comment: Providing sources owned by small entities with a greater share of allowances.

The EPA also seeks comment on allocating in such a way as to provide sources owned by small entities with a greater share of allowances. The Agency convened a Small Business Advocacy Review Panel that discussed options to provide additional flexibility to small entities. Specifically, the Agency is taking comment on an option (proposed by one member of the Panel) that would set aside some percentage of States' annual NO_X budgets and provide these allowances to certain small entity sources that can demonstrate economic hardship as a result of the rule. Such an option would necessitate adjusting the number of NO_X allowances available to other affected sources in order to ensure that the overall reduction requirements of CAIR are achieved. Because EPA does not allocate SO_2 allowances, the Agency could only provide relief through NO_X allowance allocations. However, because allowances are fungible, it would be possible for the burden on small entity sources that would experience hardship as a result of the SO_2 trading program to be reduced through the distribution of additional NO_X allowances. The EPA solicits comments on appropriate criteria for establishing hardship. See section 9.4 of the Panel report (*http://www.epa.gov/sbrefa*) and section IX.C. in this preamble for further description of the Panel discussions.

Alternative allocation approach on which the Agency seeks comment: Use of an auction to distribute NO_X allowances.

Allowances can be distributed by allocating them directly to sources, offering them for sale to bidders (*i.e.*, an ''auction'') or a combination of the two. Today's notice proposes to allocate NO_X allowances directly to emissions sources. However, the Agency also seeks comment on the desirability of using a combination of direct allocations and auctions for distributing allowances in the proposed Federal CAIR trading programs. The primary benefit of allowance auctions is that they are the most economically efficient way to distribute allowances. This approach can ensure that all parties, including the general public, have access to allowances. With an auction, existing and new sources have equal access to allowances. Under a combination approach, such as the one we are taking comment on, the effect of these benefits is dependent upon the percentage of allowances that are auctioned.

The EPA discussed allowance auctions and took comment on using auctions in the CAIR proposal (69 FR 4566, January 30, 2004) and supplemental proposal (69 FR 32684, June 10, 2004). The title IV Acid Rain Program uses a combination approach to distributing allowances, reserving 2.8 percent of available allowances for an auction and directly allocating the remainder.

The Agency seeks comment on using a combination approach for distributing

NO_X allowances in the proposed Federal CAIR trading programs. The proposed approach is analogous to the auction approach in the Administration's proposed Clear Skies legislation, and is defined as follows: 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 twenty years, and then an additional 2.5 percent of allowances every year thereafter, until eventually 100 percent of allowances would be distributed via auction.

If EPA implemented allowance auctions for the Federal CAIR trading programs, the Agency would establish procedures for the frequency and timing of auctions, bidding schedules and bidding mechanisms, requirements for financial guarantees, and other administrative requirements and procedures as necessary to implement allowance auctions. The Agency seeks comment on appropriate auction procedures for the proposed Federal CAIR trading programs. Allowance auctions are typically (but are not required to be) open to any person, including sources or third-party entities, that can comply with the auction protocols. Proceeds from any auction conducted for Federal CAIR trading programs would be deposited in the United States Treasury.

Regardless of whether or not the allowance distribution approach taken by the Agency in its Federal trading programs includes the use of auctions, the States have full flexibility in determining the allocation method to use in their State CAIR implementation plans. As discussed above, the EPA would allocate NO_X allowances to sources only in a CAIR-State that does not have a timely, approved full CAIR SIP revision or timely, approved abbreviated CAIR SIP revision that includes allocations. A State choosing to submit a full SIP revision or an abbreviated SIP revision that covers allowance allocations could elect to distribute allowances using auctions, direct allocations to sources, or other methodologies (or combinations of methodologies). The Agency intends to withdraw Federal CAIR trading programs in coordination with approval of full CAIR SIP revisions (provisions for withdrawal of CAIR FIPs and section 126 responses are discussed elsewhere in this preamble).

Allocation of CSP Annual NO_X Allowances to Sources

As discussed in section V, above, the Agency proposes that we will distribute annual NO_X allowances from the Compliance Supplement Pools (CSP) to sources for use in complying with the Federal annual NO_X cap and trade program. The proposed CSP amounts for each State are the same as in the CAIR NFR, and are shown in Table V–3 in today's action. The Agency is not inviting comment on the State CSP amounts.

In the CAIR NFR, the Agency provided that a State participating in the EPA-administered CAIR SIP NO_X annual trading program would distribute its CSP allowances by two mechanisms: (1) To sources that implement NO_X control measures resulting in reductions in 2007 or 2008 that are beyond what is required by any applicable State or Federal emissions limitation (early reductions); and, (2) based on 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).

Today, the Agency proposes to allocate CSP allowances to sources for use in the Federal CAIR annual NO_X cap and trade program based on the same two mechanisms as we provided in the CAIR NFR for States to use. However, we propose to use a more specific methodology for determining early reductions than the mechanism provided in the CAIR NFR.

The Agency proposes to award CSP allowances for early reductions to units that—for the years for which they apply for early reduction credits—are operating at an annual NO_X emission rate below 0.25 lb/mmBtu. In addition, the Agency proposes that if a unit applying for early reduction credit is included in a title IV NO_X averaging plan, then the source must demonstrate that the plan-wide weighted-average NO_X emission rate for the year for which early reduction credit is sought must be equal to or lower than the plan-wide rate for the year prior to the year for which credit is sought. Provided a unit met these proposed criteria, it 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. In proposing these criteria, for early reductions, EPA believes that the criteria ensure that the award of CSP allowances will be aimed at early reductions and that owners and operators will be able to make reasonable projections about how many allowances they may receive for their early reductions. This early reduction method is similar to the method used in the NO_X SIP Call section 126 action (65 FR 2674, January 18, 2000). The Agency seeks comment on this proposed method for determining early reductions.

Under the abbreviated SIP revision option that the Agency proposes today, States could choose to submit abbreviated revisions addressing distribution of CSP allowances to individual sources. Such revisions would need to include mechanisms based on early reductions as well as based on demonstration of need. States could choose to include the early reduction mechanism set forth in the CAIR SIP model trading rules or could choose to use the more specific early reduction criteria proposed in today's Federal trading rules, in addition to the criterion based on demonstration of need.

E. Allocation of SO_2 Emission Allowances to Sources

The proposed Federal CAIR SO_2 cap and trade program would rely on title IV allowances, as does the CAIR SIP model SO_2 trading rule. Title IV allowances have already been allocated in perpetuity to individual units by title IV of the CAA (70 FR 25278). Thus, today's proposal does not include an allocation methodology for SO_2 allowances, except with regard to opt-in units.

F. Allowance Banking

Allowance banking is the retention of unused emissions allowances from 1 calendar year for use in a later calendar year. 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 reductions goals.

The Agency proposes to allow unrestricted banking under the Federal CAIR cap and trade programs, the same as in the CAIR SIP model cap and trade programs. For additional discussion on allowance banking provisions in CAIR, see section VIII.E.1 in the CAIR NFR preamble (70 FR 25282–25283).

G. 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. Early reduction credits (ERCs) can provide an incentive for sources to install and/or operate controls before the implementation dates. Allowing emission allowances from existing programs to be used for compliance in new programs is another mechanism to encourage early reductions prior to the start of cap and trade programs. See further discussion of this topic in section VIII.F. of the CAIR NFR preamble (70 FR 25284–25286).

As in the CAIR SIP model trading rules, the proposed Federal CAIR cap and trade programs would provide incentives for early reductions in each of the three programs (the SO_2 program, NO_X program, and ozone season NO_X program), as described below.

1. SO_2 Program

The proposed Federal CAIR SO_2 cap and trade program would allow for affected sources to use title IV SO_2 allowances of vintage 2009 and earlier for compliance with the Federal CAIR program at a 1-to-1 ratio. This approach was part of the CAIR policy case assumptions used in the rulemaking modeling and the EPA has shown 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. This proposed early reduction incentive is identical to the SO_2 incentive in the CAIR SIP model cap and trade programs.

2. NO_X Program

The proposed Federal CAIR NO_X cap and trade program would provide incentives for early annual NO_X reductions by creating a Compliance Supplement Pool (CSP) for each affected State, from which EPA could distribute allowances for early, surplus NO_X emissions reductions occurring in the years 2007 and 2008, as described above. The Agency's proposed method for allocating CSP allowances to States is explained above. As in the CAIR SIP rule, the CSP for today's proposal would provide a total of about 200,000 annual NO_X allowances of vintage 2009 for the CAIR region, apportioned to each State, which would be in addition to each State's annual NO_X budgets. Table V–3 in this preamble provides the CSP amounts by State. The Agency is not inviting comment on the CSP amounts that were determined in CAIR. This proposed early reduction incentive is identical to the annual NO_X incentive in the CAIR SIP rule, except that we are proposing a more specific methodology for determining early reductions than the criteria in the CAIR SIP rule.

3. Ozone Season NO_X Program

The proposed Federal CAIR ozone season NO_X cap and trade program would allow the use of NO_X SIP Call allowances of vintage years 2008 and earlier for compliance with the Federal CAIR ozone season program. This mechanism would provide an incentive for sources in NO_X SIP Call States to reduce their ozone season NO_X emissions early and bank additional allowances into the Federal CAIR ozone season program. This proposed early reduction incentive is identical to the ozone season NO_X incentive in the CAIR SIP cap and trade programs.

H. 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 measurement of NO_X mass emissions by all affected sources by January 1, 2008 using part 75 certified monitoring methodologies 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 sources beginning January 1, 2009.

Today's proposal requires Part 75 monitoring and reporting for all sources subject to the Federal CAIR cap and trade programs. This is consistent with the CAIR SIP 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).

I. Differences Between the Proposed Federal CAIR Cap and Trade Programs and the CAIR SIP Rules

The proposed Federal CAIR NO_X and SO_2 cap and trade programs are largely the same as the CAIR SIP model trading programs. The EPA intends the proposed Federal CAIR cap and trade rules to be as similar as possible to the CAIR SIP model cap and trade rules so that the two sets of rules will operate as single integrated cap and trade programs, one for annual NO_X, one for SO_2, and one for ozone season NO_X. However, the Agency is proposing certain limited differences as described below. These differences arise primarily from the need for Federal implementation of the programs rather than State implementation and to facilitate the transition from Federal implementation to State implementation. Note that the proposed Federal CAIR cap and trade programs include all of the mandatory elements that States must include in order to participate in the EPA-administered cap and trade programs for CAIR (the SIP model trading rules).

This section describes the main differences between the proposed Federal CAIR trading rules and the CAIR SIP rules. This is not an exhaustive list of differences.

NO_X Allocations

As discussed above, the proposed NO_X allocation methodology for the Federal CAIR annual and ozone season NO_X trading programs is consistent with the sample NO_X allocation methodology in the CAIR SIP model trading rules. However, timing for recordation of NO_X allowances in source accounts differs in the proposed Federal CAIR rules compared to the SIP model rules (see timing discussion, above).

Additionally, when the Agency allocates NO_X allocations, we follow notice and comment procedures consistent with Federal law (the Administrative Procedures Act), whereas under a SIP, a State follows its own administrative procedures (*e.g.*, for notice and comment). Further, the proposed Federal CAIR rules include criteria for ''best available data'' for purposes of NO_X allocations (in absence of continuous emission monitoring systems (CEMS) data), which are not included in the SIP model rules.

