

US EPA ARCHIVE DOCUMENT

Title 40, chapter I, of the Code of Federal Regulations is 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.

2. Part 51 subpart A is ~~proposed to be amended~~revised to read as follows:

Subpart A - Emission Inventory Reporting Requirements

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Subpart A - Emission Inventory Reporting Requirements

GENERAL INFORMATION FOR INVENTORY PREPARERS

~~§51~~§ 51.1 **Who is responsible for actions described in this subpart?**

States must inventory emission sources located on non-tribal lands and report this information to EPA.

~~§51~~§ 51.5 **What tools are available to help prepare and report emissions data?**

We urge your State to use estimation procedures described in documents from the Emission Inventory Improvement Program (EIIP). These procedures are standardized and ranked according to relative uncertainty for each emission estimating technique. Using this guidance

will enable others to use your State's data and evaluate its quality and consistency with other data.

~~§51~~§ 51.10 How does my State report emissions that are required by the ~~NOx~~NO_x SIP Call and the Clean Air Interstate Rule ?

The District of Columbia and States that are subject to the ~~NOx~~NO_x SIP Call (~~§51~~§ 51.121) are subject to the emission reporting provisions of ~~§51~~§ 51.122. The District of Columbia and States that are subject to the Clean Air Interstate Rule are subject to the emission reporting provisions of ~~§51~~§ 51.125. This subpart A incorporates the pollutants, source, time periods, and required data elements for both of these reporting requirements.

SPECIFIC REPORTING REQUIREMENTS

~~§51~~§ 51.15 What data does my State need to report to EPA?

(a) Pollutants. Report actual emissions of the following (see Definitions in appendix A to this subpart for precise definitions as required):

(1) Required pollutants for triennial reports of annual (12-month) emissions for all sources and every-year reports of annual emissions from Type A sources:

- (i) Sulfur dioxide(~~SO2~~SO₂).
- (ii) Volatile organic compounds (VOC).

(iii) Nitrogen oxides (~~NO_x~~NO_x).

(iv) Carbon monoxide (CO).

(v) Lead and lead compounds.

(vi) Primary PM_{2.5}. Emissions of filterable, condensible, and total PM_{2.5} should be reported, if all are applicable to the source type.

(vii) Primary PM₁₀. Emissions of filterable, condensible, and total PM₁₀ should be reported, if all are applicable to the source type.

(viii) Ammonia (NH₃).

(2) Required pollutants for every-year reporting of annual (12-month) emissions for sources controlled to meet the requirements of 51.123: NO~~x~~x.

(3) Required pollutants for every-year reporting of annual (12-month) emissions of sources controlled to meet the requirements of 51.124: ~~SO₂~~SO₂.

(4) Required pollutants for all reports of ozone season (5 months) emissions: NO~~x~~x.

(5) Required pollutants for triennial reports of summer daily emissions:

(i) NO~~x~~x.

(ii) VOC.

(6) Required pollutants for every-year reports of summer daily emissions: NO~~x~~x.

(7) A State may at its option include in its emissions inventory reports estimates of emissions for additional pollutants such as other pollutants listed in paragraph (a)(1) or hazardous air pollutants.

(b) Sources. Emissions should be reported from the following sources in all parts of the State, excluding sources located on tribal lands:

- (1) Point.
- (2) Non-point.
- (3) Onroad mobile.
- (4) Nonroad mobile.

(c) Supporting information. You must report the data elements in Tables 2a through 2d of appendix A to this subpart. You must also report information on the method of determination for data elements EPA may designate for such reporting in each reporting period. Additional information not listed in Tables 2a through 2d may be required, for example information identifying the State contact person for the submittal. We may ask you for other data on a voluntary basis to meet special purposes.

(d) Confidential data. We do not consider the data in Tables 2a through 2d of appendix A to this subpart confidential, but some States limit release of this type of data. Any data that you submit to EPA under this rule will

be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

(e) Option to Submit Inputs to Emission Inventory

Estimation Models in Lieu of Emission Estimates. For a given reporting year, EPA may allow States to submit comprehensive input values for models capable of estimating emissions from a certain source type on a national scale, in lieu of submitting the emission estimates otherwise required by this subpart.

~~§51~~ **§ 51.20** **What are the emission thresholds that separate point and non-point sources?**

(a) All anthropogenic stationary sources must be included in your inventory as either point or non-point sources, except that biogenic emissions are not required to be reported.

(b) Sources which are major sources under section 302 or part D of title I of the Clean Air Act, considering emissions only of the pollutants listed in ~~section~~ § 51.15(a), must be reported as point sources, starting with the 2008 inventory year. Provisions of part 70 affecting the definition of a major source apply to this subpart also. All pollutants specified in ~~section~~ § 51.15(a) must be

reported for point sources, not just the pollutant(s) which qualify the source as a point source. Prior to the 2008 inventory year, States may omit from point source treatment any source that would not be major if its actual emissions were considered rather than its potential to emit.

(c) If your State has lower emission reporting thresholds for point sources than paragraph (b) of this section, then you may use these in reporting your emissions to EPA.

(d) All stationary sources that are not subject to reporting as point sources must be reported as non-point sources. This includes wild fires and prescribed fires. Episodic wind-generated particulate matter emissions from sources that are not major sources may be excluded, for example dust lifted by high winds from natural or tilled soil. Emissions of non-point sources may be aggregated to the county level, but must be separated and identified by source classification code (SCC). Non-point source categories or emission events reasonably estimated by the State to represent a de minimis percentage of total county and State emissions of a given pollutant may be omitted.

~~§51~~ **§ 51.25** **What geographic area must my State's inventory cover?**

Because of the regional nature of these pollutants,

your State's inventory must be statewide, regardless of any area's attainment status.

§51.30 When does my State report which emissions data to EPA?

All States are required to report two basic types of emission inventories to EPA: Every-year Cycle Inventory; and Three-year Cycle Inventory. The sources and pollutant to be reported vary among States.

(a) Every-year cycle.

See Tables 2a, 2b, and 2c of appendix A to this subpart for the specific data elements to report every year.

(1) All States are required to report every year the annual (12-month) emissions of all pollutants listed in section 51.15(a)(1) from Type A (large) point sources, as defined in Table 1. The first every-year cycle inventory will be for the year 2003 and must be submitted to EPA within 17 months, i.e., by June 1, 2005. Subsequent every-year cycle inventories will be due 17 months following the end of the reporting year.

(2) States subject to sections 51.123 and 51.125 of this subpart are required to report every year the annual (12-month) emissions of NO_x from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under

~~section~~§ 51.123 of this subpart. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to ~~section~~§ 51.123 solely because of its contribution to ozone nonattainment in another State.

(3) States subject to ~~sections~~§§ 51.124 and 51.125 of this subpart are required to report every year the annual (12-month) emissions of ~~SO₂~~SO₂ from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under ~~section~~§ 51.124 of this subpart. This requirement begins with the 2009 inventory year.

(4) States subject to ~~sections~~§§ 51.123 and 51.125 are required to report every year the ozone season emissions of NO_x and summer daily emissions of NO_x from any point, non-point, onroad mobile, or nonroad mobile source for which the State specified control measures in its SIP submission under ~~section~~§ 51.123 of this subpart. This requirement begins with the 2009 inventory year. This requirement does not apply to any State subject to ~~section~~§ 51.123 solely because of its contribution to PM_{2.5} nonattainment in another State.

(5) States subject to the emission reporting requirements of 51.122 are required to report every year the ozone season emissions of NO_x and summer daily emissions of NO_x from any point, non-point, onroad mobile, or nonroad

mobile source for which the State specified control measures in its SIP submission under ~~section~~ § 51.121(g) of this subpart.— This requirement begins with the inventory year prior to the year in which compliance with the NO_x SIP Call requirements is first required.

(6) If sources report ~~SO₂~~ SO₂ and ~~NO_x~~ NO_x emissions data to EPA in a given year pursuant to a trading program approved under ~~section~~ § 51.123(o) or ~~section~~ § 51.124(o) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR 75, then the State need not provide annual reporting of the pollutants to EPA for such sources. If ~~SO₂~~ SO₂ and NO_x are the only pollutants required to be reported for the source for the given calendar year and emissions period (annual, ozone season, or summer day), all data elements for the source may be omitted from the State's emissions report for that period. We will make both the raw data submitted by sources to the trading programs and summary data available to any State that chooses this option.

(~~5~~7) In years which are reporting years under the 3-year cycle, the reporting required by the 3-year cycle satisfies the requirements of this paragraph.

(b) Three-year cycle.

See Tables 2a, 2b and 2c of appendix A to this subpart

for the specific data elements that must be reported triennially.

(1) All States are required to report for every third year the annual (12-month) emissions of all pollutants listed in ~~section~~§ 51.15(a)(1) from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

(2) States subject to ~~section~~§ 51.122 must report ozone season emissions and summer daily emissions of NO_x from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. For States with a ~~NO_x~~NO_x SIP Call compliance date of 2007, the first 3-year cycle inventory will be for 2008. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

(3) States subject to ~~sections~~§§ 51.123 and 51.125 must report ozone season emissions of NO_x and summer daily emissions of VOC and NO_x from all point sources, non-point

sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2008 and must be submitted to us within 17 months, i.e., by June 1, 2010. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year. This requirement does not apply to any State subject to section 51.123 solely because of its contribution to PM_{2.5} nonattainment in another State.

(4) Any State with an area for which EPA has made an 8-hour ozone nonattainment designation finding (regardless of whether that finding has reached its effective date) must report summer daily emissions of VOC and NO_x from all point sources, non-point sources, onroad mobile sources, and nonroad mobile sources. The first 3-year cycle inventory will be for the year 2005 and must be submitted to us within 17 months, i.e., by June 1, 2007. Subsequent 3-year cycle inventories will be due 17 months following the end of the reporting year.

51.35 How can my State equalize the emissions inventory effort from year to year?

(a) Compiling a 3-year cycle inventory means much more effort every 3 years. As an option, your State may ease this workload spike by using the following approach:

 (1) Each year, collect and report data for all Type A

(large) point sources (This is required for all Type A point sources).

 (2) — Each year, collect data for one-third of your smaller point sources. Collect data for a different third of these sources each year so that data has been collected for all of the smaller point sources by the end of each 3-year cycle. You must save 3 years of data and then report all of the smaller point sources on the 3-year cycle due date.

 (3) Each year, collect data for one-third of the area, nonroad mobile, and onroad mobile sources. You must save 3 years of data and then report all of these data on the 3-year cycle due date.

(b) For the sources described in paragraph (a) of this section, your State will therefore have data from 3 successive years at any given time, rather than from the single year in which it is compiled.

(c) If your State chooses the method of inventorying one-third of your smaller point sources and 3-year cycle area, nonroad mobile, onroad mobile sources each year, your State must compile each year of the 3-year period identically. For example, if a process hasn't changed for a source category or individual plant, your State must use the same emission factors to calculate emissions for each year

of the 3-year period. If your State has revised emission factors during the 3 years for a process that hasn't changed, resubmit previous year's data using the revised factor. If your State uses models to estimate emissions, you must make sure that the model is the same for all three years.

(d) If your State needs a new reference year emission inventory for a selected pollutant, your State can not use these optional reporting frequencies for the new reference year.

(e) If your State is a NO_x SIP Call State, you can not use these optional reporting frequencies for NO_x SIP Call reporting.

~~§51~~ **§ 51.40** In what form and format should my State report the data to EPA?

You must report your emission inventory data to us in electronic form. We support specific electronic data reporting formats and you are required to report your data in a format consistent with these. The term format encompasses the definition of one or more specific data fields for each of the data elements listed in Tables 2a, 2b, and 2c; allowed code values for categorical data fields; transmittal information; and data table relational structure. Because electronic reporting technology

continually changes, contact the Emission Factor and Inventory Group (EFIG) for the latest specific formats. You can find information on the current formats at the following Internet address:

~~http~~<http://www.epa.gov/ttn/chief/nif/index.html>>. You may also call the air emissions contact in your EPA Regional Office or our Info CHIEF help desk at (919)541-1000 or email to info.chief@epa.gov.

~~§51~~ **§ 51.45 Where should my State report the data?**

_____ (a) Your State submits or reports data by providing it directly to EPA.

(b) The latest information on data reporting procedures is available at the following Internet address:

~~http~~<http://www.epa.gov/ttn/chief>>. You may also call our Info CHIEF help desk at (919)541-1000 or email to info.chief@epa.gov.

Appendix A to Subpart A of Part 51 - Tables and

~~Glossary~~Definitions

Table 1. Emission Thresholds by Pollutant(tpy¹) for Treatment of Point Sources as Type A Under [Section](#) 51.30.

Pollutant	Emissions Threshold for Type A Treatment
1. SO₂ SO ₂	≥2500
2. VOC	≥250
3. NO _x	≥2500
4. CO	≥2500
5. Pb	Does not determine Type A status
6. PM ₁₀	≥250
7. PM _{2.5}	≥250
8. NH ₃ ²	≥250

¹ tpy = tons per year of actual emissions.

² Ammonia threshold applies only in areas where ammonia emissions are a factor in determining whether a source is a major source, i.e., where ammonia is considered a significant precursor of PM_{2.5}.

Table 2a. Data Elements For Reporting on Emissions from Point Sources, Where Required by [Section](#) 51.30

Data Elements	Every-Year Reporting	Three-Year Reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. Facility ID codes	✓	✓
7. Unit ID code	✓	✓
8. Process ID code	✓	✓
9. Stack ID code	✓	✓
10. Site name	✓	✓
11. Physical address	✓	✓
12. SCC or PCC	✓	✓
13. Heat content (fuel) (annual average)	✓	✓

14. Heat content (fuel) (ozone season, if applicable)	✓	✓
15. Ash content (fuel) (annual average)	✓	✓
16. Sulfur content (fuel) (annual average)	✓	✓
17. Pollutant code	✓	✓
18. Activity/throughput (for each period reported)	✓	✓
19. Summer daily emissions (if applicable)	✓	✓
20. Ozone season emissions (if applicable)	✓	✓
21. Annual emissions	✓	✓
22. Emission factor	✓	✓
23. Winter throughput (percent)	✓	✓
24. Spring throughput (percent)	✓	✓
25. Summer throughput (percent)	✓	✓
26. Fall throughput (percent)	✓	✓
27. Hr/day in operation	✓	✓
28. Start time (hour)	✓	✓
29. Day/wk in operation	✓	✓
30. Wk/yr in operation	✓	✓
31. X stack coordinate (longitude) with method accuracy descriptions		✓
32. Y stack coordinate (latitude) with method accuracy descriptions		✓
33. Stack height		✓
34. Stack diameter		✓
35. Exit gas temperature		✓

36. Exit gas velocity		✓
37. Exit gas flow rate		✓
38. SIC/NAICS and at the facility and unit levels		✓
39. Design capacity (including boiler capacity if applicable)		✓
40. Maximum generator nameplate capacity		✓
41. Primary capture and control efficiencies (percent)		✓
42. Total capture and control efficiency (percent)		✓
43. Control device type		✓
44. Rule effectiveness (percent)		✓

Table 2b. Data Elements For Reporting on Emissions from Non-Point Sources and Nonroad Mobile Sources, Where Required by [Section](#) 51.30

Data Elements	Every-Year Reporting	Three-Year Reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. SCC or PCC	✓	✓
7. Emission factor	✓	✓
8. Activity/throughput level (for each period reported)	✓	✓
9. Total capture/control efficiency (percent)	✓	✓

10. Rule effectiveness (percent)	✓	✓
11. Rule penetration (percent)	✓	✓
12. Pollutant code	✓	✓
13. Ozone season emissions (if applicable)	✓	✓
14. Summer daily emissions (if applicable)	✓	✓
15. Annual emissions	✓	✓
16. Winter throughput (percent)	✓	✓
17. Spring throughput (percent)	✓	✓
18. Summer throughput (percent)	✓	✓
19. Fall throughput (percent)	✓	✓
20. Hrs/day in operation	✓	✓
21. Days/wk in operation	✓	✓
22. Wks/yr in operation	✓	✓

Table 2c. Data Elements For Reporting on Emissions from Onroad Mobile Sources, Where Required by [Section](#) 51.30

Data Elements	Every-Year Reporting	Three-Year Reporting
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. FIPS code	✓	✓
6. SCC or PCC	✓	✓
7. Emission factor	✓	✓
8. Activity (VMT by SCC)	✓	✓

9. <u>P</u> ollutant code	✓	✓
10. Ozone season emissions (if applicable)	✓	✓
11. <u>S</u> ummer daily emissions (if applicable)	✓	✓
12. <u>A</u> nnual emissions	✓	✓
13. Winter throughput (percent)	✓	✓
14. Spring throughput (percent)	✓	✓
15. Summer throughput (percent)	✓	✓
16. Fall throughput (percent)	✓	✓

Definitions

Activity throughput - A measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source during the period for which emissions are reported. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, or number of units. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Annual emissions - Actual emissions for a plant, point, or process - measured or calculated that represent a calendar

year.

Ash content - Inert residual portion of a fuel.

Biogenic sources - Biogenic emissions are all pollutants emitted from non-anthropogenic sources. Example sources include trees and vegetation, oil and gas seeps, and microbial activity.

Control device type - The name of the type of control device (e.g., wet scrubber, flaring, or process change).

Day/wk in operations - Days per week that the emitting process operates - average over the inventory period.

Design capacity - A measure of the size of a point source, based on the reported maximum continuous throughput or output capacity of the unit. For a boiler, design capacity is based on the reported maximum continuous steam flow, usually in units of million BTU per hour.

Emission factor - Ratio relating emissions of a specific pollutant to an activity or material throughput level.

Exit gas flow rate - Numeric value of stack gas's flow rate.

Exit gas temperature - Numeric value of an exit gas stream's temperature.

Exit gas velocity - Numeric value of an exit gas stream's velocity.

Facility ID codes - Unique codes for a plant or facility treated as a point source, containing one or more pollutant-emitting units. The EPA's reporting format for a given reporting year may require several facility ID codes to ensure proper matching between data bases, e.g., the State's own current and most recent facility ID codes, the EPA-assigned facility ID codes, and the ORIS (Department of Energy) ID code if applicable.

Fall throughput (percent) - Part of the throughput for the three Fall months (September, October, November). This expresses part of the annual activity information based on four seasons - typically spring, summer, fall, and winter. It can be a percentage of the annual activity (e.g., production in summer is 40 percent of the year's production) or units of the activity (e.g., out of 600 units produced,

spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

FIPS Code - Federal Information Placement System (FIPS) is the system of unique numeric codes the government developed to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Heat content - The amount of thermal heat energy in a solid, liquid, or gaseous fuel, averaged over the period for which emissions are reported. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Hr/day in operations - Hours per day that the emitting process operates - average over the inventory period.

Inventory end date - Last day of the inventory period.

Inventory start date - First day of the inventory period.

Inventory type - A code indicating whether the inventory submission includes emissions of hazardous air pollutants..

Inventory year - The calendar year for which you calculated emissions estimates.

Lead (Pb)- As defined in 40 CFR 50.12, lead should be reported as elemental lead and its compounds.

Maximum nameplate capacity - A measure of the size of a generator which is put on the unit's nameplate by the manufacturer. The data element is reported in megawatts or kilowatts.

Mobile source - A motor vehicle, nonroad engine or nonroad vehicle, where:

A "motor vehicle" is any self-propelled vehicle used to carry people or property on a street or highway.

A "nonroad engine" is an internal combustion engine (including fuel system) that is not used in a motor vehicle or vehicle only used for competition, or that is not affected by ~~sections~~§§ 111 or 202 of the CAA.

A "nonroad vehicle" is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle only used for competition.

Nitrogen oxides (NO_x) - The EPA has defined nitrogen oxides

(NO_x) in 40 CFR part 60.2 as all oxides of nitrogen except N₂O. Nitrogen Oxides should be reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂).

Non-point sources - Non-point sources collectively represent individual sources that have not been inventoried as specific point, mobile, or biogenic sources. These individual sources treated collectively as non-point sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Ozone Season - The period May 1 through September 30 of a year.

PM (Particulate Matter) - Particulate matter is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(1) **Filterable PM_{2.5} or Filterable PM₁₀**: Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train. Filterable PM_{2.5} is particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers. Filterable PM₁₀ is

particulate matter with an aerodynamic diameter equal to or less than 10 micrometers.

(2) Condensible PM: Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack. Note that all condensible PM, if present from a source, is typically in the $PM_{2.5}$ size fraction, and therefore all of it is a component of both primary $PM_{2.5}$ and primary PM_{10} .

(3) Primary $PM_{2.5}$: The sum of filterable $PM_{2.5}$ and condensible PM.

(4) Primary PM_{10} : The sum of filterable PM_{10} and condensible PM.

(5) Secondary PM: Particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should **NOT** be reported in the emission inventory and is **NOT** covered

by this subpart.

PCC - Process classification code. A process-level code that describes the equipment or operation which is emitting pollutants. This code is being considered as a replacement for the SCC.

Physical address - Street address of a facility. This is the address of the location where the emissions occur; not, for example, the corporate headquarters.

Point source - Point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. As used in this rule, a point source is defined as a facility that is a major source under [section](#) 302 or part D of title I of the Clean Air Act. Emissions of hazardous air pollutants are not considered in determining whether a source is a point source under this subpart.

Pollutant code - A unique code for each reported pollutant assigned by the reporting format specified by EPA for each reporting year.

Primary capture and control efficiencies (percent) - Two values indicating the emissions capture efficiency and the emission reduction efficiency of a primary control device. Capture and control efficiencies are usually expressed as a percentage or in tenths.

Process ID code - Unique code for the process generating the emissions, typically a description of a process.