Criteria for Allocating CSP Allowances to Sources

As discussed above, the proposed Federal CAIR rules include a more specific methodology for determining early reductions for purposes of allocating CSP allowances than the mechanism in the CAIR SIP model rules.

Abbreviated SIP Revisions

As discussed above, the Agency proposes to give States the option to retain control of certain elements of the Federal CAIR trading programs without submitting full SIP revisions. States could submit abbreviated SIP revisions that cover any of the following four specific elements: (1) Non-EGU opt-ins,

(2) allocation of NO_X allowances to individual sources, (3) allocation of annual NO_X Compliance Supplement Pool (CSP) allowances to individual sources, and (4) inclusion of non-CAIR NO_X SIP Call trading sources in the Federal CAIR ozone season NO_X trading program.

Applicability

The EPA intends the applicability provisions specifying units covered by the CAIR Federal trading programs to be identical to those provisions in the CAIR SIP rules. As discussed elsewhere in today's preamble, the Agency is proposing certain changes to the applicability provisions in the CAIR SIP rules. The proposed applicability provisions for the Federal CAIR trading programs are the same as those for the CAIR SIP rules if today's proposed changes to the CAIR SIP rules are finalized.

Definitions

The EPA is proposing to use the same definitions as those that apply in the CAIR SIP rules with a few exceptions that are necessary to reflect Federal implementation rather than State implementation.

Issuance of NO_X Allowances Allocations

The Administrator, rather than the permitting authority, would allocate NO_X allowances under the Federal CAIR cap and trade programs, unless an abbreviated SIP revision is approved providing for State allocation of allowances.

Monitoring and Reporting Requirements

The proposed Federal CAIR monitoring and reporting provisions (including, among other things, general requirements, initial certification and recertification procedures, out of control periods, notifications, recordkeeping and reporting, and petitions) are essentially the same as the monitoring-related provisions of CAIR SIP model trading rules. The differences between the provisions reflect the fact that the Agency would oversee administration of the monitoring requirements, rather than both the Agency and the permitting authority overseeing the requirements as in the CAIR SIP rules. As a result, for example, monitoring certification applications would be submitted to the Administrator, and the Administrator, rather than the permitting authority, would act on the applications. By further example, the Administrator would handle all audit decertifications and all petitions for alternatives to the monitoring requirements.

J. Coordination Between the Proposed Federal CAIR Cap and Trade Programs and CAIR SIPs

The EPA intends that if States choose to meet their emission reduction obligations under CAIR by participating in the EPA-administered CAIR SIP NO_X and SO_2 trading programs, such programs will be fully integrated with respective Federal CAIR NO_X and SO_2 trading programs that EPA may promulgate in a final FIP or in a final section 126 response. The sources covered in the CAIR SIP model trading rules are the same types of sources named in the section 126 petition (except that the petition names a subset of the States affected by CAIR) and are the same types as the sources that EPA proposes to regulate in the proposed CAIR FIP and section 126 remedy.

The SO_2 allowances under the CAIR SIP SO_2 trading program, CAIR FIP SO_2 trading program, or section 126 SO_2 trading program would all be termed ''CAIR SO_2 allowances'' and could be used for compliance with the allowance-holding requirement in any of these trading programs. The NO_X annual allowances under the CAIR SIP, CAIR FIP, or section 126 NO_X trading program would all be termed ''CAIR NO_X allowances'' and could be used for compliance in any of these trading programs. The NO_X ozone season allowances under the CAIR SIP or CAIR FIP ozone season NO_X trading program would all be termed ''CAIR Ozone Season NO_X allowances'' and could be used for compliance in either of these programs.

The proposed regulatory text for the CAIR FIP provides that allowances issued under a CAIR FIP or CAIR SIP trading program could be used for compliance in the CAIR FIP trading program (within each of the respective trading programs—SO_2, annual NO_X, or ozone season NO_X). Today's proposal also includes revisions to the CAIR SIP model trading rules that would provide that allowances issued under a CAIR FIP or CAIR SIP trading program could be used for compliance in the CAIR SIP trading program (within the respective SO_2, annual NO_X, or ozone season NO_X trading programs).

As discussed above, today's proposal does not include regulatory text for the proposed section 126 remedy. If the Agency promulgates regulatory text for the section 126 remedy, the text would include a provision that allowances issued under a CAIR FIP, CAIR SIP, or section 126 trading program could be used for compliance in any of these programs (within the respective emissions trading programs). In that case, the Agency would propose corresponding changes to the CAIR FIP and SIP trading rules to provide that allowances issued under a CAIR FIP, CAIR SIP, or section 126 trading program could be used for compliance in any of these programs.

K. Relationship of Emissions Trading Programs to Section 126 Relief

In its petition, North Carolina states that ''EPA cannot allow interstate trading of emissions allowances to thwart North Carolina's remedy under section 126.'' Petition p. 25. The State's concern is that under a regionwide trading program, EGUs in upwind States which contribute to North Carolina nonattainment might not in fact reduce their emissions (or might not reduce emissions sufficiently for North Carolina's purposes) since they could purchase allowances from non-contributing (or less-contributing) EGUs. *Id.* p. 26. North Carolina believes this result to be ''irrational'' because EPA ''would have made the technical finding of contribution without requiring a real remedy''. *Id.*

EPA disagrees. As explained above in section II.A., a finding of whether there is a violation of section 126 turns on whether there is a violation of section 110(a)(2)(D), *i.e.*, whether upwind States are contributing significantly to nonattainment or interfering significantly with maintenance in downwind receptors. Upwind States contribute significantly if collective contribution is above a designated amount and highly cost-effective controls are available to reduce emissions. In CAIR, EPA determined the extent of reductions required to eliminate significant contribution (*i.e.*, to remove the section 110(a)(2)(D) violation) and expressed the reductions as statewide budgets of the $PM_{2.5}$ precursors SO_2 and NO_X susceptible to reduction by highly cost-effective controls. Emissions trading (within the constraints of the emissions caps based on these statewide emission budgets) is one means of implementing highly cost-effective controls and consequently is a lawful (and CAIR-authorized) means of eliminating a section 110(a)(2)(D) violation.

It therefore follows that once a section 110(a)(2)(D) violation is eliminated, there is no section 126 violation since the basis for the section 126 finding would not exist.[17] The violation can be

[17] Indeed, North Carolina's petition itself essentially recognizes this point, since the petition notes (correctly) that section 110(a)(2)(D) and section 126 are co-extensive for purposes of what constitutes a violation. *Id.* p. 3. The petition likewise accepts the CAIR definition of ''significant

eliminated through EPA adopting a FIP containing the CAIR trading programs or through EPA approving a SIP containing the CAIR trading programs (or approving a SIP containing the other emission reduction options specified in CAIR).

For the same reasons, if EPA chooses to act directly under section 126 by making the section 126(b) findings and adopting a remedy pursuant to section 126(c) (rather than eliminating the section 110(a)(2)(D) violation by means of a FIP), EPA could ''bring about compliance with the requirements contained in section [110(a)(2)(D)]'' (CAA section 126(c)) by adopting the CAIR FIP trading programs, for the States containing sources linked to North Carolina $PM_{2.5}$ NAAQS nonattainment or maintenance problems. This result necessarily follows because, as just explained, these CAIR FIP provisions eliminate the significant contribution to North Carolina nonattainment and maintenance of the $PM_{2.5}$ NAAQS.

In any event, the Agency 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 used the Integrated Planning Model (IPM) to project emission and cost impacts of CAIR.[18] The EPA modeled the CAIR requirements assuming interstate emissions trading programs for EGUs. We modeled three separate regionwide EGU emissions trading programs (an annual SO_2 program, an annual NO_X program, and an ozone season NO_X program). The Agency's IPM modeling for the CAIR NFR—which assumes interstate emissions trading[19]—projects decreases in annual SO_2 and NO_X emissions under CAIR compared to the Base Case (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.[20]

Moreover, the emission reductions under CAIR are likely to be sufficient to eliminate $PM_{2.5}$ nonattainment in North Carolina. In the CAIR NFR, the Agency presented its modeling of the Base Case, which projects that 10 States would contribute significantly to $PM_{2.5}$ nonattainment in North Carolina in 2010 without CAIR (see discussion in section III in this preamble). Under CAIR, however, EPA's modeling projects that by 2010 there will be no remaining $PM_{2.5}$ nonattainment counties in North Carolina, thus no States contributing to nonattainment. These projected CAIR impacts are likewise from EPA's CAIR modeling with interstate emissions trading.

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.

Air quality modeling results are in the Air Quality Modeling Technical Support Document for the Final Clean Air Interstate Rule, March 2005, Appendix F. The EGU emissions modeling for the CAIR NFR is in the CAIR docket. State-by-State summaries of projected emissions impacts of CAIR are on the CAIR Web site at *epa.gov/cair/where.html*.

L. 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 proposal covers the same States as the CAIR (this proposal includes Delaware and New Jersey for $PM_{2.5}$ purposes which is consistent with EPA's proposal at 70 FR 25408) and uses Federal trading programs that are substantively identical to the CAIR SIP model trading rules, thus the interactions would be as described in CAIR (70 FR 25289–25299).

VII. What Are the Revisions to the CAIR?

In today's action, EPA is proposing a number of revisions to the regulations issued as part of the CAIR. The proposed revisions to CAIR, explained in greater detail below, are primarily intended to facilitate federal implementation of the CAIR and to facilitate interaction between the proposed EPA-administered Federal CAIR trading programs and any EPA-administered State CAIR trading programs established through an approved SIP revision to meet the requirements of the CAIR.

With regard to § 51.123 in the CAIR, EPA is proposing to add provisions that allow states to submit abbreviated SIP revisions—as discussed above in Sections IV and VI of this preamble—that would have to meet certain requirements and that, if approved, would be integrated with the FIP trading programs and replace portions of the programs or modify application of the programs to sources in the State. In particular, a State could submit an abbreviated SIP revision providing for the permitting authority (instead of the Administrator) to allocate CAIR NO_X allowances in the Federal CAIR NO_X Annual Trading Program. The abbreviated SIP revision could also provide for the permitting authority to allocate the compliance supplement pool in the Federal CAIR NO_X Annual Trading Program. Similarly, the State could submit an abbreviated SIP revision providing for the expansion of the applicability provisions of the Federal CAIR NO_X Ozone Season Trading Program to include all units in the State's NO_X Budget Trading Program that are not already covered by such applicability provisions. The abbreviated SIP revisions could also provide for the permitting authority to allocate CAIR NO_X Ozone Season allowances under the Federal CAIR NO_X Ozone Season Trading Program. The abbreviated SIP revision could also provide for the inclusion of non-EGU opt-ins in the Federal CAIR trading programs. These changes will facilitate transfer from an EPA-administered Federal CAIR trading program to any EPA-administered State CAIR trading program.

Also, included in today's proposal are corresponding provisions in the Federal CAIR trading program regulations that would modify the allocation or applicability sections to be consistent with such approved abbreviated SIP revisions under § 51.123. For example, the Federal CAIR NO_X Annual Trading Program provides that, if an abbreviated SIP revision setting forth procedures for allowance allocations by the permitting authority is approved, the provisions in that SIP revision would replace the provisions otherwise in effect in that trading program for allowance allocation by the Administrator. By further example, the Federal CAIR NO_X Ozone Season Trading Program provides that, if an abbreviated SIP revision setting forth expanded applicability provisions to include NO_X Budget units not already in CAIR is approved, the applicability provisions in the trading program would be

contribution'' and agrees with the statewide emission budgets proposed in CAIR. Id. p. 21.