Roadway class - A classification system developed by the Federal Highway Administration that defines all public roadways as to type based on land use and physical characteristics of the roadway.

Rule effectiveness (RE) - How well a regulatory program achieves all possible emission reductions. This rating reflects the assumption that controls typically are not 100 percent effective because of equipment downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates. RE adjusts the control efficiency.

Rule penetration - The percentage of a non-point source category covered by an applicable regulation.

SCC - Source classification code. A process-level code that describes the equipment and/or operation which is emitting pollutants.

SIC/NAICS - Standard Industrial Classification code. NAICS (North American Industry Classification System) codes will replace SIC codes. U.S. Department of Commerce's code for businesses by products or services.

Site name - The name of the facility.

Spring throughput (percent) - Part of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

Stack diameter - A stack's inner physical diameter.

Stack height - A stack's physical height above the surrounding terrain.

Stack ID code - Unique code for the point where emissions from one or more processes release into the atmosphere.

Start time (hour) - Start time (if available) that was

applicable and used for calculations of emissions estimates.

Sulfur content - Sulfur content of a fuel, usually expressed as percent by weight.

~~Summer throughput (percent) - Part of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.~~

Summer daily emissions - Average day's emissions for a typical summer day with conditions critical to ozone attainment planning. The State will select the particular month(s) in summer and the day(s) in the week to be represented. The selection of conditions should be coordinated with the conditions assumed in the development of reasonable further progress plans, rate of progress plans and demonstrations, and/or emissions budgets for transportation conformity, to allow comparability of daily emission estimates.

~~Summer throughput (percent) - Part of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.~~

Total capture and control efficiency (percent) - The net emission reduction efficiency of all emissions collection

and devices.

Type A source - Large point sources with actual annual emissions greater than or equal to any of the emission thresholds listed in Table 1 for Type A sources.

Unit ID code - Unique code for the unit of generation of emissions, typically a physical piece or closely related set of equipment. The EPA's reporting format for a given reporting year may require multiple unit ID codes to ensure proper matching between data bases, e.g., the State's own current and most recent unit ID codes, the EPA-assigned unit ID codes if any, and the ORIS (Department of Energy) ID code if applicable.

VMT by SCC - Vehicle miles traveled (VMT) disaggregated to the SCC level, i.e., reflecting combinations of vehicle type and roadway class. VMT expresses vehicle activity and is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Because VMT does not correlate directly to emissions that occur while the vehicle isn't moving, these nonmoving emissions are incorporated into the emission factors in EPA's MOBILE Model.

VOC - Volatile Organic Compounds. The EPA's regulatory definition of VOC is in 40 CFR ~~§~~51.100.

Winter throughput (percent) - Part of throughput or activity for the three winter months (December, January, February, all from the same year, e.g., Winter 2000 = January 2000 + February, 2000 + December 2000). See the definition of Fall Throughput.

Wk/yr in operation - Weeks per year that the emitting process operates.

X stack coordinate (longitude) - An object's east-west geographical coordinate.

Y stack coordinate (latitude) - An object's north-south geographical coordinate.

Appendix B to Subpart A of Part 51 - [Reserved]

3. Part 51 is ~~proposed to be~~ amended by revising ~~section~~§ 51.122 of subpart G to read as follows:

~~Sec.~~§ 51.122 **Emissions reporting requirements for SIP**

revisions relating to budgets for NO_x emissions.

(a) For its transport SIP revision under [section](#)§ 51.121 of this part, each State must submit to EPA NO_x emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NO_x emissions data to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Every-year reporting cycle. Each revision must provide for reporting of NO_x emissions data every year as follows:

(i) The State must report to EPA emissions data from all NO_x sources within the State for which the State specified control measures in its SIP submission under [section](#)§ 51.121(g) of this part. This would include all sources for which the State has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the State developed in accordance with [section](#)§ 51.121(g) of this part.

(ii) If sources report NO_x emissions data to EPA for a given year pursuant to a trading program approved under [section](#)§ 51.121(p) of this part or pursuant to the monitoring and reporting requirements of subpart H of 40 CFR part 75, then the State need not provide an every-year cycle

report to EPA for such sources.

(2) Three-year cycle reporting. Each plan must provide for triennial (i.e., every third year) reporting of NO_x emissions data from all sources within the State.

(3) The data availability requirements in section 51.116 of this part must be followed for all data submitted to meet the requirements of paragraphs (b) (1) and (2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information ~~for~~ to verify the calculated value of ozone season emissions.

(e) Reporting schedules.

(1) Data collection is to begin during the ozone season one year prior to the State's NO_x SIP Call compliance date.

(2) Reports are to be submitted according to paragraph (b) of this section and the schedule in Table 1. After 2008, triennial reports are to be submitted every third year and annual reports are to be submitted each year that a triennial report is not required.

Table 1. Schedule for Submitting Reports

Data Collection Year	Type of Report Required
2002	Triennial
2003	Annual
2004	Annual
2005	Triennial
2006	Annual
2007	Annual
2008	Triennial

(3) States must submit data for a required year no later than 17 months after the end of the calendar year for which the data are collected.

(f) Data reporting procedures are given in subpart A. When submitting a formal NO_x Budget Emissions Report and associated data, States shall notify the appropriate EPA Regional Office.

(g) Definitions. As used in this section, words and terms shall have the meanings set forth in appendix A of subpart A of this part.

4. Part 51 is ~~proposed to be~~ amended by adding ~~section~~ § 51.123 to Subpart G 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.

(a) Under section 110(a)(1) of the CAA, 42 U.S.C.

7410(a)(1), the Administrator determines that each State identified in paragraph (c) of this section must submit a SIP revision to comply with the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C.

7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting ~~NOx~~NO_x in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles (PM_{2.5}) and/or the 8-hour ozone NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) will contain adequate provisions, for purposes of complying with ~~section~~§ 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C.

7410(a)(2)(D)(i)(I), only if the SIP revision contains measures that assure compliance with the applicable requirements of this section.

(c) The following States are subject to the requirements of this section: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,

Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, provided that Connecticut shall be subject to a seasonal ~~NOx~~NO_x reduction requirement, unless it adopts an annual ~~NOx~~NO_x reduction requirement, as described in paragraph (q) of this section.

(d) (1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than 18 months from the date of promulgation of the final Clean Air Interstate Rule.

(2) The requirements of appendix V shall apply to the SIP submissions required under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision to the appropriate Regional Office, with a letter giving notice of such action.

(e) (1) (i) The Annual EGU ~~NOx~~NO_x budget for a State is defined as the total amount of ~~NOx~~NO_x emissions from all EGUs in that State for a year if the State meets the requirements of paragraph (a) of this section by imposing control measures, at least in part, on EGUs. If a State imposes control measures under this section on only EGUs, the Annual EGU ~~NOx~~NO_x budget amounts for a State shall not exceed the amounts, during the indicated periods, specified

in paragraph (e) (2) of this section.

(ii) The Non-EGU Reduction Requirement is defined as the amount of ~~NOx~~NO_x emission reductions the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If a State meets the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the State's Non-EGU Reduction Requirement shall equal or exceed the amount specified in paragraph (e) (3) of this section.

(iii) If a State meets the requirements of paragraph (a) of this section by imposing control measures on both EGUs and non-EGUs, the amount of the Non-EGU Reduction Requirement shall equal or exceed the difference between the amount of the State's Annual EGU ~~NOx~~NO_x budget specified in paragraph (e) (2) of this section and the amount of the State's Annual EGU ~~NOx~~NO_x budget specified in the SIP for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures only on EGUs, the amount of the Annual EGU ~~NOx~~NO_x budget, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Annual EGU NOx <u>NO_x</u> Budget, 2010 through 2014	Annual EGU NOx <u>NO_x</u> Budget, 2015 and beyond

Alabama	67,422	56,185
Arkansas	24,919	20,765
Delaware	5,089	4,241
District of Columbia	215	179
Florida	115,503	96,253
Georgia	63,575	52,979
Illinois	73,622	61,352
Indiana	102,295	85,246
Iowa	30,458	25,381
Kansas	32,436	27,030
Kentucky	77,938	64,948
Louisiana	47,339	39,449
Maryland	26,607	22,173
Massachusetts	19,630	16,358
Michigan	60,212	50,177
Minnesota	29,303	24,420
Mississippi	21,932	18,277
Missouri	56,571	47,143
New Jersey	9,895	8,246
New York	52,503	43,753
North Carolina	55,763	46,469
Ohio	101,704	84,753
Pennsylvania	84,552	70,460
South Carolina	30,895	25,746
Tennessee	47,739	39,783
Texas	224,314	186,928
Virginia	31,087	25,906
West Virginia	68,235	56,863
Wisconsin	39,044	32,537
Total	1,600,799	1,333,999

(3) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the amount of the Non-EGU Reduction Requirement, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Non-EGU Reduction Requirement, 2010 through 2014 ¹	Non-EGU Reduction Requirement, 2015 and beyond ²
Alabama	66,678	72,415
Arkansas	27,581	32,035
Delaware	5,211	6,559
District of Columbia	0	0
Florida	46,097	74,247
Georgia	87,025	100,321
Illinois	96,778	117,148
Indiana	133,705	156,754
Iowa	51,642	61,219
Kansas	68,464	74,870
Kentucky	115,962	133,752
Louisiana	2,361	10,651
Maryland	33,793	39,727
Massachusetts	0	0
Michigan	60,688	76,323
Minnesota	71,697	80,280
Mississippi	21,168	26,623
Missouri	76,229	93,657
New Jersey	19,105	22,154
New York	11,497	21,747
North Carolina	5,237	15,931
Ohio	159,696	171,147
Pennsylvania	123,148	142,440
South Carolina	33,805	40,454
Tennessee	55,061	62,917
Texas	0	13,572
Virginia	23,813	31,394
West Virginia	86,965	91,337
Wisconsin	66,456	64,863

¹ This period refers to each year during the 2010-2014 period.

² This period refers to each year during 2015 and subsequently.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not

limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2) (i) Should a State elect to impose control measures on EGUs, then those measures must impose a ~~NO_x~~NO_x mass emissions cap on all such sources in the State.

(ii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose a ~~NO_x~~NO_x mass emissions cap on all such sources in the State.

(iii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs other than those described in paragraph (f) (2) (ii) of this section, then those measures must impose a ~~NO_x~~NO_x mass emissions cap on all such sources in the State, or the State must demonstrate why such emissions cap is not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2010 and subsequent years.

(g) (1) Each SIP revision which includes control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Non-EGU Reduction Requirement under paragraph (e) of this section, and are not otherwise required under the Clean Air Act.

(2) The demonstration under paragraph (g) (1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP requires controls:

(i) A detailed historical baseline inventory of ~~NOx~~NO_x mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP submission.

(~~F~~A) This inventory must represent estimates of actual emissions based on part 75 monitoring data, if the source category is subject to part 75 monitoring requirements.

(~~F~~B) In the absence of part 75 monitoring data, actual emissions must be estimated using assumptions that ensure a source or source category's actual emissions are not overestimated, and must include source-specific or category-specific data. If a State uses factors to estimate emissions, production or utilization, or effectiveness of

controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated, or the State must justify the use of another value with additional information showing with reasonable confidence that the substitute value is more appropriate for estimating actual emissions.

(~~III~~C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development, and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(~~IV~~D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates must be based on the emission methodologies recommended in EPA guidance current at the time of the SIP development or the SIP must document that another method is superior due to local factors.

(ii) A detailed baseline inventory of ~~NOx~~NO_x mass emissions from the source category in the years 2010 and 2015, absent the control measures specified in the SIP submission, and reflecting changes in these emissions from the historical baseline year to the years 2010 and 2015, based on projected changes in the production input and/or output, population, vehicle miles traveled, economic activity or other factors

as applicable to this source category.

(~~F~~A) These inventories must account for implementation of any rules or regulations that will affect ~~NOx~~NO_x emissions from this source category, excluding any control measures specified in the SIP submission to meet the ~~NOx~~NO_x emissions reduction requirements of this section.

(~~F~~B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category, and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population and energy consumption projections contained in the Annual Energy Outlook published by the U.S. Department of Energy, adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate.

(~~F~~C) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2010 or 2015, as appropriate.

(iii) A projection of ~~NOx~~NO_x mass emissions in 2010 and 2015 from the source category identified in paragraph (g)(2)(i) of this section resulting from implementation of each of the control measures specified in the SIP submission.

(~~±~~A) These inventories must address the possibility that the State's new control measures may cause production and emissions to shift to non-regulated or less stringently regulated sources in the source category in the same or another State, and must include in the projected emissions inventory any such amounts of emissions that may shift to other sources.

(~~±~~B) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2010 and 2015 ~~NOx~~NO_x emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g)(2)(iii) for 2010 and 2015, respectively, from the lower of the amounts in paragraph (g)(2)(i) or (g)(2)(ii) of this section for 2010 and 2015, respectively, may be credited towards the State's Non-EGU Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each revision must identify the sources of the data used

in the estimate and projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of ~~NOx~~NO_x emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § -51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control measures, then the revision must comply with § -51.213 (regarding transportation control measures);

(4) (i) If the revision contains measures to control EGUs, then the revision must require such sources to comply with

the monitoring and reporting provisions of subpart H of part 75.

(ii) If the revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring and reporting provisions of subpart H of part 75.—

(iii) If the revision contains measures to control any other non-EGUs that are not described in paragraph (i)(4)(ii) of this section, the revision must require such sources to comply with the monitoring and reporting provisions of subpart H of part 75, or the State must demonstrate why such requirements are not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the required emissions reductions will be achieved.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

- (1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU ~~NO_x~~NO_x budget or the Non-EGU Reduction Requirement, as applicable, under paragraph (e);
- (2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4) (i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j) (4) (i) of this section available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k) (1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j) (3) and (4) of this section may be delegated to the State under section § 114 of the CAA.

(1) (1) A revision may assign legal authority to local agencies in accordance with § -51.232.

(2) Each revision must comply with §- 51.240 (regarding general plan requirements).

(m) Each revision must comply with §- 51.280 (regarding resources).

(n) Each revision must provide for State compliance with the reporting requirements set forth in §- 51.125.

(o) (1) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AA through HH of part 96 of this chapter, (the model CAIR ~~NOx~~NO_x trading program), incorporates such part by reference into its regulations, or adopts regulations that differ substantively from such part only as set forth in paragraph (o) (2) of this section, then that portion of the State's SIP revision is automatically approved as meeting the requirement of paragraph (e) (1) (i) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(2) (i) If a State adopts an emissions trading program that differs substantively from subparts AA through HH of part 96 of this chapter only as described in paragraph (o) (2) (ii) of this section, then the emissions trading program is approved as set forth in paragraph (o) (1) of this section.

(ii) The State may decline to adopt the allocation provisions set forth in subpart EE of part 96 of this chapter and may instead adopt any methodology for allocating

~~NOx~~NO_x allowances to individual sources, provided that:

(~~F~~A) The State's methodology does not allow the State to allocate ~~NOx~~NO_x allowances in excess of the total amount of ~~NOx~~NO_x emissions which the State has assigned to its trading program; and

(~~F~~B) The State's methodology conforms with the timing requirements for submission of allocations to the Administrator set forth in §- 96.141 of this chapter.

(3) If a State adopts an emissions trading program that differs substantively from subparts AA through HH of part 96 of this chapter, other than as set forth in paragraph (o) (2) (ii) of this section, then such portion of the trading program is not automatically approved as set forth in paragraph (o) (1) of this section, but will be reviewed by the Administrator for approvability in accordance with the other provisions of this section.

(p) (1) The State may revise its applicable implementation plan to provide that, for each year during which a State imposes controls on EGUs under paragraph (o) of this section, such EGUs shall not be subject to the requirements of the State's applicable implementation plan that meet the requirements of § 51.121. The owners and operators of such EGUs shall surrender for deduction by the Administrator any ~~NOx~~NO_x SIP Call allowances allocated to such units for any

such year.

(2) Notwithstanding a revision by the State authorized under paragraph (p) (1) of this section, a State's applicable implementation plan that, without such revision, imposes controls on EGUs under § 51.121 determined by the Administrator to meet the requirements of § 51.121 shall be deemed to continue to meet the requirements of § 51.121.

(q) (1) (i) The SIP revision required under paragraph (a) of this section for the State of Connecticut must require emissions reductions during the ozone season, which begins May 1 and ends September 30 of any year, commencing with 2010.

(ii) Except as provided under paragraph (q) (2) of this section, the Administrator shall not approve SIP provisions that adopt the model CAIR ~~NOx~~NO_x trading program, under subparts AA through HH of part 96 of this chapter.

(iii) For purposes of determining the applicability of paragraph (e) of this section to the State of Connecticut's SIP revision required under paragraph (a) of this section-

(~~F~~A) The term "Seasonal EGU ~~NOx~~NO_x budget" shall replace the term "Annual EGU ~~NOx~~NO_x budget;" and

(~~F~~B) The Seasonal EGU ~~NOx~~NO_x budget, in tons per season, for the State of Connecticut shall be 4,360, for the years 2010 through 2014, and 3,633, for the years 2015 and beyond;

and

(~~III~~C) The amount of the Non-EGU Reduction Requirement, in tons per season, for the State of Connecticut shall be zero, for the years 2010 through 2014, and zero, for the years 2015 and beyond.

(~~2~~3) In lieu of the SIP provisions required under paragraph (q) (1) of this section, the Administrator may approve a SIP revision adopted by the State of Connecticut that requires annual ~~NOx~~NO_x emissions reductions and that meets the requirements of this section, as revised by this paragraph.

(i) For purposes of paragraph (e) (2) of this section, the Annual EGU ~~NOx~~NO_x budget, in tons per year, for Connecticut shall be 9,283, for the years 2010 through 2014, and 7,735, for the years 2015 and beyond; and

(ii) For purposes of paragraph (e) (3) of this section, the amount of the Non-EGU Reduction Requirement, in tons per year, for Connecticut shall be zero, for the years 2010 through 2014, and zero, for the years 2015 and beyond.

(~~3~~4) The Administrator may approve a SIP revision from the State of Connecticut adopted under paragraph (q) (2) of this section that adopts the model CAIR ~~NOx~~NO_x trading program, under subparts AA through HH of part 96 of this chapter.

(r) The terms used in this section shall have the following meanings:

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 power production.

CAIR ~~NO_x~~NO_x 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 HH of ~~part~~ 96 of this chapter and ~~this~~ section, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

Cogeneration unit means a unit:

(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 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 than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means 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. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Electric generating unit or EGU means:

(1) Except for a unit under paragraph (2) of this definition, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or

(2) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying 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.

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, any boiler or turbine combusting any amount of fossil fuel.

Generator means a device that produces electricity.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

Non-EGU means a source of ~~NO_x~~NO_x emissions that is not an EGU.

~~NO_x~~NO_x means oxides of nitrogen.

NOxNOx Budget Trading Program means a multi-State nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of part 96 of this chapter and § 51.121 , as a means of mitigating interstate transport of ozone and nitrogen oxides.

NOxNOx SIP Call allowance means a limited authorization issued by the Administrator under the NOxNOx Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from power 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 power production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power 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.

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, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat 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 distribution utility and dedicated to delivering electricity to customers.

5. Part 51 is ~~proposed to be~~ amended by adding ~~section~~§ 51.1234 to Subpart G 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.

(a) Under ~~section~~§ 110(a)(1) of the CAA, 42 U.S.C.

7410(a)(1), the Administrator determines that each State identified in paragraph (c) of this section ~~must~~ submit a SIP revision to comply with the requirements of ~~section~~§ 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C.

7410(a)(2)(D)(i)(I), through the adoption of adequate provisions prohibiting sources and other activities from emitting ~~SO₂~~SO₂ in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, one or more other States with respect to the fine particles (PM_{2.5}) NAAQS.

(b) For each State identified in paragraph (c) of this section, the SIP revision required under paragraph (a) will contain adequate provisions, for purposes of complying with ~~section~~§ 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C.

7410(a)(2)(D)(i)(I), only if the SIP revision contains measures that assure compliance with the applicable requirements of this section.

(c) The following States are subject to the requirements of

this section: Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia.

(d) (1) The SIP submissions required under paragraph (a) of this section must be submitted to EPA by no later than 18 months from the date of promulgation of the final Clean Air Interstate Rule.

(2) The requirements of appendix V shall apply to the SIP submissions required under paragraph (a) of this section.

(3) The State shall deliver 5 copies of the SIP revision to the appropriate Regional Office, with a letter giving notice of such action.

(e) (1) (i) The Annual EGU ~~SO₂~~SO₂ budget for a State is defined as the total amount of ~~SO₂~~SO₂ emissions from all EGUs in that State for a year if the State meets the requirements of paragraph (a) of this section by imposing control measures, at least in part, on EGUs. If a State imposes control measures under this section on only EGUs, the Annual EGU ~~SO₂~~SO₂ budget amounts for a State shall not exceed the amounts, during the indicated periods, specified in paragraph (e) (2) of this section.

(ii) The Non-EGU Reduction Requirement is defined as the amount of ~~SO₂~~SO₂ emission reductions the State demonstrates, in accordance with paragraph (g) of this section, it will achieve from non-EGUs during the appropriate period. If a State meets the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the State's Non-EGU Reduction Requirement shall equal or exceed the amount specified in paragraph (e) (3) of this section.

(iii) If a State meets the requirements of paragraph (a) of this section by imposing control measures on both EGUs and non-EGUs, the amount of the Non-EGU Reduction Requirement shall equal or exceed the difference between the amount of the State's Annual EGU ~~SO₂~~SO₂ budget specified in paragraph (e) (2) of this section and the amount of the State's Annual EGU ~~SO₂~~SO₂ budget specified in the SIP for the appropriate period.