[18] See discussion of EPA's modeling using IPM in section V in this preamble. For further description, see section IV in the CAIR NFR preamble (70 FR 25196–25197) as well as a technical support document entitled ''Modeling of Control Costs, Emissions, and Control Retrofits for Cost Effectiveness and Feasibility Analyses'' in the CAIR docket.

[19] The IPM projects plant-level SO_2 and NO_X emissions under interstate emissions cap and trade programs. Emissions trading allows sources to find the least cost compliance strategy.

[20] The CAIR annual NO_X program includes a compliance supplement pool of about 200,000 allowances for the entire CAIR region, the use of which could lead to slightly higher NO_X emissions in some CAIR States than the projections shown in the CAIR NFR.

expanded to include such units. These changes will also facilitate transfer from a Federal CAIR trading program to a State CAIR trading program.

In addition to the proposed revisions to § 51.123 providing for abbreviated SIP revisions, today's action proposes other revisions to both § 51.123 and § 51.124 in order to clarify the definition of ''EGU'' in those rules. In particular, as discussed above in Section VI of the preamble, the status of solid waste incinerators under the CAIR is unclear. EPA did not intend for CAIR to require States that elect to participate in the EPA-administered CAIR trading program to regulate solid waste incineration units. In addition, the CAIR FIP is not intended to directly regulate solid waste incineration units. Furthermore, EPA has received two petitions to reconsider the definition of EGU with respect to solid waste incinerators in the model trading rule. The petitions were submitted by the Integrated Waste Service Association (IWSA) and the Commonwealth of Massachusetts.[21] In its petition, IWSA presents two main arguments regarding why EPA should reconsider the treatment of solid waste incinerators (and particularly municipal waste incinerators) under CAIR. First, it indicates that EPA failed to take notice and comment on the treatment of municipal waste incinerators (MWCs) under CAIR. The Commonwealth of Massachusetts makes a similar argument Second, IWSA argues that ''the regulation of MWCs is contrary to the core EPA methodology for regulating interstate transport of emissions under CAIR.'' As part of the second argument, IWSA makes two main points. They argue that emission reductions from municipal waste units are not highly cost effective and they argue that emissions of SO_2 and NO_X from municipal waste combustors are very small. The Commonwealth of Massachusetts also argues that EPA did not perform any specific cost analysis on municipal waste combustors to determine whether emission reductions from this source category were highly cost effective.

EPA has granted reconsideration on the issue of the definition of EGU in the final CAIR model trading rule as it relates to solid waste incinerators (and particularly municipal waste incinerators) because EPA agrees, that its analysis of highly cost effective emissions reductions did not assume that emissions from municipal waste combustors were highly cost effective to control. Further, EPA did not specifically indicate that it intended solid waste incinerators to be included in the model trading program. In fact, in both the proposed and final actions, EPA indicated that it did not consider reductions from municipal waste combustors in its determination of highly cost effective emission reductions. In a January 2004, technical support document entitled ''Identification and Discussion of Sources of Regional Point Source NO_X and SO_2 Emissions other than EGUs'', EPA indicated that, ''In examining non-EGU categories for emission reduction opportunities, we identified categories emitting more than one percent of the overall projected SO_2 or NO_X year 2010 emission inventory for the geographic area of interest.'' The document also notes that SO_2 emissions from waste incinerators emit about 0.1 percent of the SO_2, and 0.7 percent of the NO_X. In the response to comments document for the final rule, EPA indicated that, ''the final rule, as was the case for the proposal, does not reflect any emission reductions for NO_X or SO_2 from MWC facilities.'' For this reason, EPA decided to grant the petitions to reconsider this issue. It is therefore unnecessary for EPA to consider the other arguments presented by petitioners.

In this rulemaking EPA is reconsidering the definition of EGU in the final CAIR as it relates to MWCs and is taking comment on that issue. EPA is not taking comment on other issues not being reconsidered or addressed in this rulemaking—including the determination that, for purposes of the CAIR rulemaking, EPA did not determine that there were highly cost effective emission reductions from MWCs. It should also be noted that excluding MWCs from the definition of EGU in the CAIR model trading rule, does not preclude States from regulating MWCs, or other non-EGU sources, for the purpose of obtaining emission reductions required by CAIR.

The proposed revisions of the ''EGU'' definition address these issues. The proposed revisions would establish a specific exemption for certain solid waste incineration units. The proposed exemption is analogous to an exemption for such units under the Acid Rain Program. In addition, the status, under the CAIR, of units that formerly generated electricity for sale but stopped doing so many years ago warrants further clarification. The proposed revisions to the ''EGU'' definition state that, in order to be an EGU, a unit must serve a generator producing electricity for sale at any time since the later of November 15, 1990 or the start-up of the unit's combustion chamber. This proposed approach is analogous to the approach under the Acid Rain Program. This proposed approach also makes consistent EPA's position on this issue in the CAIR and the CAIR FIP proposed today.

Today's action also includes proposed revisions to the regulations setting forth the CAIR model trading programs. There are three categories of revisions. The first category includes revisions to clarify certain aspects of the CAIR model trading programs. This category of changes primarily intends to ensure consistency between the CAIR model trading rules and the proposed Federal CAIR trading programs. For example, revisions, analogous to the proposed revisions to the ''EGU'' definition in §§ 51.123 and 51.124, are proposed for the applicability provisions of the CAIR model trading programs to exclude certain solid waste incineration units and certain units that stopped before November 15, 1990, and do not resume, serving a greater-than-25 MW generator producing electricity for sale. Further, the definitions of some terms in the CAIR model trading programs (''commence commercial operation'' and ''commence operation'') are also revised consistent with the exclusion of units that, before November 15, 1990, stopped serving a greater-than-25MW generator producing electricity for sale. These revisions make the CAIR model trading rules consistent with the proposed applicability provisions and definitions for the Federal CAIR trading programs.

Another set of revisions are proposed to clarify the interaction of the application of excess emission penalties for sources that are subject to, and have excess emissions under, both the Acid Rain Program and the CAIR SO_2 trading program. Under the existing CAIR SO_2 model trading rule, the Administrator first determines, for a source in both the Acid Rain Program and the CAIR SO_2 trading program, whether the source holds enough allowances to cover emissions under the Acid Rain Program and then whether the source holds enough allowances to cover emissions under the CAIR SO_2 trading program. To the extent a source fails to hold enough allowances and so has excess emissions under the Acid Rain Program, the owners and operators must provide the Administrator one allowance from the next year to offset each ton of excess emissions and pay a $2,000 inflation-adjusted penalty per ton of excess emissions. To the extent the source also fails to hold enough allowances and so has excess emissions under the CAIR

[21] The petitions, as well as the letters granting reconsideration of the petitions, will be available in the docket for the CAIR (OAR–2003–0053).

SO_2 trading program, the owners and operators must provide a tonnage equivalent of allowances equaling 3 times (including a one-for-one offset) the tonnage of the excess emissions. As a result, the owners and operators may be liable, for a given ton of excess emissions, for both the offset and dollar penalty under the Acid Rain Program and the three-for-one allowance deduction.

Under the proposed revisions, for a given ton of SO_2 excess emissions at a source, the owners and operators will be liable for either the offset and dollar penalty under the Acid Rain Program or the three-for-one allowance deduction under the CAIR trading program. EPA believes that the Acid Rain dollar penalty, which is currently about $3,000 per ton of excess emissions (due to the inflation adjustment of the original $2,000 per ton penalty) is sufficiently large to provide a strong incentive for compliance with the allowance-holding requirement with regard to any tons of excess emissions under the Acid Rain Program. Under the proposal, any tons of excess emissions that a source under both the Acid Rain and CAIR trading programs has beyond the Acid Rain Program excess emissions would be subject to the three-for-one allowance deduction under the CAIR trading program. The EPA maintains that it is unnecessary to apply to a given ton of excess emissions both the Acid Rain and CAIR trading program penalties. The EPA also notes that the proposed revisions would address only the automatic penalties under the two programs and would not affect in any way the ability to impose, through enforcement actions, additional discretionary civil or criminal penalties.

The second category of revisions to the CAIR model trading rules includes those necessary to integrate the State CAIR trading programs with the appropriate Federal CAIR trading programs. As discussed above in Section VI of the preamble, EPA's intention is that the State CAIR trading programs for those States with approved SIP revisions and the Federal CAIR trading programs for those States without approved SIP revisions (or with only approved abbreviated SIP revisions) would all operate together as integrated trading programs, one integrated program covering NO_X annual emissions, one covering SO_2 annual emissions, and one covering NO_X ozone season emissions. Certain revisions to the CAIR model trading programs (and certain analogous provisions in the Federal CAIR trading programs) are necessary to accomplish this integration. For example, the definition of ''CAIR NO_X allowance'' is revised in order to ensure that NO_X allowances issued in a Federal CAIR NO_X annual trading program are treated the same in the State CAIR NO_X annual trading program as (and so is interchangeable with) NO_X allowances issued in the latter program. The definitions of ''CAIR SO_2 allowance'' and ''CAIR NO_X Ozone Season allowance'' are similarly revised.

The third category of revisions includes minor corrections of the CAIR model trading program regulations. These changes are intended to facilitate federal implementation of the CAIR and ensure consistency between State CAIR trading programs and the Federal CAIR trading programs by removing ambiguities in the CAIR. For example, certain provisions of the current CAIR SO_2 model trading rule reference non-existent provisions about SO_2 allowance allocations. EPA is proposing to remove the provisions that include these references.

By further example, the CAIR NO_X model trading rule requires the Administrator to record allocations submitted by the States for 2009 by December 1, 2006. However, since the SIP revisions that include such allocations are not due until September 11, 2006, it is highly unlikely that 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 could be recorded and traded could subsequently be rendered invalid due to disapproval of the SIP revision on which the allocations are based. For this reason, EPA is proposing to remove the deadline for recordation of the allocations for existing units for the first set of years submitted in the SIP revision, but to retain the deadlines for recordation for the subsequent allocations.

VIII. What Are the Revisions to the Acid Rain Program?

EPA is also proposing in today's action a few revisions to the Acid Rain Program regulations. Most of the proposed revisions are changes to the administrative appeal procedures in part 78 of the Acid Rain Program regulations in order to make those procedures applicable to all final decisions of the Administrator under the Federal CAIR trading programs. In the CAIR, part 78 was revised to make those administrative appeal procedures apply to the Administrator's final decisions under the State CAIR trading programs. The part 78 revisions in today's proposal are analogous to those revisions made in the CAIR and are necessary to provide consistent appeal procedures to sources subject to the CAIR FIP.

The remaining provisions aim to facilitate interaction between the EPA-administered Federal CAIR trading programs, any EPA-administered State CAIR trading programs, and the Acid Rain Program. A number of these proposed revisions involve minor changes to language in some certifications included in the certificate of representation for designated representatives and in some certifications by authorized account representatives for general accounts. Analogous minor revisions are proposed for provisions describing the relationship of the designated representative to the owners or operators of the sources and units represented and of the authorized account representative to the owners of the allowances in the general account involved. The purpose of these proposed revisions is to make the wording of these Acid Rain Program provisions and certifications essentially the same as the analogous provisions and certifications in the State and Federal CAIR trading programs in order to streamline the requirements and the forms that must be submitted. Many sources are likely to be subject to both the Acid Rain Program and the CAIR trading programs.