(2) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures only on EGUs, the amount of the Annual EGU ~~SO₂~~SO₂ budget, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Annual EGU SO₂ SO ₂ Budget, 2010 through 2014 ¹	Annual EGU SO₂ SO ₂ Budget, 2015 and beyond ²
Alabama	157,582	110,307
Arkansas	48,702	34,091
Delaware	22,411	15,687
District of Columbia	708	495
Florida	253,450	177,415
Georgia	213,057	149,140
Illinois	192,671	134,869
Indiana	254,599	178,219
Iowa	64,095	44,866
Kansas	58,304	40,812
Kentucky	188,773	132,141
Louisiana	59,948	41,963
Maryland	70,697	49,488
Massachusetts	82,561	57,792
Michigan	178,605	125,024
Minnesota	49,987	34,991
Mississippi	33,763	23,634
Missouri	137,214	96,050
New Jersey	32,392	22,674
New York	135,139	94,597
North Carolina	137,342	96,139
Ohio	333,520	233,464
Pennsylvania	275,990	193,193
South Carolina	57,271	40,089
Tennessee	137,216	96,051
Texas	320,946	224,662
Virginia	63,478	44,435
West Virginia	215,881	151,117
Wisconsin	87,264	61,085
Total	3,863,566	2,704,490

¹ This period refers to each year during the 2010-2014 period.

² This period refers to each year during 2015 and subsequently.

(3) For a State that complies with the requirements of paragraph (a) of this section by imposing control measures on only non-EGUs, the amount of the Non-EGU Reduction

Requirement, in tons per year, shall be as follows, for the indicated State, for the indicated period:

State	Non-EGU Reduction Requirement, 2010 through 2014 ¹	Non-EGU Reduction Requirement, 2015 and beyond ²
Alabama	157,582	204,857
Arkansas	48,702	63,312
Delaware	22,411	29,134
District of Columbia	708	920
Florida	253,450	329,485
Georgia	213,057	276,974
Illinois	192,671	250,472
Indiana	254,599	330,978
Iowa	64,095	83,323
Kansas	58,304	75,795
Kentucky	188,773	245,405
Louisiana	59,948	77,932
Maryland	70,697	91,906
Massachusetts	82,561	107,329
Michigan	178,605	232,187
Minnesota	49,987	64,983
Mississippi	33,763	43,892
Missouri	137,214	178,378
New Jersey	32,392	42,109
New York	135,139	175,681
North Carolina	137,342	178,545
Ohio	333,520	433,576
Pennsylvania	275,990	358,787
South Carolina	57,271	74,452
Tennessee	137,216	178,380
Texas	320,946	417,230
Virginia	63,478	82,521
West Virginia	215,881	280,645
Wisconsin	87,264	113,443

¹ This period refers to each year during the 2010-2014 period.

² This period refers to each year during 2015 and subsequently.

(f) Each SIP revision must set forth control measures to meet the amounts specified in paragraph (e) of this section, as applicable, including the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2) (i) Should a State elect to impose control measures on EGUs, then those measures must impose a ~~SO₂~~SO₂ mass emissions cap on all such sources in the State.

(ii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then those measures must impose a ~~SO₂~~SO₂ mass emissions cap on all such sources in the State.

(iii) Should a State elect to impose control measures on fossil fuel-fired non-EGUs other than those described in paragraph (f) (2) (ii) of this section, then those measures must impose a ~~SO₂~~SO₂ mass emissions cap on all such sources in the State, or the State must demonstrate why such emissions cap is not practicable, and adopt alternative

requirements that ensure to the maximum practicable degree that the State will comply with its requirements under paragraph (e) of this section, as applicable, in 2010 and subsequent years.

(g) (1) Each SIP revision which includes control measures covering non-EGUs as part or all of a State's obligation in meeting its requirement under paragraph (a) of this section must demonstrate that such control measures are adequate to provide for the timely compliance with the State's Non-EGU Reduction Requirement under paragraph (e) of this section, and are not otherwise required under the Clean Air Act.

(2) The demonstration under paragraph (g) (1) of this section must include the following, with respect to each source category of non-EGUs for which the SIP requires controls:

(i) A detailed historical baseline inventory of ~~SO₂~~SO₂ mass emissions from the source category in a representative year consisting, at the State's election, of 2002, 2003, 2004, or 2005, or an average of 2 or more of those years, absent the control measures specified in the SIP submission.

(~~F~~A) This inventory must represent estimates of actual emissions based on part 75 monitoring data, if the source category is subject to part 75 monitoring requirements.

(~~F~~B) In the absence of part 75 monitoring data, actual emissions must be estimated using assumptions that ensure a

source or source category's actual emissions are not overestimated, and must include source-specific or category-specific data. If a State uses factors to estimate emissions, production or utilization, or effectiveness of controls or rules for a source category, such factors must be chosen to ensure that emissions are not overestimated, or the State must justify the use of another value with additional information showing with reasonable confidence that the substitute value is more appropriate for estimating actual emissions.

(~~III~~C) For measures to reduce emissions from motor vehicles, emission estimates must be based on an emissions model that has been approved by EPA for use in SIP development, and must be consistent with the planning assumptions regarding vehicle miles traveled and other factors current at the time of the SIP development.

(~~IV~~D) For measures to reduce emissions from nonroad engines or vehicles, emission estimates must be based on the emission methodologies recommended in EPA guidance current at the time of the SIP development or the SIP must document that another method is superior due to local factors.

(ii) A detailed baseline inventory of ~~SO₂~~SO₂ mass emissions from the source category in the years 2010 and 2015, absent the control measures specified in the SIP submission, and

reflecting changes in these emissions from the historical baseline year to the years 2010 and 2015, based on projected changes in the production input and/or output, population, vehicle miles traveled, economic activity or other factors as applicable to this source category.

(~~F~~A) These inventories must account for implementation of any rules or regulations that will affect ~~SO2~~SO₂ emissions from this source category, excluding any control measures specified in the SIP submission to meet the ~~SO2~~SO₂ emissions reduction requirements of this section.

(~~F~~B) Economic and population forecasts must be as specific as possible to the applicable industry, State, and county of the source or source category, and must be consistent with both national projections and relevant official planning assumptions including estimates of population and vehicle miles traveled developed through consultation between State and local transportation and air quality agencies. However, if these official planning assumptions are themselves inconsistent with official U.S. Census projections of population and energy consumption projections contained in the Annual Energy Outlook published by the U.S. Department of Energy, adjustments must be made to correct the inconsistency, or the SIP must demonstrate how the official planning assumptions are more accurate.

(IIIC) These inventories must account for any changes in production method, materials, fuels, or efficiency that are expected to occur between the historical baseline year and 2010 or 2015, as appropriate.

(iii) A projection of ~~SO₂~~SO₂ mass emissions in 2010 and 2015 from the source category identified in paragraph (g) (2) (i) of this section resulting from implementation of each of the control measures specified in the SIP submission.

(IA) These inventories must address the possibility that the State's new control measures may cause production and emissions to shift to non-regulated or less stringently regulated sources in the source category in the same or another State, and must include in the projected emissions inventory any such amounts of emissions that may shift to other sources.

(IIB) The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction in projected 2010 and 2015 ~~SO₂~~SO₂ emissions that will be achieved from the implementation of the new control measures compared to the relevant baseline emissions inventory.

(iv) The result of subtracting the amounts in paragraph (g) (2) (iii) for 2010 and 2015, respectively, from the lower of the amounts in paragraph (g) (2) (i) or (g) (2) (ii) of this

section for 2010 and 2015, respectively, may be credited towards the State's Non-EGU Reduction Requirement in paragraph (e)(3) of this section for the appropriate period.

(v) Each revision must identify the sources of the data used in the estimate and projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(i) Each revision must provide for monitoring the status of compliance with any control measures adopted to meet the State's requirements under paragraph (e) of this section. Specifically, the revision must meet the following requirements:

(1) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of, and periodically report to the State:

(i) Information on the amount of ~~SO₂~~SO₂ emissions from the stationary sources; and

(ii) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(2) The revision must comply with § -51.212 (regarding testing, inspection, enforcement, and complaints);

(3) If the revision contains any transportation control

measures, then the revision must comply with § 51.213 (regarding transportation control measures);

(4) (i) If the revision contains measures to control EGUs, then the revision must require such sources to comply with the monitoring and reporting provisions of part 75.

(ii) If the revision contains measures to control fossil fuel-fired non-EGUs that are boilers or combustion turbines with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to comply with the monitoring and reporting provisions of part 75.

(iii) If the revision contains measures to control any other non-EGUs that are not described in paragraph (i) (4) (ii) of this section, the revision must require such sources to comply with the monitoring and reporting provisions of part 75, or the State must demonstrate why such requirements are not practicable, and adopt alternative requirements that ensure to the maximum practicable degree that the required emissions reductions will be achieved.

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's relevant Annual EGU ~~SO₂~~SO₂ budget or the Non-EGU Reduction Requirement, as applicable, under paragraph (e);

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and

(4) (i) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; and

(ii) Make the data described in paragraph (j) (4) (i) of this section available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k) (1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j) (3) and (4) of this section may be delegated to the State under ~~section~~§ 114 of the CAA.

(l) (1) A revision may assign legal authority to local agencies in accordance with § -51.232.

(2) Each revision must comply with § -51.240 (regarding general plan requirements).

(m) Each revision must comply with § -51.280 (regarding resources).

(n) Each revision must provide for State compliance with the reporting requirements set forth in § -51.125.

(o) Notwithstanding any other provision of this section, if a State adopts regulations substantively identical to subparts AAA through HHH of part 96 of this chapter, (CAIR ~~SO₂~~SO₂ Emissions Trading Program), or incorporates such part by reference into its regulations, then that portion of the State's SIP revision is automatically approved as meeting the requirements of paragraph (e)(1)(i) of this section, provided that the State has the legal authority to take such action and to implement its responsibilities under such regulations.

(p) For a State that does not adopt regulations in accordance with paragraph (o) of this section:

(1) The sources subject to the Acid Rain Program , in addition to complying with the requirements of § 72.9(c)(1)(i) of this chapter, shall hold the following amounts of Acid Rain allowances, as of the allowance transfer deadline in the source's compliance account -

(i) For each Acid Rain allowance allocated for a year during

2010 through 2014 that is held in order to meet the requirements of § 72.9(c)(1)(i) of this chapter, one additional Acid Rain allowance allocated for a year during 2010 through 2014; and

(ii) For each Acid Rain allowance allocated for a year during 2015 or thereafter held in accordance with § 72.9(c)(1)(i) of this chapter, two additional Acid Rain allowances allocated for a year during 2015 or thereafter.

(2) When the Administrator deducts Acid Rain allowances under § 73.35(b) and (c) of this chapter, the Administrator will also deduct from the source's compliance account the amount of Acid Rain allowances required to be held under paragraph (p)(1) of this section. If the owner and operator of the source fails to hold the Acid Rain allowances required under paragraph (p)(1) of this section, then, for each Acid Rain allowance required but not held, the Administrator will deduct from such compliance account three Acid Rain allowances allocated for the year after the year of the allowance transfer deadline by which the Acid Rain allowances were required to be held.—

(q) The terms used in this section shall have the following meanings:

Acid Rain Program means a multi-State sulfur dioxide and nitrogen oxides air pollution control and emissions

reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Acid Rain allowance means a limited authorization issued by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during the specified year or any year thereafter.

Allowance transfer deadline means the allowance transfer deadline under the Acid Rain Program, as defined in ~~§72~~ 72.2 of this chapter.

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 power production.

CAIR ~~SO2~~SO₂ Emissions 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 HHH of ~~part~~ 96 of this chapter and ~~this~~ section, as a means of mitigating interstate transport of fine particulates.

Cogeneration unit means a unit:

(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 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 than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means 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. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.

Compliance account means a compliance account under the Acid

Rain Program, as defined in ~~§ 72~~ § 72.2 of this chapter.

Electric generating unit or EGU means:

(1) Except for a unit under paragraph (2) of this definition, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale; or

(2) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying 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.

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, any boiler or turbine combusting any amount of fossil fuel.

Generator means a device that produces electricity.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

NAAQS means National Ambient Air Quality Standard.

Nameplate capacity means the maximum electrical generating

output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

Non-EGU means a source of ~~SO₂~~SO₂ emissions that is not an EGU.

SO₂SO₂ means sulfur dioxide.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from power 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 power production.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power and at least some of the reject heat from the power 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.

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, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat 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 distribution utility and dedicated to delivering electricity to customers.

6. Part 51 is ~~proposed to be~~ amended by adding ~~section~~§ 51.125 to Subpart G to read as follows:

Sec. § 51.125 Emissions reporting requirements for SIP revisions relating to budgets for ~~SO₂~~SO₂ and NO_x emissions.

(a) For its transport SIP revision under ~~section~~§ 51.123 and/or 51.124 of this part, each State must submit to EPA ~~SO₂~~SO₂ and/or NO_x emissions data as described in this section.

(1) The District of Columbia and following States must report annual (12 months) emissions of ~~SO₂~~SO₂ and NO_x:
Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

(2) The District of Columbia and the following States must report ozone season (May 1 through September 30) emissions of NO_x: Alabama, Arkansas, Connecticut, Delaware, Georgia, 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.

(b) Each revision must provide for periodic reporting by the State of ~~SO₂~~SO₂ and/or NO_x emissions data as specified in paragraph (a) of this section to demonstrate whether the State's emissions are consistent with the projections contained in its approved SIP submission.

(1) Every-year reporting cycle. As applicable, each revision must provide for reporting of ~~SO₂~~SO₂ and NO_x emissions data every year as follows:

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every year from all ~~SO₂~~SO₂ and NO_x sources within the State for which the State specified control measures in its SIP submission under ~~sections~~§§ 51.123 and/or 51.124 of this part.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and summer daily emissions data every year from all NO_x sources within the State for which the State specified control measures in its SIP submission under ~~section~~§ 51.123 of this part.

(iii) If sources report SO₂ and NO_x emissions data to EPA in a given year pursuant to a trading program approved under ~~section~~§ 51.123(o) or ~~section~~§ 51.124(o) of this part or pursuant to the monitoring and reporting requirements of

subpart H of 40 CFR part 75, then the State need not provide annual reporting of these pollutants to EPA for such sources.

(2) Three-year reporting cycle. As applicable, each plan must provide for triennial (i.e., every third year) reporting of SO₂ and NO_x emissions data from all sources within the State.

(i) The States identified in paragraph (a)(1) of this section must report to EPA annual emissions data every third year from all SO₂ and NO_x sources within the State.

(ii) The States identified in paragraph (a)(2) of this section must report to EPA ozone season and ozone daily emissions data every third year from all NO_x sources within the State.

(3) The data availability requirements in [section 51.116](#) of this part must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(c) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(d) Approval of annual and ozone season calculation by EPA. Each State must submit for EPA approval an example of the calculation procedure used to calculate annual and ozone season emissions along with sufficient information for EPA

to verify the calculated value of annual and ozone season emissions.

(e) Reporting schedules.

(1) Reports are to begin with data for emissions occurring in the year 2008, which is the first year of the 3-year cycle.

(2) After 2008, 3-year cycle reports are to be submitted every third year and every-year cycle reports are to be submitted each year that a triennial report is not required.

(3) States must submit data for a required year no later than 17 months after the end of the calendar year for which the data are collected.

(f) Data reporting procedures are given in subpart A. When submitting a formal NO_x budget emissions report and associated data, States shall notify the appropriate EPA Regional Office.

(g) Definitions. As used in this section, words and terms shall have the meanings set forth in appendix A of subpart A of this part.

~~Title 40, chapter I, of the Code of Federal Regulations is 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.~~

~~2. Section 51.308 is proposed to be amended to read as follows:~~

~~§51.7. § 51.308 is amended by revising the introductory text of paragraph (e) (2), paragraphs (e) (3) and (e) (4), and by adding paragraph (e) (5) as follows:~~

~~§ 51.308 Regional haze program requirements~~

~~* * * *~~

~~(e) * * *~~

~~(2) A State may opt to implement an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate and maintain BART. Except as provided in part paragraph (e) (3) of this section, to do so, the State must demonstrate that this emissions trading program or other alternative measure will achieve greater reasonable progress than would be achieved through the installation and operation of BART. To make this demonstration, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses:~~

~~* * *~~

~~(3) A State that opts to participate in the Clean Air~~

Interstate Rule cap-and-trade program under part 96 AAA-EEE need not require affected BART-eligible EGU's to install, operate, and maintain BART. A State that chooses this option may also include provisions for a geographic enhancement to the program to address the requirement under ~~§51~~ § 51.302(c) related to BART for reasonably attributable impairment from the pollutants covered by the CAIR cap-and-trade program.

~~(3)~~ (4) After a State has met the requirements for BART or implemented emissions trading program or other alternative measure that achieves more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of ~~§51~~ § 51.308(d) in the same manner as other sources.

~~(4)~~ (5) Any BART-eligible facility subject to the requirement under ~~§51~~ § 51.308(e) to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement. An application for an exemption will be subject to the requirements of ~~§51~~ § 51.303(a) (2) - (h).

Part 72-PERMITS REGULATION

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

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

§ 72.2 [Amended]

2. Section 72.2 is amended by:-

a. ~~Revising~~ Amend the definition of "Acid rain emissions limitation" by replacing, in paragraph (1)(i), the words "an affected unit" by the words "the affected units at a source" and replacing, in paragraph (1)(ii)(C), the words "compliance subaccount for that unit" by the words "compliance account for that source";

b. ~~Revising~~ Amend the definition of "Allocate or allocation" by replacing the words "unit account" by the words "compliance account";

c. ~~Revising~~ Amend the definition of "Allowance deduction, or deduct" by replacing the words "compliance subaccount, or future year subaccount," by the words "compliance account" and replacing the words "from an affected unit" by the words "from the affected units at an affected source";

d. ~~Revising~~ Amend the definition of "Allowance transfer deadline" by replacing the words "affected unit's compliance subaccount" by the words "an affected source's compliance account" and replacing the words "the unit's" by the words "the source's";

e. ~~Revising~~ Amend the definition of "Authorized account

representative" by replacing the words "unit account" by the words "compliance account" and replacing the words "affected unit" by the words "affected source and the affected units at the source";

f. Revising Amend the definition of "Compliance use date" by replacing the word "unit's" by the word "source's";

g. Revising Amend the definition of "excess emissions" by, in paragraph (1), replacing the words "an affected unit" by the words "the affected units at an affected source" and replacing the words "for the unit" by the words "for the source";

h. Revising Amend the definition of "Recordation, record, or recorded" by removing the words "or subaccount"; and

i. Revising Revise the definition of "Cogeneration unit", adding a new definition of "Compliance account", and removing the definitions of "Compliance subaccount", "Current year subaccount", "Future year subaccount", and "Unit account" to read as follows:

§ 72.2 Definitions.

* * * * *

Cogeneration unit—means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating,

or cooling purposes, through sequential use of energy.

* * * * *

~~Compensating unit means * * *~~

Compliance account means an Allowance Tracking System account, established by the Administrator for an affected source and for each affected unit at the source pursuant to § 73.31(a) or (b) of this chapter.

* * * * *

§ 72.7 [Amended]

3. ~~Section~~Sectoin 72.7 is amended in paragraph (c) (1) (ii) ~~by~~, in the first sentence, ~~removing~~remove the word "unit's" and ~~adding~~add after the words "Allowance Tracking System account" the words "of the source that includes the unit" and ~~by removing~~remove the third sentence.

§ 72.9 [Amended]

4. Section 72.9 is amended by:—

a. In paragraph (c) (1) (i), ~~replacing~~replace the words "unit's compliance subaccount" with the words "source's compliance account" and ~~replacing~~replace the words "from the unit" by the words "from the affected units at the source";

b. In paragraphs (e) (1) and (e) (2) introductory text, ~~replacing~~replace the words "an affected unit" by the words "an affected source"; and

c. In paragraph (g) (6), ~~removing~~remove the second

sentence.

§ 72.21 [Amended]

5. Section 72.21 is amended by removing from paragraph (b) (1) the word "affected" wherever it appears.

§ 72.24 [Amended]

6. Section 72.24 is amended by removing and reserving paragraphs (a) (5), (a) (7), and (a) (10).

§ 72.40 [Amended]

7. Section 72.40 is amended, in paragraph (a) (1), ~~by replacing~~replace the words "unit's compliance subaccount" with the words "compliance account of the source where the unit is located ", ~~removing~~remove the words ", or in the compliance subaccount of another affected unit at the source to the extent provided in § 73.35(b) (3),", and ~~replacing~~replace the words "from the unit" by the words "from the affected units at the source".

§ 72.73 [Amended]

8. Section 72.73 is amended, in paragraph (b) (2), ~~by replacing~~replace the words "the ~~first~~first Acid Rain permit" by the word ~~"a"~~s "an Acid Rain permit".

§ 72.90 [Amended]

9. Section 72.90 is amended, in paragraph (a) ~~(1)~~, ~~by adding~~add, after the words "each calendar year", the words "during 1995 through 2004".

§ 72.95 [Amended]

—10. Section 72.95 is amended by:

a. In the introductory text, ~~replacing~~replace the words “an affected unit’s compliance subaccount” with the words “an affected source’s compliance account”; and

b. In paragraph (a), ~~replacing~~replace the words “by the unit” by the words “by the affected units at the source”.

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

~~11~~1. The authority citation continues to read as follows: —

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

~~12~~1 **§ 73.10 [Amended]**

2. Section 73.10 is amended by:

a. In paragraph (a), ~~removing~~remove the words “in each future year subaccount”;

b. In paragraph (b) (1), ~~replacing~~replace the words “in the future year subaccounts representing calendar years” with the words “for the years”; and—

c. In paragraph (b) (2), ~~replacing~~replace the words “in the future year subaccounts representing calendar years” with the words “for the year”.

—~~13~~

§ 73.30 [Amended]

3. Section 73.30 is amended by:

a. In paragraph (a), ~~by replacing~~replace the words "affected units" by the words "affected sources"; and

b. In paragraph (b), ~~by replacing~~replace the word "unit" by the word "source".

§ 73.31 [Amended]

~~144.~~ Section 73.31 is amended by:-

a. In paragraph (a), ~~replacing~~replace the words "each unit" with the words "each source that includes a unit";-

b. In paragraph (b), ~~replacing~~replace the words "the unit." by the words "the source that includes the unit, unless the source already has a compliance account."; and

c. In paragraph (c) ~~(1)~~(v), ~~removing~~remove the words " I shall abide by any fiduciary responsibilities assigned pursuant to the binding agreement.".

~~155.~~ ~~Section~~§ 73.32 is removed and reserved.

~~16. Section~~

§ 73.33 is amended by r [Amended]

6. Removing and reserving paragraph (c).

§ 73.34 [Amended]

~~177.~~ Section 73.34 is amended by:

a. ~~Revising~~Revise paragraph (a) to read as set forth below;

b. ~~Removing~~Remove and ~~reserving~~reserve paragraph (b);

and

c. In paragraph (c) introductory test, ~~replacing~~replace the word "in subaccounts" with the words "in compliance accounts" and ~~replacing~~replace the words "compliance, current year, and future year" with the words "compliance account" ~~to read as follows:~~

.

§ 73.34 Recordation in accounts.

(a) *Recordation in compliance accounts.* When a compliance account is established under § 73.31(a), the Administrator will record in the account any allowances allocated to the affected units at the source under § 73.10 or part 74 for 30 years starting with the later of 1995 or the year in which the account is established. At the beginning of 1995 and, in the case of each year thereafter, after Administrator has made all deductions from the compliance account pursuant to ~~§ 73~~§ 73.35(b), the Administrator will record in the compliance account the allowances allocated to such units under § 73.10 or part 74 for the new 30th year.

* * * * *

§ 73.35 [Amended]

~~188~~. Section 73.35 is amended by:

a. In paragraph (a) introductory text and paragraph

(a) (1), ~~replacing~~replace the words "unit's" by the word "source's";

b. In paragraph (a) (2) (i), ~~replacing~~replace the words "the unit's compliance subaccount" with the words "the compliance account of the source that includes the unit";

c. In paragraph (a) (2) (ii), ~~replacing~~replace the words "the unit's compliance subaccount" with the words "the compliance account of the source that includes the unit" wherever they appear and ~~removing~~remove the words "for the unit", and ~~replacing~~replace the words "; or" with a period.

d. ~~Removing~~Remove paragraph (a) (2) (iii).-

e. In paragraph (b) (1), ~~adding~~add after the words "deduct allowances" the words "available for deduction under paragraph (a) of this section" and ~~replacing~~replace the words "each affected unit's compliance subaccount" with the words "each affected source's compliance account";

f. In paragraph (b) (2), ~~replacing~~replace the words "allowances remain in the compliance subaccount" with the words "allowances available for deduction under paragraph (a) of this section remain in the compliance account";

g. ~~Removing~~Remove paragraphs (b) (3) ~~(i), (3) (ii), and 3(iii)~~;

h. ~~Revising~~Revise paragraph (c) (1) to read as set forth below;

i. In paragraph (c) (2), ~~replacing~~replace the words "for the unit" with the words "for the units at the source", ~~replacing~~replace the words "in its compliance subaccount." by the words "in the source's compliance account.", ~~replacing~~replace the words "from the compliance subaccount" by the words "from the compliance account", and ~~replacing~~replace the words "unit's compliance subaccount" by the words "source's compliance account";

j. In paragraph (d), ~~replacing~~replace the words "for each unit" by the words "for each source" and ~~replacing~~replace the word "unit's" by the word "source's"; and

k. ~~Removing~~Remove paragraph (e) ~~to read as follows:~~ —

§ 73.35 Compliance.—

~~(a)~~* * * *

~~(b)~~ * ~~*~~ *

(c) (1) Identification of allowances by serial number.

The authorized account representative for a source's compliance account may request that specific allowances, identified by serial number, in the compliance account be deducted for a calendar year 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 year and include, in a format prescribed by the

Administrator, the identification of the source and the appropriate serial numbers.

~~(2) * * *~~

* * * * *

~~19~~ **§ 73.36 [Amended]**

9. Section 73.36 is amended by:—

a. In paragraph (a), ~~replacing~~replace the words “Unit accounts.” with the words “Compliance accounts.” and ~~replacing~~replace with words “compliance subaccount” with the words “compliance account” whenever they appear; and

b. In paragraph (b), ~~replacing~~replace the words “current year subaccount” with the words “general account” whenever they appear.

~~20~~10. **Section 73.37** is ~~amended~~revised to read as follows:—

§ 73.37 Account error.—

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 73.38 [Amended]

~~21~~11. Section 73.38 is amended by:

a. In paragraph (a), ~~replacing~~replace the words “delete the general account from the Allowance Tracking System.” by the words “close the general account.”; and

b. In paragraph (b), ~~removing~~remove the words “and eliminated from the Allowance Tracking System” and the last sentence.

22 § 73.50 [Amended]

12. Section 73.50 is amended by:—

a. In paragraph (a), ~~removing~~remove the words “, including, but not limited to, transfers of an allowance to and from contemporaneous future year subaccounts, and transfers of an allowance to and from compliance subaccounts and current year subaccounts, and transfers of all allowances allocated for a unit for each calendar year in perpetuity”;

b. In paragraph (b) (1) (ii), ~~removing~~remove the words “, or correct indication on the allowance transfer where a request involves the transfer of the unit’s allowance in perpetuity”;

c. In paragraph (b) (2) (ii), ~~removing~~remove the words “Allowance Tracking System” and “under 40 CFR part 73, or any other remedies” and ~~removing~~remove the comma after the words “under State or Federal law”; and

d. ~~Removing~~Remove paragraph (b) (3).

~~23~~13. Section 73.51 is removed and reserved.

~~24~~

14. Section 73.52 is amended by revising paragraphs

(a) (1), (a) (2) and (a) (3) and by removing paragraph (a) (4), and revising paragraph (b) and adding a new paragraph (c) to read as follows:-

§ 73.52 EPA recordation.

(a) * * *

-
- (1) The transfer is corrected submitted under § 73.50;
- (2) The transferor account includes each allowance identified by serial number in the transfer;
- (3) If the allowances identified by serial number specified pursuant to § 73.50(b) (1) (ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h) (1) (i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation.

(b) To the extent an allowance transfer submitted for recordation after the allowance transfer deadline includes allowances allocated for any year before the year of the allowance transfer deadline, the transfer of such allowance will not be recorded until after completion of the

deductions pursuant to § 73.35(b) for year before the year of the allowance transfer deadline.

(c) Where an allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

25 **§ 73.70 [Amended]**

15. Section 73.70 is ~~revised~~amended by:

a. In paragraph (f), ~~replacing~~replace the words "the subaccount" by the words "the Allowance Tracking System account"; and

b. In paragraph (i)(1), ~~adding~~add, after the words "Allowance Tracking System account", the words "of the source that includes".

PART 74-SULFUR DIOXIDE OPTS-INS

261. The authority citation for part 74 continues to read as follows:

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

27 **§ 74.18 [Amended]**

27. Section 74.18 is amended, in paragraph (d), ~~by~~removingremove the last sentence.

28 **§ 74.40 [Amended]**

3. Section 74.40 is amended, in paragraph (a), ~~by~~

~~adding~~add, after the words "an account", the words "(unless the source that includes the opt-in unit already has a compliance account)" and ~~removing~~remove the last sentence.—

~~29~~4. **Section 74.42** is ~~amended~~revised to read as follows:

§ 74.42 Limitation on transfers.

(a) With regard to a transfer request submitted for recordation during the period starting January 1 and ending with the allowance transfer deadline in the same year, the Administrator will not record a transfer of an opt-in allowance that is allocated to an opt-in source for the year in which the transfer request is submitted or a subsequent year.—

——(b) With regard to a transfer request during the period starting with an allowance transfer deadline and ending December 31 in the same year, the Administrator will not record a transfer of an opt-in allowance that is allocated to an opt-in source for a year after the year in which the transfer request is submitted.

~~30~~ **§ 74.43 [Amended]**

5. Section 74.43 is amended by:

a. In paragraph (a), ~~removing~~remove the words "in lieu of any annual compliance certification report required under

subpart I of part 72 of this chapter”;

b. In paragraph (b) (7), ~~replacing~~replace the word “At” by the words, “In an annual compliance certification report for a year during 1995 through 2004, at”; and

c. In paragraph (b) (8), ~~replacing~~replace the word “The” by the words, “In an annual compliance certification report for a year during 1995 through 2004, the”.

~~31~~§ 74.44 [Amended]

6. Section 74.44 is amended by:

a. In paragraphs (c) (2) (iii) (C), (c) (2) (iii) (D), (c) (2) (iii) (E) introductory text, and (c) (~~2~~) (iii) (E) (3), ~~replacing~~replace the words “opt-in source’s compliance subaccount” by the words “compliance account of the source that includes the opt-in source” whenever they occur; and

b. In paragraph (c) (2) (iii) (F), ~~replacing~~replace the words “opt-in source’s compliance subaccount” by the words “compliance account of the source that includes the opt-in source” and ~~replacing~~replace the words “source’s compliance subaccount” by the words “compliance account of the source that includes the opt-in source”.

~~32~~§ 74.46 [Amended]

7. Section 74.467 is amended by removing and reserving paragraph (b) (2).-

§ 74.47 [Amended]

~~33~~8. ~~Section~~Sectoin 74.47 is amended by:

a. In paragraph (c), ~~replacing~~replace the words "unit account" by the words "compliance account of the source that includes the replacement unit"; and

b. In paragraph (d)(2), ~~adding~~add, after the words "Allowance Tracking System accounts", the words "of the source that include the opt-in source and each replacement unit" and ~~removing~~remove the words "for the opt-in source and for each replacement unit".

~~34~~\$ 74.49 [Amended]

9. Section 74.49 is amended, in paragraph (a), ~~by~~
~~replacing~~replace the words "an opt-in source's compliance subaccount" by the words "the compliance account of a source that include an opt-in source".

~~35~~\$ 74.50 [Amended]

10. Section 74.50 is amended by:

a. In paragraph (a)(2) introductory text, ~~adding~~add, after the words "the account of the" the words "source that includes";

b. In paragraph (a)(2)(i), ~~replacing~~replace the words "opt-in source's compliance subaccount" by the words "the compliance account of the source that includes the opt-in source"; and

c. In paragraph (b), ~~replacing~~replace the words "the

opt-in source's unit account" by the words "the compliance account of the source that includes the opt-in source"; and

d. In paragraph (d), replacingreplace the words "an opt-in source does not hold" by the words "the source that include the opt-in source does not hold".

PART 77-EXCESS EMISSIONS

361. The authority citation for part 77 continues to read as follows:

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

37**§ 77.3 [Amended]**

2. Section 77.3 is amended by:—

a. In paragraph (a), replacingreplace the words "affected unit" by the words "affected source" and replacingreplace the word "unit's" by the word "source's";

b. In paragraphs (b) and (c), replacingreplace the word "unit" by the word "source" wherever it appears; and

c. In paragraph (d) introductory text and paragraphs (d) (1), (d) (2), (d) (3), and (d) (5), replacingreplace the word "unit" by the word "source" wherever it appears, replacingreplace the word "unit's" by the word "source's" wherever it appears, and replacingreplace the words "compliance subaccount" by the words "compliance account".

§ 77.4 [Amended]

~~38~~. Section 77.4 is amended, in paragraphs (c) ~~(1)~~ (ii) (A), (d) (1), (d) (2), (d) (3), (g) (2) (ii), (g) (3) (ii), and (g) (3) (iii), ~~by replacing~~replace the word "unit" by the word "source".

~~39~~**§ 77.5 [Amended]**

4. Section 77.5 is amended by:—

a. In paragraph (b), ~~replacing~~replace the words "compliance subaccount" with the words "compliance account";

b. In paragraph (c), ~~replacing~~replace the words ", from the unit's compliance subaccount" with the words "allocated for the year after the year in which the source has excess emissions, from the source's compliance account" and ~~replacing~~replace the word "unit's" by the word "source's"; and

c. ~~Removing~~Remove paragraph (d).—

~~40~~**§ 77.6 [Amended]**

5. Section 77.6 is amended by, in paragraph (a) (1), ~~adding~~add, after the words "sulfur dioxide", the words occur at the affected source" and ~~adding~~add, after the words "owners and operators of", the words "the affected source or".—

PART 78—APPEAL PROCEDURES FOR ACID RAIN PROGRAM

~~41~~1. The authority citation for part 78 continues to

reads as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, et seq.

42**§ 78.1 [Amended]**

2.- Section 78.1 is amended, in paragraph (a)(1), by replacing~~replace~~ the words "parts 72, 73, 74, 75, 76, or 77 of this chapter or part 97 of this chapter" by the words "part 72, 73, 74, 75, 76, or 77 of this chapter, subparts AA through GG and subparts AAA and GGG of part 96 of this chapter, or part 97 of this chapter" and adding~~add~~ new paragraphs (b)(7) and (b)(8) to read as follows:

§ 78.1 Purpose and scope.

(b) * * *

(7) Under subparts AA through GG of part 96 of this chapter,

(i) The decision on the deduction of CAIR ~~NO_x~~NO_x allowances, and the adjustment of the information in a submission and the deduction or transfer of CAIR ~~NO_x~~NO_x allowances based on the information, as adjusted, under § 96.154;

(ii) The correction of an error in a CAIR ~~NO_x~~NO_x Allowance Tracking System account under § 97.156;

(iii) The decision on the transfer of CAIR ~~NO_x~~NO_x allowances under § 96.161;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 96.175.

(8) Under subparts AAA through GGG of part 96 of this chapter,

(i) The decision on the deduction of CAIR SO₂ allowances, and the adjustment of the information in a submission and the deduction or transfer of CAIR SO₂ allowances based on the information, as adjusted, under § 96.254;

(ii) The correction of an error in a CAIR SO₂ Allowance Tracking System account under § 97.256;

(iii) The decision on the transfer of CAIR SO₂ allowances under § 96.261;

(iv) The finalization of control period emissions data, including retroactive adjustment based on audit;

(v) The approval or disapproval of a petition under § 96.275.

~~43~~ § 78.3 [Amended]

3. Section 78.3 is amended by:

a. ~~Revising~~Revise paragraph (b) (3) (i) by adding, after the words "(unless the NO_x authorized account representative is the petitioner)", the words "or the CAIR

designated representative or CAIR authorized account representative under paragraph (a) (5) or (a) (6) of this section (unless the CAIR designated representative or CAIR authorized account representative is the petitioner)";

b. In paragraph (c) (7) ~~by replacing~~replace the words "or part 97 of this chapter, as appropriate" by the words ", subparts AA through GG of part 96 of this chapter, subparts AAA through GGG of part 96 of this chapter, or part 97 of this chapter, as appropriate";

c. In paragraph (d) (2) ~~by adding~~add, after the words "under the ~~NOx~~NO_x Budget Trading Program", the words "or on an account certificate of representation submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through GG of part 96 of this chapter or subparts AAA through GGG of part 96 of this chapter,";

d. ~~Adding~~Add new paragraphs (a) (5), (a) (6), and (d) (5) and (d) (6).

The additions and revisions read as follows:

§ 78.3 **Petition for administrative review and request for evidentiary hearing.**

(a) * * *

(5) The following persons may petition for

administrative review of a decision of the Administrator that is made under subparts AA through GG of part 96 and that is appealable under § 78.1(a) of this part:

(i) The CAIR designated representative for a source or the CAIR authorized account representative for any CAIR ~~NOx~~NO_x Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

(6) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through ~~GG~~GGG of part 96 and that is appealable under § 78.1(a) of this part:

(i) The CAIR designated representative for a source or the CAIR authorized account representative for any CAIR SO₂ Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(5) Any provision or requirement of subparts AA through GG of part 96, including the standard requirements under § 96.106 of this chapter and any emission monitoring or reporting requirements.

(6) Any provision or requirement of subparts AAA

through GGG of part 96, including the standard requirements under § 96.206 of this chapter and any emission monitoring or reporting requirements.

* * * * *

44 § 78.4 [Amended]

4. Section 78.4 is amended by adding two new sentences after the fifth sentence in paragraph (a) to read as follows:

§ 78.4 Filings.

(a) * * * Any filings on behalf of owners and operators of a CAIR unit or source shall be signed by the CAIR designated representative. Any filings on behalf of persons with an interest in CAIR ~~NOx~~NO_x or SO₂ allowances in a general account shall be signed by the CAIR authorized account representative. * * *

* * * * *

45 § 78.12 [Amended]

5. Section 78.12 is amended, in paragraph (a) (2), by ~~adding~~add, after the words "a ~~NOx~~NO_x Budget permit", the words ", CAIR permit,".

~~SUBPART AAA through HHH - SO₂ EMISSIONS TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS UNDER THE CLEAN AIR INTERSTATE RULE (CAIR)~~

Outline**Subpart AAA CAIR SO₂ PART 96 - [AMENDED]**

1. Authority citation for Part 96 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7601.

2. Part 96 is amended by adding subparts AA through CC, adding and reserving subpart DD and adding subparts EE through HH to read as follows:

Subpart AA - CAIR NO_x Trading Program General Provisions

Text Moved Here: 3

96.101 Purpose.

96.102 Definitions.

96.103 Measurements, abbreviations, and acronyms.

96.104 Applicability.

96.105 Retired unit exemption.

96.106 Standard requirements.

96.107 Computation of time.

96.108 Appeal Procedures.

Subpart BB - CAIR Designated Representative for CAIR Sources

96.110 Authorization and responsibilities of CAIR designated representative.

96.111 Alternate CAIR designated representative.

96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

96.113 Certificate of representation.

96.114 Objections concerning CAIR designated representative.

Subpart CC - Permits

96.120 General CAIR NO_x Trading Program permit requirements.

96.121 Submission of CAIR permit applications.

96.122 Information requirements for CAIR permit applications.

96.123 CAIR permit contents and term.

96.124 CAIR permit revisions.

Subpart DD - [Reserved]

Subpart EE - CAIR NO_x Allowance Allocations

96.140 State trading budgets.

96.141 Timing requirements for CAIR NO_x allowance allocations.

96.142 CAIR NO_x allowance allocations.

Subpart FF - CAIR NO_x Allowance Tracking System

96.150 CAIR NO_x Allowance Tracking System accounts.

96.151 Establishment of accounts.

96.152 Responsibilities of CAIR NO_x authorized account representative.

96.153 Recordation of CAIR NO_x allowance allocations.

96.154 Compliance with CAIR NO_x emissions limitation.

96.155 Banking.

96.156 Account error.

96.157 Closing of general accounts.

Subpart GG - CAIR NO_x Allowance Transfers

96.160 Submission of CAIR NO_x allowance transfers.

96.161 EPA recordation.

96.162 Notification.

Subpart HH - Monitoring and Reporting

96.170 General requirements.

96.171 Initial certification and recertification procedures.

96.172 Out of control periods.

96.173 Notifications.

96.174 Recordkeeping and reporting.

96.175 Petitions.

96.176 Additional requirements to provide heat input data.

Subpart AA - CAIR NO_x Trading Program General Provisions

§ 96.101 Purpose.

This subpart establishes the model rule comprising general

provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state Clean Air Interstate Rule (CAIR) NO_x Trading Program, under section 110 of the Clean Air Act (CAA) and § 51.123 of this chapter, as a means of reducing national NO_x emissions.

§ 96.102 Definitions.

The terms used in this subpart 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.

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

Allocate or allocation means, with regard to CAIR NO_x allowances, the determination by the Administrator of the amount of CAIR NO_x allowances to be initially credited to a

CAIR unit or a new unit set-aside.

Alternate CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source in accordance with subpart BB of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program and the CAIR NO_x Trading Program. This natural person shall be the same person as the alternate designated representative under the Acid Rain Program under § 72.22 of this chapter.

Automated data acquisition and handling system or DAHS means that component of the CEMS, 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 power production.

Text Moved Here: 2

CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source, in accordance with subpart BBB of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program and to the CAIR ~~NO_x~~NO_x Trading Program. This natural person shall be the same person who is the authorized account representative under the Acid Rain Program under § 72.20 of this chapter.

End Of Moved Text

CAIR NO_x allowance means a limited authorization issued by the Administrator to emit up to one ton of nitrogen oxide during the control period of the specified year or of any year thereafter under the CAIR NO_x Program or, except for purposes of subpart EE of this part, any NO_x SIP Call allowance, allocated for the 2009, or any earlier, ozone season that is not used to meet an NO_x emissions limitation

under the NO_x Budget Trading Program.

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 in order to account for a specified number of tons of nitrogen oxide emissions from all CAIR units at a CAIR source for a control period, determined in accordance with subparts FF and HH of this part, or to account for excess emissions.

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

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 allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which a CAIR NO_x allowance transfer must be submitted for recordation in a CAIR source's compliance account in order to meet the source's CAIR NO_x emissions limitation for the control period immediately preceding such deadline.

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 and GG of this part, in a CAIR NO_x Allowance Tracking System account.