Some of the proposed revisions are related to the change, finalized in the CAIR rulemaking, from unit-level to source-level compliance with the Acid Rain Program SO_2 trading program. For example, EPA is proposing to remove a provision that allows two designated representatives for the same source under certain circumstances. While it was workable to have one designated representative for one, non-opt-in unit at the source and a different designated representative for another, opt-in unit at the same source where compliance with the allowance-holding requirement was achieved unit-by-unit, this is not workable where compliance is at the source-level and one individual must be responsible for compliance by all units at the source.

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.

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. The FIP proposal represents a federal mandate to implement the recently published CAIR (March 2005) covering the same set of air pollution emission reductions in the event States fail to implement CAIR. The section 126 proposal would impose regulatory requirements similar to CAIR in the States that significantly contribute to downwind emissions in North Carolina. 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. The costs and benefits presented in this economic analysis are an accurate representation of the benefits and costs of the FIP. The benefits and costs of the section 126 action would be a subset of the benefits and costs associated with CAIR, because only a subset of CAIR-affected States would be affected.

B. Paperwork Reduction Act

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) submitted to the OMB for review and approval on May 12, 2005 as part of the Clean Air Interstate Rule (CAIR) (70 FR25162–25405). 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 proposed 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.

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), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the proposed rule, if promulgated, 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 proposed rule with applicable NAICS code.

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.
State/Local/Tribal Government	[c] 221112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	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.

1. Small Business Advocacy Review Panel

As required by section 609(b) of the RFA, as amended by SBREFA, EPA convened a Small Business Advocacy Review Panel (SBAR Panel or Panel) and conducted outreach to small entities representatives (SERs) to obtain the advice and recommendations of small entities that potentially would be subject to the rule's requirements.

On April 27, 2005, EPA's Small Business Advocacy chairperson convened a SBAR Panel under section

609(b) of the RFA, as amended by SBREFA. For this proposal, in addition to the EPA Small Business Advocacy chairperson, the Panel consisted of EPA's Director of Air Quality Strategies and Standards Division within the Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of Small Business Administration (SBA).

As described below, this Panel conducted outreach to SERs and completed a report on this proposed action. The Panel Report provides background information on the proposal as it was being developed and the types of small entities that may be subject to the proposal, describes efforts to obtain the advice and recommendations of representatives of those small entities, summarizes the comments that have been received to date from those representatives, and presents the findings and recommendations of the Panel. The Panel Report, written comments from the SERs, the Initial Regulatory Flexibility Analysis (discussed below), and other information are contained in the docket for this rulemaking. The Panel Report is also available on the EPA's Web site at *http://www.epa.gov/sbrefa.* It is important to note that the Panel's findings and discussions are based on the information available at the time the Panel Report was drafted.

Prior to convening the SBAR Panel, EPA had several discussions and a conference call with small entities that could be affected by this rule. In consultation with SBA, EPA invited 16 stakeholders to participate in its outreach efforts on this proposal. On April 4, 2005, EPA held conference call with the potential SERs and invited representatives from the Office of Advocacy of the SBA and the Office of Information and Regulatory Affairs within the OMB to the call. During this call, EPA presented an overview of the SBREFA process, an explanation of the planned CAIR FIP and Section 126 rulemaking, and technical background on such information as control options and costs. Subsequent to the meeting, the stakeholders submitted follow-up comments in writing.

On May 5, 2005, the SBAR Panel invited the SERs to an outreach meeting and provided them with additional background information for their consideration. These materials included the previously provided background on the potential action and pollutants of interest, as well as information the relevant States and further technical and economic information about affected entities. The outreach meeting occurred on May 24, 2005, followed by written comments from some of the SERs. Written comments were summarized in the Panel Report and can be found in the docket.

The SBAR Panel considered the oral and written comments of the SERs in preparing the final Panel Report discussed above. The primary topic of the Panel discussion was the applicability of the FIP to the various categories of small entity-owned EGUs, the costs the proposal could potentially impose, and the advantages and disadvantages of implementing any of four regulatory flexibility alternatives. Additional topics included monitoring and reporting provisions and overlap with existing federal rules.

The SBAR Panel process for today's action was conducted before the proposed proposal was fully drafted. The Panel holds its discussions and makes its report at a preliminary stage of the rule development. The Panel discussions and report provide the Agency with an opportunity to identify and explore potential ways of shaping the proposal to minimize the burden of the proposal on small entities while achieving the purpose of the proposed action.

The SBAR Panel discussions for this proposal focused on the objectives and general outline of the CAIR FIP and Section 126 Response. The EPA also explained to the Panel that the proposal would be very similar to the CAIR model trading rules and provided the Panel with analyses that were conducted for CAIR. The Panel considered that the proposal would need to obtain the same emission reductions as would be achieved under CAIR and that the proposal would be designed to work in concert with the CAIR trading rules.

The action proposed today includes certain revisions to the Acid Rain Program and the final CAIR proposed in conjunction with the CAIR FIP and section 126 response. These revisions are intended to facilitate federal implementation of the CAIR, and address the interaction between the proposed EPA-administered federal CAIR trading program and any EPA-administered State CAIR trading programs. These revisions support the CAIR FIP and the 126 response extensively discussed by the Panel and are explained in greater detail in sections VII and VIII above.

To the extent that the Panel Report or the initial regulatory flexibility analysis for today's proposal address any proposed changes to the CAIR, EPA notes that courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See Michigan* v. *EPA*, 213 F.3d 663, 668–69 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001). The proposed revisions to the CAIR would not establish requirements directly applicable to small entities and, like the CAIR (70 FR at 25420), do not require a regulatory flexibility analysis.

2. Initial Regulatory Flexibility Analysis

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of this proposal on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket for today's rulemaking and is summarized in the sections below.

a. Background on Today's Proposal and the IRFA

This action proposes Federal Implementation Plans (FIPs) for all States affected by the Clean Air Interstate Rule (CAIR). The FIPs would serve as a backstop measure to achieve the emission reductions requirements established by the CAIR until States have approved State implementation plans (SIPs) to achieve the reductions. The Agency's authority to promulgate FIPs is contained in section 110 of the CAA.

This action also proposes EPA's response to a petition submitted by the State of North Carolina under section 126 of the CAA. The EPA is proposing Federal cap and trade programs for electric generation units (EGUs) as the control strategy for the FIPs as well as the section 126 action. The proposed Federal cap and trade programs are virtually identical to the CAIR model trading rules.

The EPA is also proposing certain revisions to the CAIR and the Acid Rain Program. Sections I through IV in today's preamble explain in more detail the reasons the Agency is considering this action, as well as the Agency's objectives and the legal basis for the proposed action.

The CAIR does not establish specific requirements applicable to small entities. Instead, the CAIR requires states to develop, adopt and submit SIP revisions that will achieve the necessary SO_2 and NO_X reductions, leaving to states the task of determining how and by which entities these reductions will be obtained. Although not required by the RFA, EPA conducted an analysis of the impact of regulations implementing the CAIR model trading rules on small

entities. The Federal cap and trade programs in today's proposal are virtually identical to the CAIR model trading rules. For the small entity analysis conducted for CAIR we analyzed the potential impacts that regulations implementing the model trading rules in the CAIR might have on small entities. EPA expects the impacts of the CAIR FIP trading programs in today's proposal to be identical to the impacts we analyzed for regulations implementing the model trading rules in the CAIR. Therefore, the small entity analysis that the Agency conducted for CAIR rulemaking provides the basis for the IRFA for today's proposal. The CAIR small entity analysis is contained in chapter 8 of the Regulatory Impact Analysis for the Final Clean Air Interstate Rule, March 2005, available in the docket for the CAIR rulemaking.

b. Potentially Affected Small Entities

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. An additional 189 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.

c. Impact on Potentially Affected Small Entities

EPA has assessed the potential impact of today's action on small entities. 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 would overstate 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.

Moreover, 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. Available air emissions data indicate that the collective emissions from small EGUs with capacity less than or equal to 25 MW are relatively small and that further regulating their emissions would be burdensome, to both the regulated community and regulators, given the relatively large number of units. In addition, the use of cap and trade in general will limit impacts on small entities relative to a less flexible command-and-control program.

EPA considered several additional suggestions raised during the SBAR panel process that would have changed the scope, and thus the impact, of today's action. One SER suggested exempting small gas turbines from the rule. The Panel did not recommend exempting small gas turbines from the program. The Panel believed that the reduced monitoring requirements for this set of sources under CAIR will provide a significant level of relief to these sources, which are low emitters of both NO_X and SO_2. According to EPA analysis, most of these sources are projected to be net sellers of allowances, and the maximum impact projected for any one of these sources in terms of the ratio of costs to electricity generation revenues is approximately 3 percent. Additionally, today's action does exempt a number of small gas turbines as a result of the 25 MW and below exemption. The SBAR Panel supported retaining this exemption in today's action.

d. Potential Reporting, Record Keeping, and Compliance Requirements

EPA also considered suggestions from the SBAR Panel regarding reporting and recordkeeping requirements of the proposed action. During the outreach to the SERs, one SER noted that EPA should coordinate emissions monitoring reporting among this and other related rules as much as possible. EPA has developed emission monitoring and reporting provisions intended to minimize the burden of reporting requirements on sources. Sources will submit one quarterly report that will account for emissions under any of the following programs that they are subject to: Title IV SO_2 and/or NO_X, Federal CAIR SO_2, annual NO_X and/or ozone season NO_X. Finally, as part of the FIP development process, EPA has coordinated FIP and SIP requirements as much as possible to minimize any conflicts in requirements that could occur if a State submitted a SIP that was approved by EPA and replaced the Federal CAIR trading rules.

e. Relevant Federal Rules

There are four Federal rules that may cover the same types of sources and pollutants as those covered in this proposal: The Clean Air Interstate Rule (CAIR), Regional Haze Rule, Acid Rain Program, and the NO_X SIP Call. During development of this proposal the Agency took great care to ensure that the proposed programs not conflict with other CAA programs. As discussed in detail elsewhere in this preamble, the Agency designed each of the elements of today's proposal—the CAIR FIP, section 126 response, revisions to CAIR and revisions to the Acid Rain Program—to work together. The Agency gave particular emphasis to the interaction between CAIR and the Acid Rain Program, since CAIR relies on the use of Acid Rain Program allowances for SO_2, and this feature of the program limits the flexibility of EPA in its design of regulatory flexibility alternatives for the CAIR FIP/126 rules. The Panel did not make specific recommendations in this area. EPA's decision to use the existing

SO_2 allocation from the Acid Rain Program is explained in greater detail in the preamble to the final CAIR (70 FR 25299).

f. Regulatory Flexibility Alternatives

The SBAR Panel discussed four options to provide additional flexibility to small entities:

Option 1. An alternative compliance method for units with low emissions, whereby facilities could adopt a voluntary limit on emissions;

Option 2. An option to buy allowances from EPA at a fixed price, which would protect units from market volatility in the price of allowances;

Option 3. Provide sources owned by small entities with a greater share of allowances, and;

Option 4. Recognize and utilize the existing flexibilities within the CAIR model trading rules.