CAIR NO_x authorized account representative means a responsible natural person who is authorized, in accordance with subpart BB of this part, to transfer and otherwise dispose of CAIR NO_x allowances held in a CAIR NO_x Allowance Tracking System general account; or, in the case of a compliance account, the CAIR designated representative of the source.

CAIR NO_x emissions limitation means, for a CAIR source, the tonnage equivalent of the CAIR NO_x allowances available for compliance deduction for the source under §§ 96.154(a) and (b) in a control period.

CAIR NO_x 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 HH of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

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 SO₂ and NO_x Trading Program requirements applicable to a CAIR source, to each CAIR unit at the CAIR source, and to the owners and operators and the CAIR designated representative of the CAIR source and each CAIR unit.

CAIR SO₂ 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 HHH of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates.

CAIR source means a source that includes one or more CAIR units.

CAIR unit means a unit that is subject to the CAIR NO_x Trading Program under § 96.104.

Clean Air Act 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, with regard to a unit, combusting coal or any coal-derived fuel alone or in combination with any

amount of any other fuel in any year.

Cogeneration unit means a unit:

(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 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 than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means 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. A combustion turbine that is combined cycle also includes any

associated heat recovery steam generator and steam turbine.
Commence commercial operation means, with regard to a unit
that serves a generator, to have begun to produce steam,
gas, or other heated medium used to generate electricity for
sale or use, including test generation. Except as provided
in § 96.105, for a unit that is a CAIR unit under § 96.104
on the date the unit commences commercial operation, such
date shall remain the unit's date of commencement of
commercial operation even if the unit is subsequently
modified or reconstructed. Except as provided in § 96.105,
for a unit that is not a CAIR unit under § 96.104 on the
date the unit commences commercial operation, the date the
unit becomes a CAIR unit under § 96.104 shall be the unit's
date of commencement of commercial operation.

Commence operation means to have begun any mechanical,
chemical, or electronic process, including, with regard to a
unit, start-up of a unit's combustion chamber. Except as
provided in § 96.105, for a unit that is a CAIR unit under §
96.104 on the date of commencement of operation, such date
shall remain the unit's date of commencement of operation
even if the unit is subsequently modified or reconstructed.
Except as provided in § 96.105, for a unit that is not a
CAIR unit under § 96.104 on the date of commencement of
operation, the date the unit becomes a CAIR unit under §

96.104 shall be the unit's date of commencement of operation.

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

Compliance account means a CAIR NO_x Allowance Tracking System account, established by the Administrator for a CAIR source under subpart FF of this part, in which the CAIR NO_x allowance allocations for the CAIR units at the source are initially recorded and in which are held CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation.

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 oxide (NO_x) emissions, stack gas volumetric flow rate or stack gas moisture content (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 DAHS. A flow monitoring

system provides a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides (NO_x) concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated DAHS. A NO_x concentration monitoring system provides 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 (CO₂ or O₂) monitor, and an automated DAHS. A NO_x-diluent monitoring system provides a permanent, continuous record of: NO_x concentration, in parts per million (ppm); diluent gas concentration, in percent CO₂ or O₂ (percent CO₂ or O₂); 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. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in percent H₂O (percent H₂O);

(5) A carbon dioxide (CO₂) monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the

CO₂ concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO₂ emissions, in percent CO₂ (percent CO₂); and

(6) An oxygen (O₂) monitoring system, consisting of an O₂ concentration monitor and an automated DAHS. An O₂ monitoring system provides a permanent, continuous record of O₂ in percent O₂ (percent O₂).

Control period means the period beginning January 1 of a year 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.

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

Excess emissions means any ton of nitrogen oxide emitted by the CAIR units at a CAIR 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, any boiler or turbine combusting any amount of fossil fuel.

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 thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

Heat input means, with regard to a specified period to 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 as determined by the Administrator in accordance with subpart HH of this part. Heat input does not include 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.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

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

monitoring system.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

NO_x Budget Trading Program means a multi-state nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of this part and § 51.121 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

NO_x SIP Call allowance means a limited authorization issued by the Administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter under the NO_x Budget Trading Program or during the control period in 2010 or any year thereafter under the CAIR NO_x Trading Program, provided that § 96.54(f) of this chapter shall not

apply to the use of such allowance under § 96.154.

Operator means any person who operates, controls, or supervises a CAIR unit or a CAIR 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) Any holder of any portion of the legal or equitable title in a CAIR unit; or

(2) Any holder of a leasehold interest in a CAIR unit; or

(3) Any purchaser of power from a CAIR 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 the CAIR unit; or

(4) 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 that 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 Trading Program in accordance with subpart CC of this part.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 mmBtu/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.

Serial number means for a CAIR NO_x allowance, the unique

identification number assigned to each CAIR NO_x allowance by the Administrator, under § 96.153(f).

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from power 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 power production.

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 50 States or the District of Columbia that adopts the CAIR NO_x Trading Program pursuant to § 51.123 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," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the 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, 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 and at least some of the reject heat from the power 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 boiler or combustion turbine.

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, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat 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 distribution utility and dedicated to delivering electricity to customers.

§ 96.103 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.

CO₂-carbon dioxide.

NO_x-nitrogen oxide.

hr-hour.

kW-kilowatt electrical.

kWh-kilowatt hour.

mmBtu-million Btu.

MWe-megawatt electrical.

MWh-megawatt hour.

O₂-oxygen.

SO₂-sulfur dioxide.

yr-year.

§ 96.104 Applicability.

The following units in a State shall be CAIR units, and any source that includes one or more such units shall be a

CAIR source, subject to the requirements of this subpart and subparts BB through HH of this part:

(a) Except a unit under paragraph (b) of this section, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying 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.

§ 96.105 Retired unit exemption.

(a) This section applies to any CAIR unit that is permanently retired.

(b) (1) Any CAIR unit that is permanently retired shall be exempt from the CAIR NO_x Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, § 96.106(c) (5) through (8), § 96.107, and subparts EE through GG of this part.

(2) The exemption under paragraph (b) (1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent

retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit. The CAIR designated representative 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 (c) of this section.

(3) After receipt of the notice under paragraph (b) (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 (b) (1) and (c) of this section.

(c) Special provisions.

(1) A unit exempt under 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 allowances under subpart EE of this part to a unit exempt under 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

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 prior to 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 this section shall comply with the requirements of the CAIR NO_x 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 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 § 96.122 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.

(6) On the earlier of the following dates, a unit

exempt under paragraph (b) 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 (c) (5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (c) (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 requirements under subpart HH of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.106 Standard requirements.

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR source required to have a title V operating permit and each CAIR 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 § 96.122 in accordance with the

deadlines specified in § 96.121(b) and (c); 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 source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority and operate the unit in compliance with such CAIR permit.

(3) The owners and operators of a CAIR source 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 source.

(b) Monitoring requirements.

(1) The owners and operators and, to the extent applicable, the CAIR designated representative of each CAIR source and each CAIR unit at the source shall comply with the monitoring 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 the unit with the CAIR NO_x emissions

limitation under paragraph (c) of this section.

(c) Nitrogen oxide emission requirements.

(1) As of the CAIR NO_x allowance transfer deadline for a control period, the owners and operators of each CAIR source and each CAIR 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 § 96.154(a) in an amount not less than the total nitrogen oxides emissions for the control period from all CAIR units at the source, as determined in accordance with subpart HH of this part.

(2) Each ton of nitrogen oxide emitted in excess of the CAIR NO_x emissions limitation shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(3) a CAIR unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1) or (b)(2).

(4) a CAIR NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the CAIR NO_x allowance was allocated.

(5) 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.

(6) a CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxide in accordance with the CAIR NO_x Trading Program. No provision of the CAIR NO_x Trading Program, the CAIR permit application, the CAIR permit, or exemption under § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(7) a CAIR NO_x allowance does not constitute a property right.

(8) Upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR unit's compliance account is incorporated automatically in any CAIR permit of the CAIR unit.

(d) Excess emissions requirements.

(1) The owners and operators of a CAIR unit that has excess emissions in any control period shall:

(i) Surrender the CAIR NO_x allowances required for deduction under § 96.154(d) (1); and

(ii) Pay any fine, penalty, or assessment or comply

with any other remedy imposed under § 96.154(d) (2).

(e) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR source and each CAIR 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 prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.113 for the CAIR designated representative for the source and each CAIR 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 § 96.113 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 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Trading Program.

(2) The CAIR designated representative of a CAIR source and each CAIR unit at the source shall submit the reports required under the CAIR NO_x Trading Program, including those under subpart HH of this part.

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the CAIR NO_x Trading Program, a CAIR permit, or an exemption under § 96.105 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the CAIR NO_x Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the CAIR NO_x Trading Program that occurs prior to the date that the revision takes effect.

(4) Each CAIR source and each CAIR unit shall meet the

requirements of the CAIR NO_x Trading Program.

(5) Any provision of the CAIR NO_x Trading Program that applies to a CAIR source or the CAIR designated representative of a CAIR source shall also apply to the owners and operators of such source and of the CAIR units at the source.

(6) Any provision of the CAIR NO_x Trading Program that applies to a CAIR unit or the CAIR designated representative of a CAIR unit shall also apply to the owners and operators of such unit.

(g) Effect on Other Authorities. No provision of the CAIR NO_x Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CAIR designated representative of a CAIR source or CAIR unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x 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 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 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.108 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Trading Program are set forth in part 78 of this chapter.

Subpart BB - CAIR designated representative for CAIR sources

§ 96.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.111, each CAIR source, including all CAIR units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Trading Program concerning the source or any CAIR unit at the source.

(b) The CAIR designated representative of the CAIR source shall be selected by an agreement binding on the owners and operators of the source and all CAIR units at the source and shall act in accordance with the certification statement in § 96.113(a)(5)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, 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 source represented and each CAIR unit at the source in all matters pertaining to the CAIR NO_x 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 unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR units at the source.

(e) (1) Each submission under the CAIR NO_x Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR 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 source or a CAIR unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.111 Alternate CAIR designated representative.

(a) A certificate of representation 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 § 96.113, 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 §§ 96.102, 96.110(a), 96.112, 96.113, and 96.151, whenever the term "CAIR designated representative" is used in this subpart, the term shall be construed to include the alternate CAIR designated representative.

§ 96.112 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 § 96.113.

Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR

designated representative prior to 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 source and the CAIR 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 § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative prior to 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 source and the CAIR units at the source.

(c) Changes in owners and operators.

(1) In the event a new owner or operator of a CAIR source or a CAIR unit is not included in the list of owners and operators submitted in the certificate of representation under § 96.113, 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, orders, actions, and inactions of the permitting authority or the Administrator, 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 source or a CAIR unit, including the addition of a new owner or operator, the CAIR designated representative or alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.

§ 96.113 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 source and each CAIR unit at the source for which the certificate of representation is submitted.

(2) For each CAIR unit at the source, the dates on which the unit commenced operation and commenced commercial operation.

(3) 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.

(4) A list of the owners and operators of the CAIR source and of each CAIR unit at the source.

(5) 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 unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ and NO_x Trading Programs on behalf of the owners and operators of the source and of each 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 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 unit, or where a customer purchases power from a unit under life-of-the-unit, firm power contractual arrangements, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternated designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each unit at the source; and allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement or, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract."

(6) 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.

§ 96.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.113 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 § 96.113 is received by the Administrator.

(b) Except as provided in § 96.112(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 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

§ 96.120 General CAIR Trading Program permit requirements.

(a) For each CAIR source required to have a title V operating permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit. The CAIR portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart.

(b) Each CAIR permit shall contain all applicable CAIR SO₂ and NO_x Trading Program requirements and shall be a complete and separable portion of the title V operating permit under paragraph (a) of this section.

§ 96.121 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.122 by the applicable deadline in paragraph (b) of this section.

(b) Application deadline. For any source with any CAIR unit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 covering

such CAIR unit to the permitting authority 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 unit commences operation.

(c) Duty to Reapply. For a CAIR source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the CAIR source covering the CAIR units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

§ 96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each CAIR unit at the CAIR source; and

(c) The standard requirements under §§ 96.106 and

96.206.

§ 96.123 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 § 96.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR 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 source's title V permit.

§ 96.124 CAIR permit revisions.

Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

Subpart DD - [Reserved]

Subpart EE - CAIR NO_x Allowance Allocations

§ 96.140 State trading budgets.

The State trading program budgets for annual allocations of CAIR NO_x allowances for 2010 through 2014 and for 2015 and thereafter are respectively as follows:

<u>State</u>	<u>State NO_x Budget 2010</u> <u>(tons)</u>	<u>State NO_x Budget 2015</u> <u>(tons)</u>
<u>Alabama</u>	<u>67,422</u>	<u>56,185</u>
<u>Arkansas</u>	<u>24,919</u>	<u>20,765</u>
<u>Delaware</u>	<u>5,089</u>	<u>4,241</u>
<u>District of Columbia</u>	<u>215</u>	<u>179</u>
<u>Florida</u>	<u>115,503</u>	<u>96,253</u>
<u>Georgia</u>	<u>63,575</u>	<u>52,979</u>
<u>Illinois</u>	<u>73,622</u>	<u>61,352</u>
<u>Indiana</u>	<u>102,295</u>	<u>85,246</u>
<u>Iowa</u>	<u>30,458</u>	<u>25,381</u>
<u>Kansas</u>	<u>32,436</u>	<u>27,030</u>
<u>Kentucky</u>	<u>77,938</u>	<u>64,948</u>
<u>Louisiana</u>	<u>47,339</u>	<u>39,449</u>
<u>Maryland</u>	<u>26,607</u>	<u>22,173</u>
<u>Massachusetts</u>	<u>19,630</u>	<u>16,358</u>
<u>Michigan</u>	<u>60,212</u>	<u>50,177</u>
<u>Minnesota</u>	<u>29,303</u>	<u>24,420</u>
<u>Mississippi</u>	<u>21,932</u>	<u>18,277</u>
<u>Missouri</u>	<u>56,571</u>	<u>47,143</u>
<u>New Jersey</u>	<u>9,895</u>	<u>8,246</u>
<u>New York</u>	<u>52,503</u>	<u>43,753</u>
<u>North Carolina</u>	<u>55,763</u>	<u>46,469</u>
<u>Ohio</u>	<u>101,704</u>	<u>84,753</u>
<u>Pennsylvania</u>	<u>84,552</u>	<u>70,460</u>
<u>South Carolina</u>	<u>30,895</u>	<u>25,746</u>
<u>Tennessee</u>	<u>47,739</u>	<u>39,783</u>
<u>Texas</u>	<u>224,314</u>	<u>186,928</u>
<u>Virginia</u>	<u>31,087</u>	<u>25,906</u>
<u>West Virginia</u>	<u>68,235</u>	<u>56,863</u>
<u>Wisconsin</u>	<u>39,044</u>	<u>32,537</u>
<u>Total Regional Budget</u>	<u>1,600,799</u>	<u>1,333,999</u>

§ 96.141 Timing requirements for CAIR NO_x allowance allocations.

(a) (1) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x allowance

allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_x allowance allocations in accordance with paragraph (a)(1) of this section, the Administrator will allocate CAIR NO_x allowances for the applicable control periods, in accordance with § 96.142(a) and (b).

(b)(1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_x allowance allocations in accordance with paragraph (b)(1), the Administrator will allocate CAIR NO_x allowances for the applicable control period, in accordance with § 96.142(a) and (b).

§ 96.142 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 unit will be:

(i) For units commencing operation before January 1, 1998 the average of the three highest amounts of the unit's annual heat input for 1998 through 2002.

(ii) For units commencing operation on or after January 1, 1998 and operating each year during a period of 5 or more consecutive years, the average of the three highest amounts of the unit's total converted annual heat input over the first such 5 years.

(2)(i) A unit's annual heat input for a year under paragraphs (a)(1)(i), (a)(2)(ii)(A), and (c)(3)(ii) of this section will be determined in accordance with part 75 of this chapter, if the CAIR unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted annual heat input for a year specified under paragraph (a)(1)(ii) of this section equals-

(A) The annual gross electrical output of the generator or generators served by the unit multiplied by 8,000 Btu/kWh, provided that if the generator is served by two 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 total heat input of such units for the year; plus

(B) For a cogeneration unit, one-half of the unit's annual gross thermal energy multiplied by 8,000 Btu/kWh.

(b)(1) For each control period under § 96.141, the permitting authority will allocate to all CAIR units in the 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 98 percent of the tons of CAIR NO_x emissions in the State trading program budget under § 96.140 (except as provided in § 96.142(d)).

(2) The permitting authority will allocate CAIR NO_x allowances to each CAIR unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such unit to the total amount of baseline heat input of all CAIR units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period under § 96.141, the permitting authority will allocate CAIR NO_x allowances to CAIR units in the State that commenced operation on or after January 1, 1998 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 permitting authority 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 2 percent of the amount of tons of CAIR NO_x emissions in the State trading program budget under § 96.140.

(2) The CAIR designated representative of such a CAIR unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x allowances, starting with the first control period after the control period in which the CAIR 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 before January 1 of the first control period for which the CAIR NO_x allowances are requested and after the date on which the CAIR 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 -

(i) 1.00 lb/MWh for boilers, coal-fired combustion

turbines, and integrated gasification combined cycle plants, 0.56 lb/MWh for gas-fired combustion turbines, or 1.01 lb/MWh for all other combustion turbines;

(ii) multiplied by the CAIR unit's heat input for the control period immediately preceding the control period for which the allowances are requested; and

(iii) rounded to the nearest whole allowance as appropriate.

(4) The permitting authority 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) Upon receipt of an allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, the request is consistent with the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after January 1 of the control period, the permitting authority will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all CAIR NO_x allowance allocation requests under paragraph (c)(2) 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, the permitting authority will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR unit covered by an allocation request under paragraph (c)(2) 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, the permitting authority will allocate to each CAIR unit covered by an allocation request under paragraph (c)(2) 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 number 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 permitting authority will notify each CAIR designated representative that submitted an allowance allocation request, and the Administrator (in a format prescribed by the Administrator), of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR unit covered by the allowance allocation request.

(d) If, after completion of the procedures under

paragraph (c)(4) of this section, any unallocated CAIR NO_x allowances remain in the new unit set-aside for a control period, the permitting authority will reallocate to each CAIR unit that was allocated CAIR NO_x allowances under paragraph (b) 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 98 percent of the amount of tons of CAIR NO_x emissions in the State trading program budget, and rounded to the nearest whole allowance as appropriate. The permitting authority will notify the Administrator (in a format prescribed by the Administrator) of the amounts of CAIR NO_x allowances (if any) allocated for the control period to such CAIR units under this paragraph.

Subpart FF - CAIR NO_x Allowance Tracking System

§ 96.150 CAIR NO_x Allowance Tracking System accounts.

(a) Nature and function of compliance accounts.

Consistent with § 96.151(a), the Administrator will establish one compliance account for each CAIR source with one or more CAIR units. Allocations of CAIR NO_x allowances to CAIR units pursuant to subpart EE of this part, and deductions or transfers of CAIR NO_x allowances pursuant § 96.154, § 96.156, or subpart GG of this part will be recorded in compliance accounts in accordance with this

subpart.

(b) Nature and function of general accounts.

Consistent with § 96.151(b), the Administrator will establish, upon request, a general account for any person. Transfers of CAIR NO_x allowances pursuant to subpart GG of this part will be recorded in general accounts in accordance with this subpart.

§ 96.151 Establishment of accounts.

(a) Compliance accounts. Upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR source for which the certificate of representation was submitted.

(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 NO_x authorized account representative and one and only one alternate CAIR NO_x authorized account representative who may act on behalf of the CAIR NO_x authorized account representative. The agreement by which the alternate CAIR NO_x authorized account representative is selected shall include a procedure for authorizing the

alternate CAIR NO_x authorized account representative to act in lieu of the CAIR NO_x 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 NO_x authorized account representative and any alternate CAIR NO_x authorized account representative;

(B) Organization name and type of organization;

(C) A list of all persons subject to a binding agreement for the CAIR NO_x authorized account representative and any alternate CAIR NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the CAIR NO_x authorized account representative and any alternate CAIR NO_x authorized account representative: "I certify that I was selected as the CAIR NO_x authorized account representative or the CAIR NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to 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 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 NO_x authorized account representative and any alternate CAIR NO_x 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 NO_x authorized account representative. Upon receipt by the Administrator of a complete application for a general account under paragraph (b) (1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The CAIR NO_x authorized account representative and

any alternate CAIR NO_x 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 Trading Program, notwithstanding any agreement between the CAIR NO_x authorized account representative or any alternate CAIR NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR NO_x authorized account representative or any alternate CAIR NO_x authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate CAIR NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR NO_x authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR NO_x authorized account representative or any alternate CAIR NO_x 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 NO_x authorized account representative or any alternate CAIR NO_x authorizing 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."

(v) 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)(iv) of this section.

(3) Changing CAIR NO_x authorized account representative and alternate CAIR NO_x authorized account representative; changes in persons with ownership interest.

(i) The CAIR NO_x 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 NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR NO_x 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 NO_x 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 NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR NO_x 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 NO_x authorized account representative and any alternate CAIR NO_x authorized account representative of the account, and the decisions, orders, actions, and inactions of the Administrator, 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 NO_x authorized account representative or any alternate CAIR NO_x 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 NO_x 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 NO_x authorized account representative or any alternative CAIR NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR NO_x authorized account representative or any alternative CAIR NO_x authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x 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 NO_x authorized account representative or any alternative CAIR NO_x 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.

§ 96.152 Responsibilities of CAIR NO_x authorized account representative.

(a) 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 NO_x authorized account representative for the account.

(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each CAIR NO_x authorized account representative.