In considering the four regulatory alternatives, the SBAR Panel evaluated the feasibility of implementing each option, as well as the extent to which the analysis of each option showed effective relief for financially-impacted small entities. Implementation of Options 1, 2, or 3 would require adjusting the number of allowances available to non-small-entity sources, in order to ensure that the overall reduction requirements of CAIR are achieved. As is discussed in Section 3 of the Panel Report, these adjustments could introduce administrative complexity and uncertainty in the case of SO_2 as to whether the reduction requirement is being met. The Panel also discussed how to set appropriate exemption levels, allowance adjustments, or price levels if EPA were to decide to implement one of the first three alternatives. Additionally, the Panel had to consider how to determine small entities' eligibility for potential relief, as well as treatment of sources that were primarily owned by large entities, but had minority ownership by small entities.

The SBAR Panel undertook detailed analysis of the four regulatory flexibility alternatives and of the comments and discussion provided by the small entity representatives during the SBAR Panel process. Consensus was not reached as to the final recommendation of the Panel. Two Panel members recommended that EPA pursue Option 4 as the means of providing flexibility to small entities under the proposed CAIR FIP and section 126 action. In general, this was due to the ability of the existing CAIR rule to provide a number of flexibilities to small entity sources, such as ability to trade and bank allowances, the inclusion of a compliance supplement pool for NO_X, and reduced monitoring requirements for some small units. In making this recommendation, these two Panel members also considered the possible trade-offs in terms of administrative ease and the ability to target sources that would need effective relief.

All SBAR Panel members agree that for the great majority of affected small entities, the CAIR model trading rules, or Option 4, provides the appropriate mechanism for limiting economic burdens, by allowing the purchase and sale of allowances in the market by all units. In the view of one Panel member, the Option 3 hardship approach best accommodates the needs of small entities with severe hardships and the burden of administering this added program element, while preserving the identical benefits of the CAIR program. Essentially, this Panel member suggested that EPA could provide meaningful relief to entities expected to experience severe hardship by setting aside some percentage of States' annual NO_X budgets, and providing these allowances to small entity sources that demonstrate the potential for severe economic hardship as a result of the proposed action. Analysis conducted by this Panel member suggested that setting aside approximately 15,000 NO_X allowances annually could provide significant relief to entities projected to experience severe hardship as a result of the proposed CAIR FIP and section 126 action.

The SBAR Panel did not recommend that EPA incorporate Option 1 or Option 2 into the CAIR FIP and section 126 action. Regarding Option 1, the Panel generally agreed that this option would not provide a mechanism for providing relief to many small entity sources. Additionally, EPA noted that this option was made available under the NO_X SIP call, and was used very sparsely. The majority of small entity representatives did not express support for this option. Option 2 could be implemented using either a safety valve price for small entity sources that falls below the projected allowance prices, or above projected allowance prices. Given the implementation issues discussed in Section 3 of the Report, and the uncertainty about what type of relief this option might provide, the Panel did not recommend that EPA consider this option further.

The EPA invites comment on all aspects of the proposal and its impacts on small entities. The EPA is accepting comment only on today's proposal. EPA is not accepting comment on the CAIR or otherwise reopening any issue decided in the CAIR for reconsideration or comment, except that we are taking comment specifically the revisions to the CAIR and the Acid Rain program that EPA is proposing in today's action, as well as on the proposed CAIR FIP, the Section 126 response, and the impacts of these proposals on small entities.

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 any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

The EPA is taking the position that the requirements of UMRA apply because this action could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that could result in costs greater than $100 million in any one year. The UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least-burdensome alternative that achieves the objectives of the rule.

EPA is relying upon the government entity analysis prepared for the final CAIR. The actual impacts on government entities of today's action would likely be less than those estimated in the analysis done for the CAIR because fewer States and individual sources are likely to be affected.

According to EPA's analysis, the total net economic impact on government-

owned entities is expected to be negative in both 2010 and 2015. However, IPM modeling projects that about 340 MW of municipality-owned capacity (about 0.4 percent of all subdivision, State and municipality capacity in the CAIR region) would be uneconomic to maintain under CAIR, beyond what is projected in 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 81 potentially affected government entities considered in EPA's analysis, and the 265 government entities in the CAIR region that are included in EPA modeling, 19 may experience compliance costs in excess of one percent of revenues in 2010, and 38 may in 2015, based on our assumptions of how the affected States implement control measures to meet their emissions budgets as set forth CAIR.

Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of this rulemaking. However, the majority of entities facing potentially significant impacts are located in States with regulated electricity markets, where they have the ability to pass some or all of their compliance cost on to ratepayers. In addition, the decision to include only units greater than 25 MW in size exempts 179 government entities that would otherwise be potentially affected by regulations implementing the CAIR trading programs. Finally, the use of cap and trade in general will limit impacts on entities owned by small governments relative to a less flexible command-and-control program.

Under section 203 of UMRA, 2 U.S.C. 1533, before EPA establishes any regulatory requirements ''that might significantly or uniquely affect small governments,'' EPA must have developed 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 requirements 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 SIP call region. 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. Therefore, development of a small government plan under section 203 of the Act is not required.

During the CAIR rulemaking process, EPA prepared a written statement consistent with the requirements of section 202 of the UMRA. Furthermore, in a manner consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA carried out consultations with the governmental entities potentially affected by this rule during the CAIR rulemaking process.

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 proposed rule does not have federalism implications. It would 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 would 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 would be exercising discretion to promulgate the FIP within the early part of the 2-year period, EPA would 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 proposed rule.

Even so, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. The EPA is including a number of provisions for States in the proposed rule so as not to constrain States' abilities to complete approvable SIP revisions, such as the ability to submit abbreviated SIP revisions, and the intent to withdraw the FIP upon approval of State SIP revisions.

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 proposal does not have ''Tribal implications'' as specified in Executive Order 13175.

This proposal 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 proposal does not have Tribal implications as defined by Executive Order 13175. It do 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 proposal 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 proposal does nothing to modify that relationship. Because this proposal does not have Tribal implications, Executive Order 13175 does not apply.

If one assumes a Tribe is implementing a Tribal Implementation Plan, today's proposal could have implications for that Tribe, but would not impose substantial direct costs upon the Tribe, nor preempt Tribal law. As provided above, EPA has estimated that 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 be attributed to inspecting regulated facilities and enforcing adopted regulations.

EPA consulted with Tribal officials in developing the final CAIR 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.

These actions are not subject to the Executive Order, because they do not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in these proposals 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 final rulemaking, and notices of final rulemaking (1) (i) a significant regulatory action under Executive Order 12866 or any successor order, and (ii) likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' This proposed 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. These impacts are detailed in the final CAIR (70 FR 25315).

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and 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 proposed rule would implement requirements largely identical to the requirements in the CAIR. This proposal would require 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 Section 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,[22] 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

[22] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

appropriate comparison group.'' (EPA, 1998)

In accordance with Executive Order 12898, the Agency has considered whether these proposals, if promulgated, may have disproportionate negative impacts on minority or low-income populations. The Agency expects these proposals would lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these sub-populations that appreciably exceed similar impacts to the general population are not expected.

List of Subjects

40 CFR Parts 51 and 52

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

40 CFR Parts 72, 73, 74, and 78

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

40 CFR Parts 96 and 97

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 1, 2005.

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 proposed to be 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.

§ 51.123 [Amended]

2. Section 51.123 is amended by:

a. In paragraph (o)(2)(ii)(B), replace the words ''for the year after the year of'' by the words ''for the 4th year after the year of'';

b. Add a new paragraph (p);

c. In paragraph (cc), amend the definition of ''Electric generating unit'' or ''EGU'' by:

i. In paragraph (1) of the definition, redesignate the paragraph as paragraph ''(1)(i)'', replace the words ''since the start-up'' with the words ''since the later of November 15, 1990 or the start-up'', and add a new paragraph (1)(ii); and

ii. Revise paragraph (2) of the definition; and

d. In paragraph (cc), add a new definition for ''Solid waste incineration unit''; and

e. Add a new paragraph (ee) to read as follows:

§ 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.

* * * * *

(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 September 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. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014.

(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. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014 and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under paragraph (p)(1)(ii)(B) of this section, as well as under this paragraph, for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under this paragraph for the applicable control period.

(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; or

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

(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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the date on which it first 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 shall not be an electric generating unit:

(i)(A) A unit:

(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 paragraph (1)(i)(A) of this definition 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 (1)(i)(A)*(2)* of this definition.

(ii)(A) A unit 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) A unit 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 definition 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 State 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 September 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. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X Ozone Season allowances for the applicable control period are the same as for the

control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014.

(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. The State's methodology must also provide that, if the permitting authority fails to submit to the Administrator such allocations in accordance with such applicable deadline, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period in 2014 and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under paragraph (ee)(2)(ii)(C) of this section, as well as under this paragraph, for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under this paragraph for the applicable control period.

(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.

§ 51.124 [Amended]

3. Section 51.124 is amended by:

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

i. In paragraph (1) of the definition, redesignate the paragraph as paragraph ''(1)(i)'', replace the words ''since the start-up'' with the words ''since the later of November 15, 1990 or the start-up'', and add a new paragraph (1)(ii); and

ii. Revise 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) to read as follows:

§ 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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the date on which it first 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 shall not be an electric generating unit:

(i)(A) A unit:

(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 paragraph (1)(i)(A) of this definition 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 (1)(i)(A)*(2)* of this definition.

(ii)(A) A unit 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) A unit 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 definition 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—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 Annual and Ozone Season Trading

Programs 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 Ozone Season Trading Program 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 and Ozone Season 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

14. 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

15. 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

16. 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

17. 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

18. 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

19. 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 and Ozone Season 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

20. 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

21. 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

22. 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 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

23. 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

24. 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

25. 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

26. 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

27. 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

28. 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

29. 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 and Ozone Season Trading Programs 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

30. 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 Seasonal 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

31. 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

32. 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.*

§ 72.7 [Amended]

2. Section 72.7 is amended by:

a. In paragraph (f)(4)(i), replace the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' with the words '', for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''; and

b. Revise paragraph (f)(2) to read 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 this chapter.

* * * * *

§ 72.8 [Amended]

3. Section 72.8 is amended by:

a. In paragraph (d)(6)(i) introductory text, replace the words ''become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter'' with the words '', for purposes of applying parts 70 and 71 of this chapter, shall be treated as an affected unit under the Acid Rain Program''; and

b. Revise paragraph (d)(4) to read 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 this chapter.

* * * * *

§ 72.20 [Amended]

4. Section 72.20 is amended by, in paragraph (b), replace the words ''his or her actions'' by the words ''his or her representations, actions''.

§ 72.22 [Amended]

5. Section 72.22 is amended by, in paragraph (b), replace the words ''any action, representation, or failure to act'' with the words ''any representation, action, inaction, or submission'' whenever they appear.

§ 72.23 [Amended]

6. Section 72.23 is amended by, in paragraphs (a), (b), and (c)(1), replace the words ''submissions, actions, and inactions'' with the words ''representations, actions, inactions, and submissions'' whenever they appear.

§ 72.24 [Amended]

7. Section 72.24 is amended by:

a. In paragraph (a)(6), replace the words ''actions, inactions, or submissions'' with the words ''representations, actions, inactions, or submissions''.

b. In paragraph (a)(9)(ii), replace the words ''or, if such multiple'' with the words '', except that, if such multiple''.

§ 72.25 [Amended]

8. Section 72.25 is amended by, in paragraph (b), replace the words ''submission, action or inaction'' with the words ''representation, action, inaction, or submission'' and replace the words ''submission, action, or inaction'' with the words ''representation, action, inaction, or submission''.

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 by, in paragraph (c)(1)(v), replace the words ''actions, inactions, or submissions'' with the words ''representations, actions, inactions, or submissions''.