§ 96.153 Recordation of CAIR NO_x allowance allocations.

(a) By January 1, 2007, the Administrator will record the CAIR NO_x allowances for 2010, 2011, 2012, 2013, and 2014 for the CAIR units at a source allocated in accordance with § 96.142(a) and (b) in the source's compliance account.

(b) Each year starting with 2011, after the Administrator has made all deductions from a CAIR source's compliance account under § 96.154, the Administrator will record CAIR NO_x allowances, in the source's compliance account, as allocated to the CAIR units at the source in

accordance with § 96.142(a) and (b), for the fourth year after the year of the control period for which such deductions were or could have been made.

(c) Each year starting with 2010, after the Administrator is notified, in accordance with § 96.142(c) (v) and (d), by the permitting authority of the amounts of CAIR NO_x allowances allocated to the CAIR units at the source, the Administrator will record the allocated allowances in the source's compliance account.

(d) Serial numbers for allocated CAIR NO_x allowances. When allocating CAIR NO_x allowances to a CAIR unit and recording them in an account, the Administrator will assign each CAIR NO_x allowance a unique identification number that will include digits identifying the year for which the CAIR NO_x allowance is allocated.

§ 96.154 Compliance with CAIR NO_x emissions limitation.

(a) CAIR NO_x 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 year only if the CAIR NO_x allowances:

- (1) Were allocated for the year or a prior year;
- (2) Are held in the compliance account as of the CAIR NO_x 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 § 96.160 by the CAIR NO_x 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 § 96.161, of CAIR NO_x allowance transfers submitted for recordation in a source's compliance account by the CAIR NO_x 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 units at the source for the control period; or

(2) 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 NO_x 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 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) Those CAIR NO_x allowances that were allocated to the units at the source under subpart EE of this part, in the order of recordation; and then

(ii) Those CAIR NO_x allowances that were allocated to any unit 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 which the CAIR source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x allowances, allocated for the year after such control period, equal to three 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 source or the CAIR units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CAIR source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(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 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.

§ 96.155 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 § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 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 NO_x authorized account representative for the account.

§ 96.157 Closing of general accounts.

(a) The CAIR NO_x 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 § 96.160 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 and does not contain any CAIR NO_x allowances, the Administrator may notify the CAIR NO_x 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 § 96.160 or a statement submitted by the CAIR NO_x 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

§ 96.160 Submission of CAIR NO_x allowance transfers.

An CAIR NO_x 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 numbers identifying both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_x allowance (which must be in transferor account) to be transferred; and

(c) The name and signature of the CAIR NO_x authorized account representative of the transferor account and the date signed.

§ 96.161 EPA recordation.

(a) Within 5 business days of receiving a CAIR NO_x allowance transfer, except as provided in paragraph (b) of this section, 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 § 96.160;
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 CAIR NO_x allowance transfer deadline
and that includes any CAIR NO_x allowances allocated for a
control period in any year before the year of the CAIR NO_x
allowance transfer deadline will not be recorded until after
the Administrator completes the deductions under § 96.154
for the control period in the year immediately before the
year of the CAIR NO_x 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.

§ 96.162 Notification.

(a) Notification of recordation. Within 5 business
days of recordation of a CAIR NO_x allowance transfer under §
96.161, the Administrator will notify the CAIR NO_x
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 § 96.161(a), the Administrator will notify the CAIR NO_x 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-recording.

(c) Nothing in this section shall preclude the submission of a CAIR NO_x allowance transfer for recording following notification of non-recording.

Subpart HH - Monitoring and Reporting

§ 96.170 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR 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 § 96.102 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 unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR 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 unit.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input. This includes all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, in accordance with §§ 75.71 and 75.72 of this chapter;

(2) Successfully complete all certification tests required under § 96.171 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 certification and other requirements of paragraphs (a)(1) and (a)(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 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR 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 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) or (b)(2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(c) Reporting data prior to initial certification. The owner or operator of a CAIR unit that does not meet the applicable compliance date set forth in paragraph (b) of

this section shall determine, record, and report maximum potential (or, in some cases, 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 § 75.31(c)(3) of this chapter, § 2.4 of appendix D to part 75 of this chapter, or § 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) Prohibitions

(1) No owner or operator of a CAIR unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.175.

(2) No owner or operator of a CAIR 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 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 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 § 96.105 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 permitting authority 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 § 96.171(d)(3)(i).

§ 96.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR unit shall be exempt from the initial certification requirements of this section if the following conditions are met:

(1) In 2008, the unit is subject to an Acid Rain emission limitation or is subject to the NO_x Budget Trading Program or another applicable State or Federal NO_x mass emission reduction program that has adopted the requirements of subpart H of part 75 of this chapter; and

(2) Under the Acid Rain Program or the NO_x mass emission reduction program described in paragraph (a)(1) of this section, all of the monitoring systems required under this subpart for monitoring NO_x mass emissions and heat input have been previously certified in accordance with subpart H of part 75 of this chapter; and

(3) The applicable quality-assurance requirements of § 75.21 or § 75.74(c) of this chapter, or appendix B, appendix D, or appendix E to part 75 of this chapter are fully met in 2008 for all of the certified monitoring systems described in paragraph (a)(2) of this section.

(b) The recertification provisions of this section shall apply to the monitoring systems exempted 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 § 75.17 or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_x Trading Program.

(d) The owner or operator of a CAIR unit that is not exempted under paragraph (a) of this section from the initial certification requirements of this section shall comply with the following initial certification and recertification procedures, for CEMS and for excepted monitoring systems under appendices D and E to part 75 of this chapter. 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 monitoring system

required by subpart H of part 75 of this chapter (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 § 96.170(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 monitoring system required by subpart H of part 75 of this chapter 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 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 CEMS 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. Fuel flowmeter systems and excepted NO_x monitoring systems under appendix E to part 75 of this chapter 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 (d)(3)(iv) of this section apply to both initial certification and recertification of continuous monitoring systems. 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 permitting authority, to the appropriate EPA Regional Office, and to the

Administrator written notice of the dates of certification testing, in accordance with § 96.173.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in § 75.63 of this chapter. Notwithstanding this requirement, a certification application is not required by subpart H if the monitoring system has been previously certified in accordance with the Acid Rain Program or in accordance with the NO_x Budget Trading Program or another applicable State or Federal NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.

(iii) Provisional certification date. Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, 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 Trading Program for a period not to exceed 120 days after receipt by the permitting authority 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 permitting authority 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 permitting authority.

(iv) Certification application formal approval process. The permitting authority 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 permitting authority 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 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 permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (d)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority 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 permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin prior to 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 has been met, then the permitting authority 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 permitting authority 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 permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).

(v) Procedures for loss of certification. If the permitting authority 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(b)(5), § 75.21(e), or § 75.20(g)(7) 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 disapproved NO_x pollutant concentration monitors and flow monitors, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in § 2 of appendix A to part 75 of this chapter.

(3) For disapproved moisture and diluent gas monitoring systems, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in § 2 of appendix A to part 75 of this chapter.

(4) For disapproved fuel flowmeter systems, the maximum potential fuel flow rate, as defined in § 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 permitting authority'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 gas-fired or oil-fired (as defined in § 72.2 of this chapter) unit using 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) in part 75 of this chapter. If the owner or operator of a low mass emissions 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 and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the notification and application procedures of paragraph (d)(1) of this section before using the system under the CAIR NO_x Trading Program. The CAIR designated representative shall also comply with the applicable notification and application procedures of paragraph (d)(2) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

§ 96.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, subpart H, appendix D, or appendix E of 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 system should not have been certified or recertified because it did not meet a particular performance specification or other

requirement under § 96.171 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 permitting authority will issue a notice of disapproval of the certification status of such 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 permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the 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 system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, 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 Recordkeeping and reporting.

(a) General provisions.

(1) 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 § 96.110(e)(1).

(b) Monitoring Plans. The owner or operator of a CAIR 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 permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, 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 NO_x mass emissions data and heat input data, 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. Data shall be reported from the first hour on January 1, 2009; or

(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 relevant deadline for initial certification under § 96.170(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. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.

(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 units that are also subject to an Acid Rain emissions limitation, the NO_x Budget Trading Program or another applicable State or Federal NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, or an applicable State or

Federal Hg mass emission reduction program that adopts the requirements of subpart I of part 75 of this chapter, 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 of part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.

§ 96.175 Petitions.

(a) The CAIR designated representative of a CAIR unit that is subject to an Acid Rain emissions limitation 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 by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and 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 by both the permitting authority and the Administrator.

§ 96.176 Additional Requirements to Provide Heat Input Data.

The owner or operator of a CAIR 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.

End Of Moved Text: 3

3. Part 96 is amended by adding subparts AAA through CCC, adding and reserving subparts DDD and EEE and adding subparts FFF through HHH to read as follows:

Subpart AAA - CAIR SO₂ Trading Program General Provisions

- 96.201 Purpose.
- 96.202 Definitions.
- 96.203 Measurements, abbreviations, and acronyms.
- 96.204 Applicability.
- 96.205 Retired unit exemption.
- 96.206 Standard requirements.
- 96.207 Computation of time.
- 96.208 Appeal Procedures.

Subpart BBB - CAIR Designated Representative for CAIR

Sources

- 96.210 Authorization and responsibilities of CAIR designated representative.

- 96.211 Alternate CAIR designated representative.
- 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 96.213 Certificate of representation.
- 96.214 Objections concerning CAIR designated representative.

Subpart CCC - Permits

- 96.220 General CAIR SO₂ Trading Program permit requirements.
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Subpart AAA - (CAIR-~~SO₂~~) SO₂ Trading Program General

Provisions

§ 96.201 Purpose.

This subpart establishes the model rule comprising general provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state Clean Air Interstate Rule (CAIR) SO₂ Trading Program, under ~~section~~§

110 of the Clean Air Act (CAA) and § 51.124 of this chapter, as a means of reducing national ~~sulfur dioxide~~SO₂ emissions.

§ 96.202 Definitions.

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

Account number means the identification number given by the Administrator to each CAIR SO₂ 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 SO₂ allowances, the determination by the Administrator of the amount of CAIR SO₂ allowances to be initially credited to a CAIR unit.

Alternate CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person

who is authorized by the owners and operators of the source and all CAIR units at the source in accordance with subpart BBB of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program and the CAIR ~~NO_x~~NO_x Trading Program. This natural person shall be the same person as the alternate designated representative under the Acid Rain Program under § 72.22 of this chapter.

Automated data acquisition and handling system or DAHS means that component of the CEMS, 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 power production.

CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source, in accordance with subpart BBB of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program and to the CAIR ~~NO_x~~NO_x Trading Program. This natural person shall be the same person who is the authorized account representative under the Acid Rain Program under § 72.20 of this chapter.

CAIR ~~NO_x~~NO_x 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 HH of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.

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 SO₂ and ~~NO_x~~NO_x Trading Program requirements applicable to a CAIR source, to each CAIR unit at the CAIR source, and to the owners and operators and the CAIR designated

representative of the CAIR source and each CAIR unit.

CAIR SO₂ allowance means:

~~(1)~~ a limited authorization issued by the Administrator under the Acid Rain Program to emit sulfur dioxide during the control period of the specified year for which the authorization is allocated or of any year thereafter under the CAIR SO₂ Trading Program as follows:

~~(i)~~ For one CAIR SO₂ allowance allocated for a control period before 2010, one ton of sulfur dioxide;

~~(ii)~~ For two CAIR SO₂ allowances allocated for a control period in 2010 through 2014, one ton of sulfur dioxide, provided that one such allowance alone authorizes zero tons of sulfur dioxide emissions under the CAIR SO₂ Trading Program; and

~~(iii)~~ For 3 CAIR SO₂ allowances allocated for a control period in 2015 or later, one ton of sulfur dioxide, provided that one or two such allowances alone authorize zero tons of sulfur dioxide emissions under the CAIR SO₂ Trading Program;

~~or~~

~~[Paragraph (2) represents one option that EPA proposes for the Innovative Reduction program.]~~

~~(2) except for purposes of subpart EEE of this part, a limited authorization issued by the Administrator under §~~

~~51.124(q) of this chapter to emit sulfur dioxide during the control period of the specified year for which the authorization is allocated or of any year thereafter under the CAIR SO₂ Trading Program as follows: for three CAIR SO₂ allowances allocated for a control period in 2015 or later, one ton of sulfur dioxide, provided that one or two such allowances alone authorize zero tons of sulfur dioxide emissions under the CAIR SO₂ Trading Program.~~

CAIR SO₂.

CAIR SO₂ allowance deduction or deduct CAIR SO₂ allowances means the permanent withdrawal of CAIR SO₂ allowances by the Administrator from a compliance account in order to account for a specified number of tons of sulfur dioxide emissions from all CAIR units at a CAIR source for a control period, determined in accordance with subparts FFF and HHH of this part, or to account for excess emissions.-

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CAIR SO₂SO₂ Allowance Tracking System (ISATS) means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program.

CAIR SO₂SO₂ Allowance Tracking System account means an account in the CAIR SO₂ Allowance Tracking System

established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. CAIR SO₂SO₂ allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which a CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR source's compliance account in order to meet the source's CAIR SO₂ emissions limitation for the control period immediately preceding such deadline.

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CAIR SO₂SO₂ allowances held or hold CAIR SO₂SO₂ allowances means the CAIR SO₂ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF and GGG of this part, in a CAIR SO₂ Allowance Tracking System account.

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CAIR SO₂SO₂ authorized account representative means a responsible natural person who is authorized, in accordance with subpart BBB of this part, to transfer and otherwise dispose of CAIR SO₂ allowances held in a CAIR SO₂ Allowance Tracking System general account; or, in the case of a compliance account, the CAIR designated representative of

the source.

CAIR SO₂/SO₂ emissions limitation means, for a CAIR source, the tonnage equivalent of the CAIR SO₂ allowances available for compliance deduction for the source under § 96.254(a) and (b) in a control period.

CAIR SO₂/SO₂ 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 HHH of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates.

CAIR source means a source that includes one or more CAIR units.

CAIR unit means a unit that is subject to the CAIR SO₂ Trading Program under § 96.204.

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

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, with regard to a unit, combusting coal or any coal-derived fuel alone or in combination with any

amount of any other fuel in any year.

Cogeneration unit means a unit:

(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 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 than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means 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. A combustion turbine that is combined cycle also includes any

associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.205, for a unit that is a CAIR unit under § 96.204 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.205, for a unit that is not a CAIR unit under § 96.204 on the date the unit commences commercial operation, the date the unit becomes a CAIR unit under § 96.204 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 96.205, for a unit that is a CAIR unit under § 96.204 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.205, for a unit that is not a CAIR unit under § 96.204 on the date of commencement of operation, the date the unit becomes a CAIR unit under §

96.204 shall be the unit's date of commencement of operation.

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

Compliance account means a CAIR SO₂ Allowance Tracking System account, established by the Administrator for a CAIR source subject to an Acid Rain emissions limitations under ~~§73~~ § 73.31(a) or (b) of this chapter or for any other CAIR source under subpart FFF of this part, in which any CAIR SO₂ allowance allocations under ~~§73~~ § 73.10 or part 74 of this chapter for the CAIR units at the source are initially recorded and in which are held CAIR SO₂ allowances available for use for a control period in order to meet the source's CAIR SO₂ emissions limitation.

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 (SO₂) emissions, stack gas volumetric flow rate or stack gas moisture content (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 DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide (SO₂) monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated DAHS. An SO₂ concentration monitoring system provides a permanent, continuous record of SO₂ emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in percent H₂O (percent H₂O);

(4) A carbon dioxide (CO₂) monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO₂ emissions, in percent CO₂ (percent CO₂); and

(5) An oxygen (O₂) monitoring system, consisting of an O₂ concentration monitor and an automated DAHS. An O₂

monitoring system provides a permanent, continuous record of O₂ in percent O₂ (percent O₂).

Control period means the period beginning January 1 of a year 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.

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

Excess emissions means any ton of sulfur dioxide emitted by the CAIR units at a CAIR source during a control period that exceeds the CAIR SO₂ 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, any boiler or turbine combusting any amount of fossil fuel.

General account means a CAIR SO₂ Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.

Heat input means, with regard to a specified period to 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 as determined by the Administrator in accordance with subpart HHH of this part. Heat input does not include 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.

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Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a

customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.

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

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a

specified period of time when not restricted by seasonal or other deratings, as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.

NOx/NO_x Budget Trading Program means a multi-state nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of this part and § 51.121 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

Operator means any person who operates, controls, or supervises a CAIR unit or a CAIR 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) Any holder of any portion of the legal or equitable title in a CAIR unit; or
- (2) Any holder of a leasehold interest in a CAIR unit; or
- (3) Any purchaser of power from a CAIR 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 (directly or indirectly) on the revenues or income from the CAIR unit; or

(4) With respect to any general account, any person who has an ownership interest with respect to the CAIR SO₂ allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent that person's ownership interest with respect to CAIR SO₂ 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 SO₂ Trading Program in accordance with subpart CCC of this part.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 mmBtu/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 SO₂ allowances, the movement of CAIR SO₂ allowances by the Administrator into or between CAIR SO₂ 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.

Serial number means for a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ allowance by the Administrator.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from power 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 power production.

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 50 States or the District of Columbia that adopts the CAIR SO₂ Trading Program pursuant to § 51.123 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," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the 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 SO₂ 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, 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 and at least some of the reject heat from the power 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 boiler or combustion turbine.

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, excluding any heat contained in condensate return or makeup water;

(2) Used in a heat 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 distribution utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.

CO₂-carbon dioxide.

~~NO_x-nitrogen~~NO_x-nitrogen oxide.

hr-hour.

kW-kilowatt electrical.

kWh-kilowatt hour.

mmBtu-million Btu.

MWe-megawatt electrical.

MWh-megawatt hour.

O₂-oxygen.

SO₂-sulfur dioxide.

yr-year.

§ 96.204 Applicability.

The following units in a State shall be CAIR units, and any source that includes one or more such units shall be a CAIR source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

(a) Except a unit under paragraph (b) of this section, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying 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.

§ 96.205 Retired unit exemption.

(a) This section applies to any CAIR unit that is permanently retired.

(b)(1) Any CAIR unit that is permanently retired shall be exempt from the CAIR SO₂ Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(5) through (8), § 96.207, and subparts EEE through GGG of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit. The CAIR designated representative 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 (c) of this section.

(3) After receipt of the notice under paragraph (b)(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 (b) (1) and (c) of this section.

(c) Special provisions.

(1) A unit exempt under 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 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 prior to 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 this section shall comply with the requirements of the CAIR SO₂ 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 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 § 96.222 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 (b) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application under paragraph (c)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (c)(5) of this section to submit a CAIR permit application; 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 requirements under subpart HHH of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first

date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR source required to have a title V operating permit and each CAIR 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 § 96.222 in accordance with the deadlines specified in § 96.221(b) and (c); 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 source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority and operate the unit in compliance with such CAIR permit.

(3) The owners and operators of a CAIR source 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 source.

(b) Monitoring requirements.

(1) The owners and operators and, to the extent applicable, the CAIR designated representative of each CAIR source and each CAIR unit at the source shall comply with the monitoring 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 the unit with the CAIR SO₂ emissions limitation under paragraph (c) of this section.

(c) Sulfur dioxide emission requirements.

(1) As of the CAIR SO₂ allowance transfer deadline for a control period, the owners and operators of each CAIR source and each CAIR unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period under § 96.254(a) not less than the total sulfur dioxide emissions for the control period from all CAIR units at the source, as determined in accordance with subpart HHH of this part.

(2) Each ton of sulfur dioxide emitted in excess of the CAIR SO₂ emissions limitation shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(3) A CAIR unit shall be subject to the requirements under paragraph (c) (1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270 (b) (1) or (b) (2).

(4) A CAIR SO₂ allowance shall not be deducted, in order to comply with the requirements under paragraph (c) (1) of this section, for a control period in a year prior to the year for which the CAIR SO₂ allowance was allocated.

(5) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(6) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or exemption under § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(7) A CAIR SO₂ allowance does not constitute a property right.

(8) Upon recordation by the Administrator under subparts FFF and GGG of this part, every allocation,

transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR unit's compliance account is incorporated automatically in any CAIR permit of the CAIR unit.

(d) Excess emissions requirements.

(1) The owners and operators of a CAIR unit that has excess emissions in any control period shall:

(i) Surrender the CAIR SO₂ allowances required for deduction under § 96.254(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.254(d)(2).

(e) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR source and each CAIR 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 prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR 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 § 96.213 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 SO₂ Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.

(2) The CAIR designated representative of a CAIR source and each CAIR unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under subpart HHH of this part.

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the CAIR SO₂ Trading Program, a CAIR permit, or an exemption under § 96.205 shall be subject to

enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the CAIR SO₂ Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the CAIR SO₂ Trading Program that occurs prior to the date that the revision takes effect.

(4) Each CAIR source and each CAIR unit shall meet the requirements of the CAIR SO₂ Trading Program.

(5) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR source or the CAIR designated representative of a CAIR source shall also apply to the owners and operators of such source and of the CAIR units at the source.

(6) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR unit or the CAIR designated representative of a CAIR unit shall also apply to the owners and operators of such unit.

(g) Effect on Other Authorities. No provision of the CAIR SO₂ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CAIR designated representative of a

CAIR source or CAIR unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ 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 SO₂ 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 SO₂ Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIA SO₂ Trading Program are set forth in part 78 of this chapter.

Subpart BBB CAIR designated representative for CAIR sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.211, each CAIR source, including all CAIR units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR unit at the source.