§ 73.33 [Amended]

3. Section 73.33 is amended by:

a. In paragraph (d)(4), replace the words ''action, representation, or failure to act'' with the words ''representation, action, inaction, or submission'' and replace the word ''an action'' with the words ''a representation, action, inaction, or submission''.

b. In paragraph (e), replace the word ''actions'' with the words ''representations, actions, inactions, or submissions''.

c. In paragraph (f), replace the words ''any submission to'' with the words ''any representation, action, inaction, or submission to'' and replace the words ''the recordation of transfers submitted by'' with the words ''any representation, action, inaction, or submission of''.

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. Section 74.4(c) is removed.

PART 78—APPEAL PROCEDURES

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.*

§ 78.1 [Amended]

2. Section 78.1 is amended by:

a. In paragraph (b)(8)(ii), replace the words ''§ 97.256'' by the words ''§ 96.256''.

b. Add new paragraphs (b)(10), (b)(11), and (b)(12) to read as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(10) Under subparts AA through HH 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 HHH 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 HHHH 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.

* * * * *

§ 78.3 [Amended]

3. Section 78.3 is amended by:

a. In paragraph (b)(3)(i), replace the words ''under paragraph (a)(4), (5), or (6) of this section'' by the words ''under paragraph (a)(4), (5), (6), (7), (8), or (9) of this section'';

b. In paragraph (d)(3), replace the words ''account certificate of representation submitted by a CAIR designated representative'' by the words ''certificate of representation submitted by a CAIR designated representative'' and replace 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'';

c. Add 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 HH 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 HHH 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 HHHH 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 HH 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 HHH 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 HHHH 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.*

§ 96.102 [Amended]

3. Section 96.102 is amended by:

a. In the definition of ''Alternate CAIR designated representative'', add 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.''

b. In the definition of ''CAIR designated representative'', add 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.''

c. In the definition of ''CAIR NO_X allowance'', replace the words ''by the permitting authority under'' with the words ''by the permitting authority or the Administrator under'', replace the words ''§ 96.188'' with the words ''§ 96.188, or under subpart EE of part 97 or § 97.188 of this chapter,'', and replace the words ''§ 51.123(o)(1) or (2) of this chapter'' with the words ''§ 51.123(o)(1) or (2) of this chapter or subpart EE of part 97 or § 97.188 of this chapter'';

d. In the definition of ''CAIR NO_X allowance deduction or deduct CAIR NO_X allowances'', add, after the words ''compliance account'', the words '', *e.g.*,'';

e. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

f. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and § 52.35 of this chapter,'';

g. In the definition of ''CAIR SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

h. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

i. In the definition of ''Commence commercial operation'', replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'' in paragraphs (1)(i), (1)(ii), and (2);

j. In the definition of ''Commence operation'', revise paragraphs (1)(i) and (1)(ii), remove paragraph (2), replace in paragraphs (3)(i) and (3)(ii) the words ''in paragraph (3)'' with the words ''in paragraph (2)'', replace in paragraph (3)(ii) the words ''in paragraph (1), (2), or (3)'' with the words ''in paragraph (1) or (2)'', and redesignate paragraph (3) as paragraph (2);

k. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.106(c)(2), and'';

l. In the definition of ''Oil-fired'', replace the words ''in a specified year.'' with the words ''in a specified year and not qualifying as coal-fired.''; and

m. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.102 Definitions.

* * * * *

Commence operation means:

(1) * * *

(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 unit's date of commencement of operation.

(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, 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.

* * * * *

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, as a means of reduction national Hg emissions.

* * * * *

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
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

§ 96.104 [Amended]

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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins 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 on the date on which it first 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:

(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 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 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 by:

a. In paragraph (a)(1), replace the words ''§ 96.106(c)(4) through (8)'' with the words ''§ 96.106(c)(4) through (7)'' and replace the words ''subparts EE through GG'' with the words ''subparts BB and EE through GG''; and

b. In paragraph (b)(3), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.106 [Amended]

7. Section 96.106 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.121(a) and (b)'' with the words ''in § 96.121'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.170(b)(1), (2), or (5)'' with the words ''under § 96.170(b)(1), (2), or (5) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR NO_X unit's compliance account'' with the words ''from a CAIR NO_X source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR NO_X unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.113 [Amended]

8. Section 96.113 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.142 [Amended]

9. Section 96.142 is amended by:

a. In paragraph (a)(2)(ii)(C), replace the words ''3,414 Btu/kWh'' with the words ''3,413 Btu/kWh'';

b. In paragraph (c)(1), replace the words ''2009 through 2013'' with the words ''2009 through 2014'' and replace the words ''in 2014'' with the words ''in 2015'';

c. In paragraph (c)(2), replace the words ''on or before July 1'' with the words ''on or before May 1''; and

d. In paragraph (c)(4)(ii), replace the words ''On or after July 1'' with the words ''On or after May 1''.

§ 96.143 [Amended]

10. Section 96.143 is amended by:

a. In paragraph (d)(3), replace the words '' 'Unit's allocation' is the number of CAIR NO_X allowances'' with the words '' 'Unit's allocation' is the amount of CAIR NO_X allowances';

b. In paragraph (d)(4), replace the words ''paragraph (d)(3) or (4)'' with the words ''paragraph (d)(2) or (3)''; and

c. In paragraph (d)(5), replace the words ''paragraph (d)(5)'' with the words ''paragraph (d)(4)''.

§ 96.153 [Amended]

11. Section 96.153 is amended by:

a. In paragraph (a), replace the words ''By December 1, 2006, the Administrator'' with the words ''The Administrator''; and

b. Revise 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 or as determined by the Administrator 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]

12. Section 96.154 is amended by, in paragraph (c)(2)(ii), replace the words ''to any unit'' with the words ''to any entity''.

§ 96.170 [Amended]

13. Section 96.170 is amended by:

a. In paragraph (b)(5), replace the words ''paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner'' with the words ''paragraphs (b)(1) and (2) of this section, for the owner''; and

b. Add 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]

14. Section 96.171 is amended by, in paragraph (c), replace the words ''§ 75.12, § 75.17, or subpart H of part 75'' with the words ''§ 75.12 or § 75.17''.

§ 96.173 [Amended]

15. 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''.

§ 96.174 [Amended]

16. Section 96.174 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2008; or'' with the words ''2008;'';

b. In paragraph (d)(1)(ii), replace the words ''2008.'' with the words ''2008;'';

c. Add new paragraphs (d)(1)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR SO_2 Trading Program,'' with the words '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I'' 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) of this chapter.

* * * * *

§ 96.184 [Amended]

17. Section 96.184 is amended by:

a. In paragraph (c)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period'' with words ''for such control periods''.

§ 96.185 [Amended]

18. Section 96.185 is amended by:

a. In paragraph (b), replacing the words ''under subpart FF or GG'' with the words ''under subpart FF, GG, or II''; and

b. 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 opt-in unit is located.

§ 96.186 [Amended]

19. Section 96.186 is amended by, in paragraph (b)(2), replace the words ''equal in number to'' with the words ''equal in amount to''.

§ 96.187 [Amended]

20. Section 96.187 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. In paragraphs (b)(3)(ii) and (b)(3)(ii)(A), replace the words ''number of CAIR NO_X allowances'' with the words ''amount of CAIR NO_X allowances''.

§ 96.188 [Amended]

21. Section 96.188 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR NO_X opt-in unit''.

§ 96.188 CAIR NO_X allowance allocations to CAIR NO_X opt-in units.

* * * * *

§ 96.202 [Amended]

22. Section 96.202 is amended by:

a. In the definition of ''Alternative CAIR designated representative'', add 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 designated representative under the Hg Budget Trading Program.''

b. In the definition of ''CAIR designated representative'', add 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.''

c. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

d. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97

of this chapter and § 52.35 of this chapter,'';

e. In the definition of ''CAIR SO_2 allowance'', replace in the introductory text the words ''under § 96.288,'' with the words ''under § 96.288 or § 97.288 of this chapter,'', designate the last sentence of the definition as paragraph (4), and, in paragraph (4), replace the words ''Program or under the provisions of'' with the words ''Program, under provisions of'' and replace the words ''is approved'' with the words ''are approved'' and replace the words ''of this chapter'' with the words ''of this chapter, or under § 97.288 of this chapter'';

f. In the definition of ''CAIR SO_2 allowance deduction or deduct CAIR SO_2 allowances'', add, after the words ''compliance account'', the words '',*e.g.*,'';

g. In the definition of ''CAIR SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

h. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

i. In the definition of ''Commence commercial operation'', replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'' in paragraphs (1)(i), (1)(ii), and (2) and remove the words ''or § 96.287(b)(3)'' in paragraph (3);

j. In the definition of ''Commence operation'', revise paragraphs (1)(i), and (1)(ii), remove paragraph (2), remove the words ''or § 96.287(b)(3)'' in paragraph (3), replace the words ''in paragraph (3)'' with the words ''in paragraph (2)'' in paragraphs (3)(i) and (3)(ii), replace the words ''in paragraph (1), (2), or (3)'' with the words ''in paragraph (1) or (2)'', and redesignate paragraph (3) as paragraph (2);

k. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.206(c)(2), and'';

l. In the definition of ''Useful thermal energy'', replace in paragraph (2) the word ''heat'' with the word ''heating''; and

m. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.202 Definitions.

* * * * *

Commence operation means:

(1) * * *

(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 unit's date of commencement of operation.

(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, 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.

* * * * *

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, as a means of reduction national Hg emissions.

* * * * *

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.

* * * * *

23. Section 96.203 is revised to read as follows:

§ 96.203 Measurements, abbreviations, and acroynyms.

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

24. 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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins 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 on the date on which it first 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:

(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 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 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]

25. Section 96.205 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.206(c)(4) through (8)'' with the words ''§ 96.206(c)(4) through (7)'' and replace the words ''subparts FFF and GGG'' with the words ''subparts BBB, FFF, and GGG:''; and

b. In paragraph (b)(2), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.206 [Amended]

26. Section 96.206 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.221(a) and (b)'' with the words ''in § 96.221'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.270(b)(1), (2), or (5)'' with the words ''under § 96.270(b)(1), (2), or (5) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR SO_2 unit's compliance account'' with the words ''from a CAIR SO_2 source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR SO_2 unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.213 [Amended]

27. Section 96.213 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.220 [Amended]

28. Section 96.220 is amended by, in paragraph (b), replacing the words ''CAIR SO_2 units at the source'' with the words ''CAIR SO_2 units at the source covered by the CAIR permit''.

§ 96.254 [Amended]

29. Section 96.254 is amended by:

a. In paragraph (a)(3), replace the words ''deduction for excess emissions'' with the words ''deductions for excess emissions''; and

b. In paragraphs (c)(2)(ii), (c)(2)(iv), and (c)(2)(vi), replace the words ''to any unit'' with the words ''to any entity''.

c. In paragraph (d)(1), replace the words ''3 times the number of tons of the source's excess emissions.'' with the words ''the sum of the following amounts:'' and add paragraphs (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

* * * * *

(d) * * *

(1) * * *

(i) 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; and

(ii) Two times:

(A) The number of tons of the source's excess emissions, if the source is not subject to an Acid Rain emissions limitation; or

(B) The number of tons of the source's excess emissions minus the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section, if the source is subject to an Acid Rain emissions limitation.

* * * * *

§ 96.261 [Amended]

30. Section 96.261 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.260; and'' with the words ''§ 96.260;'';

b. In paragraph (a)(2), replace the words ''transfer.'' with the words ''transfer; and''; and

c. Add 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.

* * * * *

§ 96.270 [Amended]

31. Section 96.270 is amended by:

a. In paragraph (b)(5), replace the words ''paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner'' with the words ''paragraphs (b)(1) and (2) of this section, for the owner''; and

b. Add 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]

32. Section 96.271 is amended by removing and reserving paragraph (c).

§ 96.273 [Amended]

33. 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''.

§ 96.274 [Amended]

34. Section 96.274 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2009; or'' with the words ''2009;'';

b. In paragraph (d)(1)(ii), replace the words ''2009.'' with the words ''2009;'';

c. Add new paragraphs (d)(1)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR NO_X Ozone Season Trading Program,'' with the words '', CAIR NO_X Ozone Season Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I''.

§ 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).

* * * * *

§ 96.283 [Amended]

35. Section 96.283 is amended by:

a. In paragraph (a)(2)(iii), replace the words ''CAIR opt-in unit'' with the words ''CAIR SO_2 opt-in unit''; and

b. In paragraph (b)(1), replace the words ''or permitting authority''s'' with the words ''or the permitting authority's''.

§ 96.284 [Amended]

36. Section 96.284 is amended by:

a. In paragraph (c)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period'' with words ''for such control periods''.

§ 96.285 [Amended]

37. Section 96.285 is amended by:

a. In paragraph (b), replacing the words ''under subpart FFF or GGG'' with the words ''under subpart FFF, GGG, or III''; and

b. 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 opt-in unit is located.

§ 96.286 [Amended]

38. Section 96.286 is amended by, in paragraph (b)(2), replacing the words ''equal in number to'' with the words ''equal in amount to''.

§ 96.287 [Amended]

39. Section 96.287 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. Remove paragraph (b)(3).

§ 96.288 [Amended]

40. Section 96.288 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR SO_2 opt-in unit''.

§ 96.288 CAIR SO_2 allowance allocations to CAIR SO_2 opt-in units.

* * * * *

§ 96.302 [Amended]

41. Section 96.302 is amended by:

a. In the definition of ''Allocate or allocation'', replace with words ''under subpart EEEE'' with the words ''under subpart EEEE of this part or § 51.123(aa)(2)(iii), (bb)(2)(iii) or (iv), or (dd)(3) or (4) of this chapter'';

b. In the definition of ''Alternate CAIR NO_X designated representative'', add 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.''

c. In the definition of ''CAIR NO_X designated representative'', add 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.''

d. In the definition of ''CAIR NO_X Annual Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and § 52.35 of this chapter,'';

e. In the definition of ''CAIR NO_X Ozone Season allowance'', replace the words ''by the permitting authority under'' with the words ''by the permitting authority or the Administrator under'', replace the words ''§ 51.123(aa)(2)(iii)(A)'' with the words ''§ 51.123(aa)(2)(iii)'', replace the words ''or (dd)(3) or (4) of this chapter'' with the words ''or (dd)(3) or (4) of this chapter, or under subpart EEEE of part 97 or § 97.388 of this chapter'', replace the words ''Budget Trading Program'' with the words ''Budget Trading Program in accordance with § 51.121(p) of this chapter'', and replace the words ''or (dd) of this chapter'' with the words ''or (dd) of this chapter or subpart EEEE of part 97 or § 97.388 of this chapter'';

f. In the definition of ''CAIR NO_X Ozone Season allowance deduction or deduct CAIR NO_X Ozone Season allowances'', add, after the words ''compliance account'', the words '',e.g.,'';

g. In the definition of ''CAIR NO_X Ozone Season Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.123 of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and § 52.35 of this chapter,'';

h. In the definition of ''CAIR NO_X SO_2 Trading Program'', replace the words ''§ 51.123 of this chapter,'' with the words ''§ 51.124 of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and § 52.36 of this chapter,'';

i. In paragraph (2) of the definition of ''Cogeneration unit'', replace the words ''calendar year after which'' with the words ''calendar year after the calendar year in which'';

j. In the definition of ''Commence commercial operation'', in paragraphs (1)(i), (1)(ii), and (2), replace the words ''on the date the unit commences'' with the words ''on the later of November 15, 1990 or the date the unit commences'';

k. In the definition of ''Commence operation'', revise paragraphs (1)(i), (1)(ii) and (2);

l. In the definition of ''Control period'', replace the words ''January 1 of a calendar year and'' with the words ''January 1 of a calendar year, except as provided in § 96.306(c)(2), and'';

m. In the definition of ''Oil-fired'', replace the words ''in a specified year.'' with the words ''in a specified year and not qualifying as coal-fired.'';

n. In the definition of ''Useful thermal energy'', replace in paragraph (2) the word ''heat'' with the word ''heating''; and

o. Add new definitions of ''Hg Budget Trading Program'' and ''Solid waste incineration unit'' and revise to read as follows:

§ 96.302 Definitions.

* * * * *

Commence operation means:

(1) * * *

(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 unit's date of commencement of operation.

(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, 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.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is a CAIR NO_X Ozone Season unit under § 96.304(d), but not on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition, and is not a unit under paragraph (3) of this definition, 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 § 96.304(d).

(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 unit's date of commencement of commercial operation.

(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), 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.

* * * * *

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, as a means of reduction national Hg emissions.

* * * * *

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.

* * * * *

42. Section 96.303 is revised to read as follows:

§ 96.303 Measurements, abbreviations, and acroynyms.

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

§ 96.304 [Amended]

43. 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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins 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 on the date on which it first 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:

(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 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 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]

44. Section 96.305 is amended by:

a. In paragraph (a)(1), replace the words ''§ 96.306(c)(4) through (8)'' with the words ''§ 96.306(c)(4) through (7)'' and replace the words ''subparts EEEE through GGGG'' with the words ''subparts BBBB and EEEE through GGGG''; and

b. In paragraph (b)(3), replace the words ''shall retain at the source'' with the words ''shall retain, at the source''.

§ 96.306 [Amended]

45. Section 96.306 is amended by:

a. In paragraph (a)(1)(i), replace the words ''in § 96.321(a) and (b)'' with the words ''in § 96.321'';

b. In paragraph (c)(2), replace the words ''under paragraph (c)(1) of this section'' with ''under paragraph (c)(1) of this section for the control period'' and replace the words ''under § 96.370(b)(1), (2), (3), or (7)'' with the words ''under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter'';

c. In paragraph (c)(7), replace the words ''from a CAIR NO_X Ozone Season unit's compliance account'' with the words ''from a CAIR NO_X Ozone Season source's compliance account'' and replace the words ''CAIR permit of the source that includes the CAIR NO_X Ozone Season unit'' with the words ''CAIR permit of the source''; and

d. In paragraph (d), remove paragraph (2), remove the designation of paragraph (1), redesignate paragraph (i) as paragraph (1), and redesignate paragraph (ii) as paragraph (2).

§ 96.313 [Amended]

46. Section 96.313 is amended by, in paragraph (a)(4)(iv), replacing the words ''where a customer'' with the words ''where a utility or industrial customer''.

§ 96.342 [Amended]

47. Section 96.342 is amended by:

a. In paragraph (a)(2)(i), replace the words ''during a calendar year'' by the words ''during a control period in a calendar year'';

b. In paragraph (a)(2)(ii)(C), replace the words ''3,414 Btu/kWh'' with the words ''3,413 Btu/kWh'';

c. In paragraph (c)(1), replace the words ''2009 through 2013'' with the words ''2009 through 2014'' and replace the words ''in 2014'' with the words ''in 2015'';

d. In paragraph (c)(2), replace the words ''on or before April 1'' with the words ''on or before February 1''; and

e. In paragraph (c)(4)(ii), replace the words ''On or after April 1'' with the words ''On or after February 1''.

§ 96.353 [Amended]

48. Section 96.353 is amended by:

a. In paragraph (a), replace the words ''By December 1, 2006, the Administrator'' with the words ''The Administrator''; and

b. Revise paragraph (c) to read as follows:

§ 96.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

* * * * *

(c) By December 1, 2009 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 or as determined by the Administrator 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]

49. Section 96.354 is amended by, in paragraph (c)(2)(ii), replace the words ''to any unit'' with the words ''to any entity'.

§ 96.370 [Amended]

50. Section 96.370 is amended by:

a. In paragraph (b)(7), replace the words ''paragraphs (b)(1), (2), and (3) of this section and solely for purposes of § 96.206(c)(2), for the owner'' with the words ''paragraphs (b)(1), (2), and (3) of this section, for the owner'' and replace the words ''CAIR NO_X Ozone Season opt-in unit'' with the words ''CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part''; and

b. Add 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]

51. Section 96.371 is amended by, in paragraph (c), replace thee words ''§ 75.12, § 75.17, or subpart H of part 75'' with the words ''§ 75.12 or § 75.17''.

§ 96.373 [Amended]

52. 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''.

§ 96.374 [Amended]

53. Section 96.374 is amended by:

a. In paragraph (d)(1)(i), replace the words ''2008; or'' with the words ''2008.'';

b. In paragraph (d)(2)(i)(A), replace the words ''2008;'' with the words ''2008.'';

c. Add new paragraphs (d)(1)(iii) and (iv) and (d)(2)(iii) and (iv); and

d. In paragraph (d)(3), replace the words ''or CAIR SO_2 Trading Program,'' with the words '', CAIR SO_2 Trading Program, or Hg Budget Trading Program,'' and replace the words ''subparts F through H'' with the words ''subparts F through I'' 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) * * *

(iii) Notwithstanding paragraphs (d)(2)(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).

(iv) Notwithstanding paragraphs (d)(2)(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).

* * * * *

§ 96.384 [Amended]

54. Section 96.384 is amended by:

a. In paragraph (c)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section'';

b. In paragraph (d)(2), replace 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'' with the words ''for the control periods under paragraphs (b)(1)(ii) and (2) of this section''; and

c. In paragraph (d)(3), replace the words ''for such control period ''with words ''for such control periods'.

§ 96.385 [Amended]

55. Section 96.385 is amended by:

a. In paragraph (b), replacing the words ''under subpart FFFF or GGGG'' with the words ''under subpart FFFF, GGGG, or IIII''; and

b. 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 opt-in unit is located.

§ 96.386 [Amended]

56. Section 96.386 is amended by, in paragraph (b)(2), replacing the words ''equal in number to'' with the words ''equal in amount to'.

§ 96.387 [Amended]

57. Section 96.387 is amended by:

a. In paragraph (b)(2)(i), replace the words ''equal in number to'' with the words ''equal in amount to''; and

b. In paragraphs (b)(3)(ii) and (b)(3)(ii)(A), replace the words ''number of CAIR NO_X Ozone Season allowances'' with the words ''amount of CAIR NO_X Ozone Season allowances''.

§ 96.388 [Amended]

58. Section 96.388 is amended by:

a. Revise the heading of the section; and

b. In paragraph (d)(2), replace the words ''CAIR opt-in unit'' with the words ''CAIR NO_X Ozone Season opt-in unit''.

§ 96.388 CAIR NO_X Ozone Season allowance allocations to CAIR NO_X Ozone Season opt-in units.

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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 HH, 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.

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.
97.176 Additional requirements to provide heat input data.

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 issued

under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit or a new unit set-aside and, with regard to CAIR NO_X allowances issued under § 97.188, the determination by the permitting authority of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit.