(b) The CAIR designated representative of the CAIR source shall be selected by an agreement binding on the owners and operators of the source and all CAIR units at the source and shall act in accordance with the certification statement in § 96.213(a)(5)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, 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 source represented and each CAIR unit at the source in all matters pertaining to the CAIR SO₂ 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 SO₂ Allowance Tracking System account will be established for a CAIR unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR units at the source.

(e) (1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR 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 source or a CAIR unit only if the submission has been made, signed, and certified in accordance with paragraph (e) (1) of this section.

§ 96.211 Alternate CAIR designated representative.

(a) A certificate of representation 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 § 96.213, 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 §§ 96.202, 96.210(a), 96.212, -96.213, and 96.251, whenever the term “CAIR designated representative” is used in this subpart, the term shall be construed to include the alternate CAIR designated

representative.

§ 96.212 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 § 96.213.

Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative prior to 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 source and the CAIR 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 § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative prior to 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 source and the CAIR units at the source.

(c) Changes in owners and operators.

(1) In the event a new owner or operator of a CAIR source or a CAIR unit is not included in the list of owners and operators submitted in the certificate of representation under § 96.213, 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, orders, actions, and inactions of the permitting authority or the Administrator, 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 source or a CAIR unit, including the addition of a new owner or operator, the CAIR designated representative or alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.

§ 96.213 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 source and each CAIR unit at the source for which the certificate of representation is submitted.

(2) For each CAIR unit at the source, the dates on which the unit commenced operation and commenced commercial operation.

(3) 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.

(4) A list of the owners and operators of the CAIR source and of each CAIR unit at the source.

(5) 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 unit at the source."

(ii) "I certify that I have all the necessary authority

to carry out my duties and responsibilities under the CAIR SO₂ and ~~NO_x~~NO_x Trading Programs on behalf of the owners and operators of the source and of each 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 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 unit, or where a customer purchases power from a unit under life-of-the-unit, firm power contractual arrangements, I certify that: I have given a written notice of my selection as the ‘designated representative’ or ‘alternated designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each unit at the source; and allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement or, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions

involving allowances will be deemed to be held or distributed in accordance with the contract.”

(6) 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.

§ 96.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.213 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 § 96.213 is received by the Administrator.

(b) Except as provided in § 96.212(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 SO₂ 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 SO₂ allowance transfers.

Subpart CCC - Permits

§ 96.220 General CAIR Trading Program permit requirements.

(a) For each CAIR source required to have a title V operating permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit. The CAIR portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart.

(b) Each CAIR permit shall contain all applicable CAIR SO₂ and ~~NO_x~~NO_x Trading Program requirements and shall be a complete and ~~segregable~~separable portion of the title V

operating permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 by the applicable deadline in paragraph (b) of this section.

(b) Application deadline. For any source with any CAIR unit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 covering such CAIR unit to the permitting authority 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 unit commences operation.

(c) Duty to Reapply. For a CAIR source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the CAIR source covering the CAIR units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the

following elements concerning the CAIR source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each CAIR unit at the CAIR source; and

(c) The standard requirements under §§ 96.106 and 96.206.

§ 96.223 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 § 96.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subparts FFF and GGG of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from the compliance account of the CAIR 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 source's title V permit.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

Subpart DDD - [Reserved]

Subpart EEE - [Reserved]

Subpart FFF - CAIR SO₂ Allowance Tracking System

§ 96.250 CAIR SO₂ Allowance Tracking System accounts.

(a) Nature and function of compliance accounts.

Consistent with § 96.251(a), the Administrator will establish one compliance account for each CAIR source with one or more CAIR units. Deductions or transfers of CAIR SO₂ allowances pursuant § 96.254, § 96.256, or subpart GGG of this part will be recorded in compliance accounts in accordance with this subpart.

(b) Nature and function of general accounts.

Consistent with § 96.251(b), the Administrator will establish, upon request, a general account for any person. Transfers of CAIR SO₂ allowances pursuant to subpart GGG of this part will be recorded in general accounts in accordance

with this subpart.

§ 96.251 Establishment of accounts.

(a) Compliance accounts. Upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR source for which the certificate of representation was submitted, unless the CAIR source is subject to an Acid Rain emissions limitation and 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 SO₂ allowances. An application for a general account may designate one and only one CAIR SO₂ authorized account representative and one and only one alternate CAIR SO₂ authorized account representative who may act on behalf of the CAIR SO₂ authorized account representative. The agreement by which the alternate CAIR SO₂ authorized account representative is selected shall include a procedure for authorizing the alternate CAIR SO₂ authorized account representative to act in lieu of the CAIR SO₂ 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 SO₂ authorized account representative and any alternate CAIR SO₂ 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 SO₂ authorized account representative and any alternate CAIR SO₂ authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the CAIR SO₂ authorized account representative and any alternate CAIR SO₂ authorized account representative: "I certify that I was selected as the CAIR SO₂ authorized account representative or the CAIR SO₂ alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to 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 SO₂ 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 SO₂ authorized account representative and any alternate CAIR SO₂ 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 SO₂ authorized account representative. Upon receipt by the Administrator of a complete application for a general account under paragraph (b) (1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The CAIR SO₂ authorized account representative and any alternate CAIR SO₂ 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 SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR SO₂ authorized account representative or any alternate CAIR SO₂ authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR SO₂ authorized account representative or any alternate CAIR SO₂ authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate CAIR SO₂ authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR SO₂ authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR SO₂ authorized account representative or any alternate CAIR SO₂ authorized account representative for the persons having an ownership interest with respect to CAIR SO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR SO₂ authorized account representative or any alternate CAIR SO₂ authorizing account representative: "I am authorized to make this submission on behalf of the persons having an ownership

interest with respect to the CAIR SO₂ 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."

(v) 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)(iv) of this section.

(3) Changing CAIR SO₂ authorized account representative and alternate CAIR SO₂ authorized account representative; changes in persons with ownership interest.

(i) The CAIR SO₂ 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 SO₂ authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR SO₂ authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.

(ii) The alternate CAIR SO₂ 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 SO₂ authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR SO₂ authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to CAIR SO₂ 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 SO₂ authorized account representative and any alternate CAIR SO₂ authorized account representative of the account, and the decisions, orders, actions, and inactions of the Administrator, 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 SO₂ allowances in the general account, including the addition of persons, the CAIR SO₂ authorized account representative or any alternate CAIR SO₂ 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 SO₂ allowances in the general account to include the change.

(4) Objections concerning CAIR SO₂ 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 SO₂ authorized account representative or any alternative CAIR SO₂ authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR SO₂ authorized account representative or any alternative CAIR SO₂ authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO₂ 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 SO₂ authorized account representative or any alternative CAIR SO₂ authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO₂ 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.

§ 96.252 Responsibilities of CAIR SO₂ authorized account representative.

(a) Following the establishment of a CAIR SO₂ 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 SO₂ allowances in the account, shall be made only by the CAIR SO₂ authorized account representative for the account.

(b) Authorized account representative identification.

The Administrator will assign a unique identifying number to each CAIR SO₂ authorized account representative.

§ 96.253 [Reserved]

§ 96.254 Compliance with CAIR SO₂ emissions limitation.

(a) CAIR SO₂ allowance transfer deadline. The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given year only if the CAIR SO₂ allowances:

(1) Were allocated for the year or a prior year;

(2) Are held in the compliance account as of the CAIR SO₂ allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under § 96.260 by the CAIR SO₂ allowance transfer deadline for the control period; and

(3) Are not necessary for deduction 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 § 96.261, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the CAIR SO₂ allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO₂ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:

(1) For a CAIR source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Make the deductions required under §§ 73.35(b) and (c) of this part;

(ii) Make the deductions required under §§ 73.35(d) and 77.4 of this part; and

(iii) Treating the CAIR SO₂ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO₂ allowances until:

(A) The tonnage equivalent of the CAIR SO₂ allowances deducted equals the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this

part, from all CAIR units at the source for the control period; or

(B) No more CAIR SO₂ allowances available under paragraph (a) of this section and authorizing at least one ton of sulfur dioxide emissions remain in the compliance account.

(2) For a CAIR source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances until:

(i) The tonnage equivalent of the CAIR SO₂ allowances deducted equals the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR units at the source for the control period; or

(ii) No more CAIR SO₂ allowances available under paragraph (a) of this section and authorizing at least one ton of sulfur dioxide emissions remain in the compliance account.

(c) (1) Identification of CAIR SO₂ allowances by serial number. The CAIR SO₂ authorized account representative for a source's compliance account may request that specific CAIR SO₂ 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 source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct CAIR SO₂ 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 SO₂ 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) Those CAIR SO₂ allowances that were allocated to the units at the source under part 73 or 74 of this chapter, in the order of recordation; and then

(ii) Those CAIR SO₂ allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to subpart GGG 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 which the CAIR source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage

equivalent in CAIR SO₂ allowances, allocated for the year after such control period, of three 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 source or the CAIR units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CAIR source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(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 SO₂ Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

(a) CAIR SO₂ 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 SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG of this part.

§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR SO₂ authorized account representative for

the account.

§ 96.257 Closing of general accounts.

(a) The CAIR SO₂ 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 § 96.260 for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account and does not contain any CAIR SO₂ allowances, the Administrator may notify the CAIR SO₂ 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 SO₂ allowances into the account under § 96.260 or a statement submitted by the CAIR SO₂ authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG - CAIR SO₂SO₂ Allowance Transfers

§ 96.260 Submission of CAIR SO₂SO₂ allowance transfers.

(a) A CAIR SO₂ authorized account representative seeking

recordation of a CAIR SO₂ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The numbers identifying both the transferor and transferee accounts;

(2) The serial number of each CAIR SO₂ allowance (which must be in the transferor account) to be transferred; and

(3) The name and signature of the CAIR SO₂ authorized account representatives of the transferor and transferee accounts and the dates signed.

(b) (1) The CAIR SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator."

§ 96.261 EPA recordation.

(a) Within 5 business days of receiving a CAIR SO₂ allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a CAIR SO₂ allowance transfer by moving each CAIR SO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.260;
and

(2) The transferor account includes each CAIR SO₂

allowance identified by serial number in the transfer.

(b) A CAIR SO₂ allowance transfer that is submitted for recordation after the CAIR SO₂ allowance transfer deadline and that includes any CAIR SO₂ allowances allocated for a control period in any year before the year of the CAIR SO₂ allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period in the year immediately before the year of the CAIR SO₂ allowance transfer deadline.

(c) Where a CAIR SO₂ allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR SO₂ allowance transfer under § 96.261, the Administrator will notify the CAIR SO₂ authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR SO₂ allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR SO₂ 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 SO₂ allowance transfer for recordation following notification of non-recordation.

Subpart HHH - Monitoring and Reporting

§ 96.270 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR 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 § 96.202 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 unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR 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 unit.

(a) Requirements for installation, certification, and

data accounting. The owner or operator of each CAIR unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO₂ mass emissions and individual unit heat input. This includes all systems required to monitor SO₂ concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, in accordance with §§ 75.11 and 75.16 of this chapter;

(2) Successfully complete all certification tests required under § 96.271 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 certification and other requirements of paragraphs (a)(1) and (a)(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 unit that

commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR 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 unit for which construction of a new stack or flue or installation of add-on SO₂ emission controls is completed after the applicable deadline under paragraph (b)(1) or (b)(2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO₂ emissions controls.

(c) Reporting data prior to initial certification. The owner or operator of a CAIR unit that does not meet the applicable compliance date set forth in paragraph (b) of this section shall determine, record, and report maximum potential (or, in some cases, minimum potential) values for SO₂ concentration, SO₂ emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other

parameters required to determine SO₂ mass emissions and heat input in accordance with § 75.31(b) (2) or § 75.31(c) (3) of this chapter, section 2.4 of appendix D to part 75 of this chapter.

(d) Prohibitions

(1) No owner or operator of a CAIR unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.275.

(2) No owner or operator of a CAIR unit shall operate the unit so as to discharge, or allow to be discharged, SO₂ 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 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO₂ 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 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 § 96.205 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 permitting authority 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 § 96.271(d)(3)(i).

§ 96.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR unit shall be exempt from the initial certification requirements of this section if the following conditions are met:

(1) In 2008, the unit is subject to an Acid Rain limitation; and

(2) Under the Acid Rain Program, all of the monitoring systems required under this subpart for monitoring SO₂ mass emissions and heat input have been previously certified in accordance with part 75 of this chapter; and

(3) The applicable quality-assurance requirements of § 75.21 of this chapter, or appendix B, or appendix D to part 75 of this chapter are fully met in 2008 for all of the certified monitoring systems described in paragraph (a) (2) of this section.

(b) The recertification provisions of this section shall apply to the monitoring systems exempted from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.16(b) (2) (ii) of this chapter for apportioning the SO₂ mass emissions measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.11 or § 75.16 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.275(a) to determine whether the approval applies under the CAIR SO₂ Trading Program.

(d) The owner or operator of a CAIR unit that is not exempted under paragraph (a) of this section from the initial certification requirements of this section shall comply with the following initial certification and recertification procedures, for CEMS and for excepted monitoring systems under appendix D of part 75 of this chapter. 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 monitoring system required by § 96.270(a) and paragraph (c) of § 75.10 of this chapter, each moisture monitoring system required by § 75.11(b), and each monitoring system required by § 75.11(d) (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 § 96.270(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 monitoring system required by § 96.270(a) that may significantly affect the ability of the system to accurately measure or record SO₂ mass emissions or heat input rate or to meet the 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 CEMS 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. Fuel flowmeter systems 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 (d)(3)(iv) of this section apply to both initial certification and recertification of continuous monitoring systems. 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 permitting authority, to the appropriate EPA Regional Office, and to the Administrator written notice of the dates of certification testing, in accordance with § 96.273.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system required under paragraph (d) of this section. A complete certification application shall include the information specified in § 75.63 of this chapter. Notwithstanding this requirement, a certification application is not required if the monitoring system has been previously certified in

accordance with the Acid Rain Program or in accordance with the ~~NOx~~NO_x Budget Trading Program or another applicable State or Federal ~~NOx~~NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.

(iii) Provisional certification date. Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, 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 SO₂ Trading Program for a period not to exceed 120 days after receipt by the permitting authority 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 permitting authority 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 permitting authority.

(iv) Certification application formal approval

process. The permitting authority 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 permitting authority 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 SO₂ 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 permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (d)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority 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 permitting authority may issue a notice of disapproval under paragraph (d) (3) (iv) (C) of this section. The 120-day review period shall not begin prior to 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 has been met, then the permitting authority 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 permitting authority 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 permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).

(v) Procedures for loss of certification. If the permitting authority 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(b) (5), § 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 disapproved SO₂ pollutant concentration monitors and flow monitors, respectively, the maximum potential concentration of SO₂ 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 disapproved moisture and diluent gas monitoring systems, respectively, the minimum potential moisture

percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ 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 disapproved fuel flowmeter systems, 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 permitting authority'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 gas-fired or oil-fired (as defined in § 72.2 of this chapter) unit using 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) in part 75 of this chapter. If the owner or operator of a low mass emissions 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 and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the notification and application procedures of paragraph (d)(1) of this section before using the system under the CAIR SO₂ Trading Program. The CAIR designated representative shall also comply with the applicable notification and application procedures of paragraph (d)(2) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

§ 96.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D or appendix D of 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 system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.271 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 permitting authority will issue a notice of disapproval of the certification status of such 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 permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the 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 system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for

each disapproved system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, 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 Recordkeeping and reporting.

(a) General provisions.

~~—(1)=~~ 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 § 96.210(e)(1).

(b) Monitoring Plans. The owner or operator of a CAIR unit shall comply with requirements of §§ 75.62 of this chapter.

(c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, 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 SO₂ mass emissions data and heat input data, 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. Data shall be reported from the first hour on January 1, 2009; or

(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 relevant deadline for initial certification under § 96.270(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. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.

(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 units that are also subject to an Acid Rain emissions limitation, the ~~NOx~~NO_x Budget Trading Program or another applicable State or Federal ~~NOx~~NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, or an applicable State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of part 75 of this chapter, 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 SO₂ 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

(~~ii~~2) For a unit with add-on SO₂ emission controls and for all hours where SO₂ 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 of part 75 of this chapter and the substitute data values do not systematically underestimate SO₂ emissions.

§ 96.275 Petitions.

(a) The CAIR designated representative of a CAIR unit that is subject to an Acid Rain emissions limitation 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 by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and 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 by both the permitting authority and the Administrator.

§ 96.276 Additional Requirements to Provide Heat Input

Data.

The owner or operator of a CAIR unit that monitors and reports SO₂ mass emissions using a SO₂ 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 AA through HH – NO_x EMISSIONS TRADING PROGRAM FOR
STATE IMPLEMENTATION PLANS UNDER THE CLEAN AIR INTERSTATE
RULE (CAIR)~~

~~Outline~~

~~Subpart AA CAIR NO_x Trading Program General Provisions~~

~~Text Was Moved From Here: 3~~

~~Subpart BB CAIR Designated Representative for CAIR Sources~~

~~96.110 Authorization and responsibilities of CAIR
designated representative.~~

~~96.111 Alternate CAIR designated representative.~~

~~96.112 Changing CAIR designated representative and
alternate CAIR designated representative; changes in owners
and operators.~~

~~96.113 Certificate of representation.~~

~~96.114 Objections concerning CAIR designated
representative.~~

~~Subpart CC Permits~~

~~96.120 General CAIR NO_x Trading Program permit
requirements.~~

~~96.121 Submission of CAIR permit applications.~~

~~96.122 Information requirements for CAIR permit
applications.~~

~~96.123 CAIR permit contents and term.~~

~~96.124 CAIR permit revisions.~~

~~**Subpart DD [Reserved]**~~

~~**Subpart EE CAIR NOx Allowance Allocations**~~

~~96.140 State trading budgets.~~

~~96.141 Timing requirements for CAIR NOx allowance allocations.~~

~~96.142 CAIR NOx allowance allocations.~~

~~**Subpart FF CAIR NOx Allowance Tracking System**~~

~~96.150 CAIR NOx Allowance Tracking System accounts.~~

~~96.151 Establishment of accounts.~~

~~96.152 Responsibilities of CAIR NOx authorized account representative.~~

~~96.153 Recordation of CAIR NOx allowance allocations.~~

~~96.154 Compliance with CAIR NOx emissions limitation.~~

~~96.155 Banking.~~

~~96.156 Account error.~~

~~96.157 Closing of general accounts.~~

~~**Subpart GG CAIR NOx Allowance Transfers**~~

~~96.160 Submission of CAIR NOx allowance transfers.~~

~~96.161 EPA recordation.~~

~~96.162 Notification.~~

~~**Subpart HH Monitoring and Reporting**~~

~~96.170 General requirements.~~

~~96.171 Initial certification and recertification~~

~~procedures.~~

~~96.172 Out of control periods.~~

~~96.173 Notifications.~~

~~96.174 Recordkeeping and reporting.~~

~~96.175 Petitions.~~

~~96.176 Additional requirements to provide heat input data.~~

~~Subparts II through ZZ (Reserved)~~

~~Subpart AA CAIR NO_x Trading Program General Provisions~~

~~§ 96.101 Purpose.~~

~~This subpart establishes the model rule comprising general provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state CAIR NO_x Trading Program, under section 110 of the CAA and § 51.123 of this chapter, as a means of reducing national nitrogen oxide emissions.~~

~~§ 96.102 Definitions.~~

~~The terms used in this subpart 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.~~

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

~~Allocate or allocation means, with regard to CAIR NO_x allowances, the determination by the Administrator of the amount of CAIR NO_x allowances to be initially credited to a CAIR unit or a new unit set-aside.~~

~~Alternate CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source in accordance with subpart BB of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program and the CAIR NO_x Trading Program. This natural person shall be the same person as the alternate designated representative under the Acid Rain Program under § 72.22 of this chapter.~~

~~Automated data acquisition and handling system or DAHS means that component of the CEMS, 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 III 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 power production.~~

~~CAIR designated representative means, for a CAIR source and each CAIR unit at the source, the natural person who is authorized by the owners and operators of the source and all CAIR units at the source, in accordance with subpart BB of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program and to the CAIR NO_x Trading Program. This natural person shall be the same person who is the authorized account representative under the Acid Rain Program under § 72.20 of this chapter.~~

~~CAIR NOx allowance means a limited authorization issued by the Administrator to emit up to one ton of nitrogen oxide during the control period of the specified year or of any year thereafter under the CAIR NOx Program or, except for purposes of subpart EE of this part, any NOx SIP Call allowance, allocated for the 2009, or any earlier, ozone season that is not used to meet an NOx emissions limitation under the NOx Budget Trading Program.~~

~~CAIR NOx allowance deduction or deduct CAIR NOx allowances means the permanent withdrawal of CAIR NOx allowances by the Administrator from a compliance account in order to account for a specified number of tons of nitrogen oxide emissions from all CAIR units at a CAIR source for a control period, determined in accordance with subparts FF and III of this part, or to account for excess emissions.~~

~~CAIR NOx allowances held or hold CAIR NOx allowances means the CAIR NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF and GG of this part, in a CAIR NOx Allowance Tracking System account.~~

~~CAIR NOx Allowance Tracking System (INATS) means the system by which the Administrator records allocations, deductions, and transfers of CAIR NOx allowances under the CAIR NOx Trading Program.~~

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

~~CAIR NOx allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which a CAIR NOx allowance transfer must be submitted for recordation in a CAIR source's compliance account in order to meet the source's CAIR NOx emissions limitation for the control period immediately preceding such deadline.~~