Allowance transfer deadline means, for a control period, 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 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 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 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 designated representative under the Hg Budget Trading Program.

CAIR NO_X allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EE of this part or under § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o) (1) or (2) 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) 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 § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 of the CAIR NO_X allowances available for deduction for the source under § 97.154 (a) and (b) for a 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 § 52.35 of this chapter or

administered by the Administrator under provisions of a State implementation plan that are approved under § 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 a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

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 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 § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 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 of 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 heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(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.

(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 unit's date of commencement of commercial operation.

(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), 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 § 97.105, 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 and is not a unit under paragraph (3) 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 unit's date of commencement of commercial operation.

(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), 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 paragraph (1) of this definition and except as provided in § 97.184(h) or § 97.187(b)(3), for a CAIR NO_X opt-in unit or 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 unit's date for commencement of commercial operation shall be the date

on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.184(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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.

(4) Notwithstanding paragraphs (1) through (3) 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 § 97.105.

(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 unit's date of commencement of operation.

(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, 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.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.184(h) or § 97.187(b)(3), for a CAIR NO_X opt-in unit or 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 unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.184(b)(1)(i).

(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 unit's date of commencement of operation.

(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), 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 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 with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction 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, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

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 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 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 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 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.

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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X unit begins 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 on the date on which it first 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:

(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 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 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, 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, 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 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 operation and 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 under 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 subpart EE 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 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, and 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 a new 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 new 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 new 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.

(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 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.

Subpart CC—Permits

§ 97.120 General CAIR 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 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 operation.

(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.

§ 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 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 the 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 the 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 determined based on the best available data reported to the Administrator for the unit, 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.

(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 will give 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 State trading budget for such State 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 commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), 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 State trading budget for the State 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. The CAIR NO_X allowance allocation request must be submitted on or before May 1 of the first control period for which the CAIR NO_X allowances are requested 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 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 State trading budget for such State 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 authorized account 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 whose average annual NO_X emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, if such unit is included in a NO_X averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, whose 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 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 July 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 July 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 July 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 November 30, 2009, the Administrator will determine by order the allocations under paragraph (d)(2) or (3) of this section, as applicable. 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 and record allocations under §§ 97.141, 97.142, and 97.153 for the CAIR NO_X units in the State, and the Administrator will record the allocations made under such approved State implementation plan revision.

(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 and record allocations under § 97.143 for the CAIR NO_X units in the State, and the Administrator will record the allocations of the State's compliance supplement pool made under such approved State implementation plan revision.

(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.* (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 new 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 new 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 new 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 persons, 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.* (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 alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative 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 alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X allowance transfers.

(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 December 1, 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 a source in accordance with § 97.142(a) and (b) for the control period in 2009.

(b) By December 1, 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 December 1, 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;

(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 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(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 paragraph (b) or (d) of this section.

(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.

§ 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 § 97.154, § 97.156, or subpart GG 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 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 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.* 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.* (1) Except as provided in paragraph (c)(2) of this section, 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.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data 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, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(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, 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 .

(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 the 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.

§ 97.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

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 CAIRNO_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 § 97.180(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.

(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 determines 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 (b)(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 (b)(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 § 97.180(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, GG, or II 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 prescribed by the permitting authority, in the CAIR permit for the source where the CAIR NO_X opt-in unit is located.

§ 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 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 treated, solely for purposes of CAIR NO_X allowance allocations under § 97.142, as a unit that commences operation on the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 and will be allocated CAIR NO_X allowances under § 97.142.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 97.104 is not January 1, 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 in which a CAIR 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 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):

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):

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.

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.
97.276 Additional requirements to provide heat input data.

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 and, with regard to CAIR SO_2 allowances issued under § 97.288, the determination by the permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.

Allowance transfer deadline means, for a control period, 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 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 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 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 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 § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 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 § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

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 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 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 the permitting authority under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) 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) 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 of the CAIR SO_2 allowances available for deduction for the source under § 97.254(a) and (b) for a 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 § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(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.

(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 unit's date of commencement of commercial operation.

(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), 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 § 97.205, 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 and is not a unit under paragraph (3) 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 unit's date of commencement of commercial operation.

(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), 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 paragraph (1) of this definition and except as provided in § 97.284(h) or § 97.287(b)(3), for a CAIR SO_2 opt-in unit or 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 unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 97.284(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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.

(4) Notwithstanding paragraphs (1) through (3) 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 § 97.205.

(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 unit's date of commencement of operation.

(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, 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.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.284(h) or § 97.287(b)(3), for a CAIR SO_2 opt-in unit or 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 unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 97.284(b)(1)(i).

(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 unit's date of commencement of operation.

(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), 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 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 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 H2O;

(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 with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, as a means of reduction in 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, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

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 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 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 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 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.

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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO_2 unit begins 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 on the date on which it first 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:

(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 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 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, 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, 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 operation and 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 under 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 and GGG 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, and 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 a new 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 new 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 new 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.

(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 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.

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 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 operation.

(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.

§ 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 elements 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.* (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 new 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 new 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 new 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 persons, 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.* (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 alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative 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 alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(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;

(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 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section or for deduction under part 77 of this chapter.

(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, available under paragraph (a) of this section and 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 § 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 the sum of the following amounts:

(i) 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; and

(ii) Two times: (A) The number of tons of the source's excess emissions, if the source is not subject to an Acid Rain emissions limitation; or

(B) The number of tons of the source's excess emissions minus the amount of the CAIR SO_2 allowances required to be deducted under paragraph (b)(1)(ii) of this section, if the source is subject to an Acid Rain emissions limitation.

(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 paragraph (b) or (d) of this section.

(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.

§ 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 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 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 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.* 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.* (1) Except as provided in paragraph (c)(2) of this section, 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, SO_2 emission rate, 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.

(2) The owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the

owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(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, 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 or 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 .

(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 NO_X opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR NO_X 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.

§ 97.276 Additional requirements to provide heat input data.

The owner or operator of a CAIR SO_2 unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

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 NO_X 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 NO_X allowances under § 97.280(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.

(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 Annual 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 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 determines 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 HH 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 (b)(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 NO_X 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 Annual 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, 2009 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 NO_X 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 § 97.280(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, GGG, or III 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 prescribed by the permitting authority, in the CAIR permit for the source where the CAIR SO_2 opt-in unit is located.

§ 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 Annual 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 SO_2 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 § 7.204, 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 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 in which a CAIR 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 in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 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 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 in an amount equaling 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, 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 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 NO_X 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 in an amount equaling 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, 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 § 51.124(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 CCCC, adding and reserving subpart DDDD and adding subparts EEEE 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.

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.
97.376 Additional requirements to provide heat input data.

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 HHHH 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 issued under subpart EEEE, the determination by the 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 or a new unit set-aside and, with regard to CAIR NO_X Ozone Season allowances issued under § 97.388, the determination by the permitting authority of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit.

Allowance transfer deadline means, for a control period, 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 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 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 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 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 § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 the 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), or (dd) 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 the 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)(i)(E) of this chapter shall not be used in applying this definition. 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), or (dd) of this chapter or that meet the requirements of § 51.121(p) of this chapter 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 of the CAIR NO_X Ozone Season allowances available for deduction for the source under § 97.354(a) and (b) for a control period.

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 § 52.35 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 source means a source that includes one or more CAIR NO_X Ozone Season units.

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 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 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 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 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 § 52.36 of this chapter or administered by the Administrator under provisions of a State implementation plan that are approved under § 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 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: (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 heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(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.

(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 unit's date of commencement of commercial operation.

(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), 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 and is not a unit under paragraph (3) 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 unit's date of commencement of commercial operation.

(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), 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 paragraph (1) of this definition and except as provided in § 97.384(h) or § 97.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or 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 unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.384(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) 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 unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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.

(4) Notwithstanding paragraphs (1) through (3) 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 § 97.305.

(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 unit's date of commencement of operation.

(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, 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.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.305, for a unit that is a CAIR NO_X Ozone Season unit under § 97.304(d), but not on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition, and is not a unit under paragraph (3) of this definition, 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 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 unit's date of commencement of commercial operation.

(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), 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 paragraph (1) of this definition and except as provided in § 97.384(h) or § 97.387(b)(3), for a CAIR NO_X Ozone Season opt-in unit or 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 unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 97.384(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) 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 unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the source (*e.g.*, repowered), 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.

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 with subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator, 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, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

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 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 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 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 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.

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 NOX 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, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins 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 on the date on which it first serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (2)(i), or (2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1)(i) Any unit:

(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 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 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, 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 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, 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 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 operation and 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 under 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 subpart EEEE 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 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, 97.351, and 97.382, whenever the term ''CAIR designated representative'' is used in subparts AAAA through HHHH 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 a new 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 new 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 new 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.

(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_XOzone 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 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.

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 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 operation.

(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.

§ 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 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
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 State's State trading budget shall be treated, for purposes of §§ 97.342 and 97.344, as comprising the sum of:

(1) The applicable amount for the State for the year under paragraph (a) of this section; and

(2) An amount not exceeding the portion of the State's State trading program budget, under such emissions trading program approved under § 51.121(p) of this chapter, attributed to the units that the applicability provisions in § 97.304(a) and (b) are expanded to include under such State implementation plan revision.

§ 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 submission 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 determined based on the best available data reported to the Administrator for the unit, 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.

(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 will give 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 State trading budget for such State 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 commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), 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 State trading budget for the State 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 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. The CAIR NO_X Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO_X Ozone Season allowances are requested 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 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 State trading budget for such State 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) or (e) 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 and record allocations under §§ 97.341, 97.342, and 97.353 for the CAIR NO_X Ozone Season units in the State, and the Administrator will record allocations made under such approved State implementation plan revision.

(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.* (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 new 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 new 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 new 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 persons, 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.* (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 alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative 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 alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

(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 December 1, 2007, 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 a source in accordance with § 97.342(a) and (b) for the control period in 2009.

(b) By December 1, 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 December 1, 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;

(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 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(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 paragraph (b) or (d) of this section.

(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.

§ 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 § 97.354, § 97.356, or subpart GGGG 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 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 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 NOX 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.* 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, if the compliance date under paragraph (b)(2)(i) is before May 1, 2008.

(3) For the owner or operator of a CAIR NO_X Ozone Season unit that commences 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 III 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.* (1) Except as provided in paragraph (c)(2) of this section, 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.

(2) The owner or operator of a CAIR NO_X unit that does not meet the applicable compliance date set forth in paragraph (b)(4) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in § 75.74(c)(7) of this chapter or subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(4) of this section.

(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, 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 .

(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, 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).

(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.

(iii) Notwithstanding paragraphs (d)(2)(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).

(iv) Notwithstanding paragraphs (d)(2)(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).

(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.

§ 97.376 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X Ozone Season unit that monitors and reports NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

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 HH 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.

(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 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 determines 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 HH 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 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 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 (b)(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 (b)(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 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 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 § 97.380(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, GGGG, or IIII 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 prescribed by the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located.

§ 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 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 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 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 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 NO_X 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 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 December 31, 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 treated, solely for purposes of CAIR NO_X Ozone Season allowance allocations under § 97.342, as a unit that commences operation on 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 will be allocated CAIR NO_X Ozone Season allowances under § 97.342.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, 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 January 1, 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 October 31 of the control period in which a CAIR Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 97.384(g) and October 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 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 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 December 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 December 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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