~~CAIR NOx authorized account representative means a responsible natural person who is authorized, in accordance with subpart BB of this part, to transfer and otherwise dispose of CAIR NOx allowances held in a CAIR NOx Allowance Tracking System general account; or, in the case of a compliance account, the CAIR designated representative of the source.~~

~~CAIR NOx emissions limitation means, for a CAIR source, the tonnage equivalent of the CAIR NOx allowances available for compliance deduction for the source under §§ 96.154(a) and (b) in a control period.~~

~~CAIR NOx 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 III of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates, ozone, and nitrogen oxides.~~

~~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 SO₂ and NO_x Trading Program requirements applicable to a CAIR source, to each CAIR unit at the CAIR source, and to the owners and operators and the CAIR designated representative of the CAIR source and each CAIR unit.~~

~~CAIR SO₂ 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 HHH of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates.~~

~~CAIR unit means a unit that is subject to the CAIR NO_x Trading Program under § 96.104.~~

~~CAIR source means a source that includes one or more CAIR units.~~

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

~~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, with regard to a unit, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.~~

~~Cogeneration unit means a unit:~~

~~(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 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 than 42.5 percent of total energy input or, if useful thermal energy produced is less than 15 percent of total energy output, not less than 45 percent of total energy input.~~

~~(ii) For a bottoming-cycle cogeneration unit, useful power~~

~~not less than 45 percent of total energy input.~~

~~Combustion turbine means 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. A combustion turbine that is combined cycle also includes any associated heat recovery steam generator and steam turbine.~~

~~Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 96.105, for a unit that is a CAIR unit under § 96.104 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.105, for a unit that is not a CAIR unit under § 96.104 on the date the unit commences commercial operation, the date the unit becomes a CAIR unit under § 96.104 shall be the unit's date of commencement of commercial operation.~~

~~Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 96.105, for a unit that is a CAIR unit under §~~

~~96.104 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified or reconstructed. Except as provided in § 96.105, for a unit that is not a CAIR unit under § 96.104 on the date of commencement of operation, the date the unit becomes a CAIR unit under § 96.104 shall be the unit's date of commencement of operation.~~

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

~~Compliance account means a CAIR NOx Allowance Tracking System account, established by the Administrator for a CAIR source under subpart FF of this part, in which the CAIR NOx allowance allocations for the CAIR units at the source are initially recorded and in which are held CAIR NOx allowances available for use for a control period in order to meet the source's CAIR NOx emissions limitation.~~

~~Continuous emission monitoring system or CEMS means the equipment required under subpart III 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 oxide (NOx) emissions, stack gas volumetric flow rate or stack gas moisture content (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 DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);~~

~~(2) A nitrogen oxides (NO_x) concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated DAHS. A NO_x concentration monitoring system provides 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 (CO₂ or O₂) monitor, and an automated DAHS. A NO_x-diluent monitoring system provides a permanent, continuous record of: NO_x concentration, in parts per million (ppm); diluent gas concentration, in percent CO₂ or O₂ (percent CO₂ or O₂); 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. A moisture monitoring system~~

~~provides a permanent, continuous record of the stack gas moisture content, in percent H₂O (percent H₂O);~~

~~(5) A carbon dioxide (CO₂) monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO₂ emissions, in percent CO₂ (percent CO₂); and~~

~~(6) An oxygen (O₂) monitoring system, consisting of an O₂ concentration monitor and an automated DAHS. An O₂ monitoring system provides a permanent, continuous record of O₂ in percent O₂ (percent O₂).~~

~~Control period means the period beginning January 1 of a year 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.~~

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

~~Excess emissions means any ton of nitrogen oxide emitted by~~

~~the CAIR units at a CAIR 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, any boiler or turbine combusting any amount of fossil fuel.~~

~~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 thermal energy means, with regard to a cogeneration unit, useful thermal energy output plus, where such output is made available for an industrial or commercial process, any heat contained in condensate return or makeup water.~~

~~Heat input means, with regard to a specified period to 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 as determined by the Administrator in accordance with subpart III of this part. Heat input does not include 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.~~

~~Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

- ~~— (1) For the life of the unit;~~
- ~~— (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~
- ~~— (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on~~

~~a steady state basis, as specified by the manufacturer of the unit as of the initial installation of the unit.~~

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

~~Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as specified by the manufacturer of the generator as of the initial installation of the generator or, if the generator is subsequently modified or reconstructed resulting in an increase in such maximum electrical generating output, as specified by the person conducting the modification or reconstruction.~~

~~NOx Budget Trading Program means a multi-state nitrogen oxide air pollution control and emission reduction program established by air pollution control and emission reduction program established by the Administrator in accordance with subparts A through I of this part and § 51.121 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.~~

~~NOx SIP Call allowance means a limited authorization issued by the Administrator under the NOx Budget Trading Program to~~

~~emit up to one ton of nitrogen oxides during the ozone season of the specified year or any year thereafter under the NOx Budget Trading Program or during the control period in 2010 or any year thereafter under the CAIR NOx Trading Program, provided that § 96.54(f) of this chapter shall not apply to the use of such allowance under § 96.154.~~

~~Operator means any person who operates, controls, or supervises a CAIR unit or a CAIR 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) Any holder of any portion of the legal or equitable title in a CAIR unit; or~~
- ~~—(2) Any holder of a leasehold interest in a CAIR unit; or~~
- ~~—(3) Any purchaser of power from a CAIR 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 the CAIR unit; or~~
- ~~—(4) With regard to any general account, any person who has an ownership interest with respect to the CAIR NOx allowances held in the general account and who is subject to~~

~~the binding agreement for the CAIR authorized account representative to represent that person's ownership interest with respect to CAIR NOx 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 NOx Trading Program in accordance with subpart CC of this part.~~

~~Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 mmBtu/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 NOx allowances, the movement of CAIR NOx allowances by the Administrator into or between CAIR NOx 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.~~

~~Serial number means for a CAIR NOx allowance, the unique identification number assigned to each CAIR NOx allowance by the Administrator, under § 96.153(f).~~

~~Sequential use of energy means:~~

~~(1) For a topping-cycle cogeneration unit, the use of reject heat from power 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 power production.~~

~~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 50 States or the District of Columbia that adopts the CAIR NOx Trading Program pursuant to § 51.123 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," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

~~Title V operating permit means a permit issued under title V of the 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 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 III of this part, 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 and at least some of the reject heat from the power 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 boiler or combustion turbine.~~

~~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, excluding any heat contained in condensate return or makeup water;~~

~~(2) Used in a heat 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 distribution utility and dedicated to delivering electricity to customers.~~

~~§ 96.103 Measurements, abbreviations, and acronyms.~~

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

~~Btu-British thermal unit.~~

~~CO₂-carbon dioxide.~~

~~NO_x-nitrogen oxide.~~

~~hr-hour.~~

~~kW-kilowatt electrical.~~

~~kWh-kilowatt hour.~~

~~mmBtu-million Btu.~~

~~MWe-megawatt electrical.~~

~~MWh-megawatt hour.~~

~~O₂-oxygen.~~

~~SO₂ sulfur dioxide.~~

~~yr year.~~

~~§ 96.104 Applicability.~~

~~The following units in a State shall be CAIR units, and any source that includes one or more such units shall be a CAIR source, subject to the requirements of this subpart and subparts BB through III of this part:~~

~~(a) Except a unit under paragraph (b) of this section, a fossil fuel-fired boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale.~~

~~(b) A fossil fuel-fired cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and in any year supplying 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.~~

~~§ 96.105 Retired unit exemption.~~

~~(a) This section applies to any CAIR unit that is permanently retired.~~

~~(b) (1) Any CAIR unit that is permanently retired shall be exempt from the CAIR NO_x Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, §~~

~~96.106(c) (5) through (8), § 96.107, and subparts EE through GG of this part.~~

~~(2) The exemption under paragraph (b) (1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit. The CAIR designated representative 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 (c) of this section.~~

~~(3) After receipt of the notice under paragraph (b) (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 (b) (1) and (c) of this section.~~

~~(c) Special provisions.~~

~~(1) A unit exempt under 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 allowances under subpart EE of this part to a unit exempt under 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 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 prior to 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 this section shall comply with the requirements of the CAIR NO_x 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 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 § 96.122 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.~~

~~(6) On the earlier of the following dates, a unit exempt under paragraph (b) 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 (c) (5) of this section;~~

~~(ii) The date on which the CAIR designated representative is required under paragraph (c) (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 requirements under subpart HH of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.~~

~~§ 96.106 Standard requirements.~~

~~(a) Permit Requirements.~~

~~(1) The CAIR designated representative of each CAIR~~

~~source required to have a title V operating permit and each CAIR 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 § 96.122 in accordance with the deadlines specified in § 96.121(b) and (c); 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 source required to have a title V operating permit and each CAIR unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority and operate the unit in compliance with such CAIR permit.~~

~~—— (3) The owners and operators of a CAIR source 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 source.~~

~~—— (b) Monitoring requirements.~~

~~—— (1) The owners and operators and, to the extent applicable, the CAIR designated representative of each CAIR~~

~~source and each CAIR unit at the source shall comply with the monitoring requirements of subpart III of this part.~~

~~(2) The emissions measurements recorded and reported in accordance with subpart III of this part shall be used to determine compliance by the unit with the CAIR NO_x emissions limitation under paragraph (c) of this section.~~

~~(c) Nitrogen oxide emission requirements.~~

~~(1) As of the CAIR NO_x allowance transfer deadline for a control period, the owners and operators of each CAIR source and each CAIR 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 § 96.154(a) in an amount not less than the total nitrogen oxides emissions for the control period from all CAIR units at the source, as determined in accordance with subpart III of this part.~~

~~(2) Each ton of nitrogen oxide emitted in excess of the CAIR NO_x emissions limitation shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.~~

~~(3) a CAIR unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1) or~~

~~(b) (2).~~

~~———— (4) a CAIR NOx allowance shall not be deducted, in order to comply with the requirements under paragraph (c) (1) of this section, for a control period in a year prior to the year for which the CAIR NOx allowance was allocated.~~

~~———— (5) CAIR NOx allowances shall be held in, deducted from, or transferred into or among CAIR NOx Allowance Tracking System accounts in accordance with subpart EE of this part.~~

~~———— (6) a CAIR NOx allowance is a limited authorization to emit one ton of nitrogen oxide in accordance with the CAIR NOx Trading Program. No provision of the CAIR NOx Trading Program, the CAIR permit application, the CAIR permit, or exemption under § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.~~

~~———— (7) a CAIR NOx allowance does not constitute a property right.~~

~~———— (8) Upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NOx allowance to or from a CAIR unit's compliance account is incorporated automatically in any CAIR permit of the CAIR unit.~~

~~———— (d) Excess emissions requirements.~~

~~(1) The owners and operators of a CAIR unit that has excess emissions in any control period shall:~~

~~(i) Surrender the CAIR NOx allowances required for deduction under § 96.154(d)(1); and~~

~~(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.154(d)(2).~~

~~(e) Recordkeeping and Reporting Requirements.~~

~~(1) Unless otherwise provided, the owners and operators of the CAIR source and each CAIR 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 prior to the end of 5 years, in writing by the permitting authority or the Administrator.~~

~~(i) The certificate of representation under § 96.113 for the CAIR designated representative for the source and each CAIR 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 § 96.113 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 NOx Trading Program.~~

~~(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NOx Trading Program or to demonstrate compliance with the requirements of the CAIR NOx Trading Program.~~

~~(2) The CAIR designated representative of a CAIR source and each CAIR unit at the source shall submit the reports required under the CAIR NOx Trading Program, including those under subpart HH of this part.~~

~~(f) Liability.~~

~~(1) Any person who knowingly violates any requirement or prohibition of the CAIR NOx Trading Program, a CAIR permit, or an exemption under § 96.105 shall be subject to enforcement pursuant to applicable State or Federal law.~~

~~(2) Any person who knowingly makes a false material statement in any record, submission, or report under the CAIR NOx Trading Program shall be subject to criminal~~

~~enforcement pursuant to the applicable State or Federal law.~~

~~(3) No permit revision shall excuse any violation of the requirements of the CAIR NOx Trading Program that occurs prior to the date that the revision takes effect.~~

~~(4) Each CAIR source and each CAIR unit shall meet the requirements of the CAIR NOx Trading Program.~~

~~(5) Any provision of the CAIR NOx Trading Program that applies to a CAIR source or the CAIR designated representative of a CAIR source shall also apply to the owners and operators of such source and of the CAIR units at the source.~~

~~(6) Any provision of the CAIR NOx Trading Program that applies to a CAIR unit or the CAIR designated representative of a CAIR unit shall also apply to the owners and operators of such unit.~~

~~(g) Effect on Other Authorities. No provision of the CAIR NOx Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CAIR designated representative of a CAIR source or CAIR unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.~~

~~§ 96.107 Computation of time.~~

~~(a) Unless otherwise stated, any time period scheduled, under the CAIR NOx 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 NOx 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 NOx Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.~~

~~**§ 96.108 Appeal Procedures.**~~

~~The appeal procedures for decisions of the Administrator under the CAIR NOx Trading Program are set forth in part 78 of this chapter.~~

~~**Subpart BB CAIR designated representative for CAIR sources**~~

~~**§ 96.110 Authorization and responsibilities of CAIR designated representative.**~~

~~(a) Except as provided under § 96.111, each CAIR source, including all CAIR units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NOx Trading Program concerning the source or any CAIR unit at the source.~~

~~(b) The CAIR designated representative of the CAIR source shall be selected by an agreement binding on the owners and operators of the source and all CAIR units at the source and shall act in accordance with the certification statement in § 96.113(a)(5)(iv).~~

~~(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, 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 source represented and each CAIR unit at the source in all matters pertaining to the CAIR NOx 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 NOx Allowance Tracking System account will be established for a CAIR unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR units~~

~~at the source.~~

~~(e) (1) Each submission under the CAIR NO_x Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR 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 source or a CAIR unit only if the submission has been made, signed, and certified in~~

~~accordance with paragraph (e) (1) of this section.~~

~~**§ 96.111 Alternate CAIR designated representative.**~~

~~(a) A certificate of representation 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 § 96.113, 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 §§ 96.102, 96.110(a), 96.112, 96.113, and 96.151, whenever the term "CAIR designated representative" is used in this subpart, the term shall be construed to include the alternate CAIR designated representative.~~

~~**§ 96.112 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 § 96.113.~~

~~Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative prior to 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 source and the CAIR 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 § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative prior to 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 source and the CAIR units at the source.~~

~~———— (c) Changes in owners and operators.~~

~~———— (1) In the event a new owner or operator of a CAIR~~

~~source or a CAIR unit is not included in the list of owners and operators submitted in the certificate of representation under § 96.113, 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, orders, actions, and inactions of the permitting authority or the Administrator, 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 source or a CAIR unit, including the addition of a new owner or operator, the CAIR designated representative or alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.~~

~~**§ 96.113 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 source and each CAIR unit at the source for which the certificate of~~

~~representation is submitted.~~

~~(2) For each CAIR unit at the source, the dates on which the unit commenced operation and commenced commercial operation.~~

~~(3) 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.~~

~~(4) A list of the owners and operators of the CAIR source and of each CAIR unit at the source.~~

~~(5) 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 unit at the source."~~

~~(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ and NO_x Trading Programs on behalf of the owners and operators of the source and of each 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 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 unit, or where a customer purchases power from a unit under life-of-the-unit, firm power contractual arrangements, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternated designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each unit at the source; and allowances and proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement or, if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract."~~

~~(6) 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.~~

~~**§ 96.114 Objections concerning CAIR designated representative.**~~

~~(a) Once a complete certificate of representation under § 96.113 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 § 96.113 is received by the Administrator.~~

~~(b) Except as provided in § 96.112(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 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 NOx allowance transfers.~~

~~Subpart CC Permits~~

~~§ 96.120 General CAIR Trading Program permit requirements.~~

~~(a) For each CAIR source required to have a title V operating permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit. The CAIR portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart.~~

~~(b) Each CAIR permit shall contain all applicable CAIR SO₂ and NOx Trading Program requirements and shall be a complete and segregable portion of the title V operating permit under paragraph (a) of this section.~~

~~§ 96.121 Submission of CAIR permit applications.~~

~~(a) Duty to apply. The CAIR designated representative of any CAIR source required to have a title V operating permit shall submit to the permitting authority a complete~~

~~CAIR permit application under § 96.122 by the applicable deadline in paragraph (b) of this section.~~

~~(b) Application deadline. For any source with any CAIR unit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 covering such CAIR unit to the permitting authority 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 unit commences operation.~~

~~(c) Duty to Reapply. For a CAIR source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the CAIR source covering the CAIR units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.~~

~~**§ 96.122 Information requirements for CAIR permit applications.**~~

~~A complete CAIR permit application shall include the following elements concerning the CAIR source for which the application is submitted, in a format prescribed by the permitting authority:~~

~~(a) Identification of the CAIR source, including plant name and the ORIS (Office of Regulatory Information Systems)~~

~~or facility code assigned to the source by the Energy Information Administration, if applicable;~~

~~(b) Identification of each CAIR unit at the CAIR source; and~~

~~(c) The standard requirements under §§ 96.106 and 96.206.~~

~~**§ 96.123 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 § 96.122. (b) Each CAIR permit is deemed to incorporate~~

~~automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subparts FF and GG of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR 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 source's title V permit.~~

~~**§ 96.124 CAIR permit revisions.**~~

~~Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in~~

~~accordance with the permitting authority's title V operating permits regulations addressing permit revisions.~~

~~**Subpart DD [Reserved]**~~

~~**Subpart EE CAIR NO_x Allowance Allocations**~~

~~**§ 96.140 State trading budgets.**~~

~~— The State trading program budgets for annual allocations of CAIR NO_x allowances for 2010 through 2014 and for 2015 and thereafter are respectively as follows:~~

State	State NO_x Budget 2010 (tons)	State NO_x Budget 2015 (tons)
Alabama	67,422	56,185
Arkansas	24,919	20,765
Delaware	5,089	4,241
District of Columbia	215	179
Florida	115,503	96,253
Georgia	63,575	52,979
Illinois	73,622	61,352
Indiana	102,295	85,246
Iowa	30,458	25,381
Kansas	32,436	27,030
Kentucky	77,938	64,948
Louisiana	47,339	39,449
Maryland	26,607	22,173
Massachusetts	19,630	16,358
Michigan	60,212	50,177
Minnesota	29,303	24,420
Mississippi	21,932	18,277
Missouri	56,571	47,143
New Jersey	9,895	8,246
New York	52,503	43,753
North Carolina	55,763	46,469
Ohio	101,704	84,753
Pennsylvania	84,552	70,460
South Carolina	30,895	25,746
Tennessee	47,739	39,783
Texas	224,314	186,928
Virginia	31,087	25,906
West Virginia	68,235	56,863
Wisconsin	39,044	32,537
Total Regional Budget	1,600,799	1,333,999

~~**§ 96.141 Timing requirements for CAIR NO_x allowance**~~

~~allocations.~~

~~(a) (1) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NOx allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.~~

~~(2) If the permitting authority fails to submit to the Administrator the CAIR NOx allowance allocations in accordance with paragraph (a) (1) of this section, the Administrator will allocate CAIR NOx allowances for the applicable control periods, in accordance with § 96.142(a) and (b).~~

~~(b) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NOx allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph.~~

~~(2) If the permitting authority fails to submit to the Administrator the CAIR NOx allowance allocations in accordance with paragraph (b) (1), the Administrator will allocate CAIR NOx allowances for the applicable control period, in accordance with § 96.142(a) and (b).~~

~~§ 96.142 CAIR NOx allowance allocations.~~

~~(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NOx allowance allocations under paragraph (b) of this section for each CAIR unit will be:~~

~~(i) For units commencing operation before January 1, 1998 the average of the three highest amounts of the unit's annual heat input for 1998 through 2002.~~

~~(ii) For units commencing operation on or after January 1, 1998 and operating each year during a period of 5 or more consecutive years, the average of the three highest amounts of the unit's total converted annual heat input over the first such 5 years.~~

~~(2) (i) A unit's annual heat input for a year under paragraphs (a) (1) (i), (a) (2) (ii) (A), and (c) (3) (ii) of this section will be determined in accordance with part 75 of this chapter, if the CAIR unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~

~~(ii) A unit's converted annual heat input for a year specified under paragraph (a) (1) (ii) of this section equals—~~

~~(A) The annual gross electrical output of the generator~~

~~or generators served by the unit multiplied by 8,000 Btu/kWh, provided that if the generator is served by two 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 total heat input of such units for the year; plus~~

~~(B) For a cogeneration unit, one-half of the unit's annual gross thermal energy multiplied by 8,000 Btu/kWh.~~

~~(b) (1) For each control period under § 96.141, the permitting authority will allocate to all CAIR units in the 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 98 percent of the tons of CAIR NO_x emissions in the State trading program budget under § 96.140 (except as provided in § 96.142(d)).~~

~~(2) The permitting authority will allocate CAIR NO_x allowances to each CAIR unit under paragraph (b) (1) of this section in an amount determined by multiplying the total amount of allowances allocated under paragraph (b) (1) of this section by the ratio of the baseline heat input of such unit to the total amount of baseline heat input of all CAIR units in the State and rounding to the nearest whole allowance as appropriate.~~

~~(c) For each control period under § 96.141, the~~

~~permitting authority will allocate CAIR NOx allowances to CAIR units in the State that commenced operation on or after January 1, 1998 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 permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NOx allowances equal to 2 percent of the amount of tons of CAIR NOx emissions in the State trading program budget under § 96.140.~~

~~(2) The CAIR designated representative of such a CAIR unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NOx allowances, starting with the first control period after the control period in which the CAIR unit commences commercial operation and until the first control period for which the unit is allocated CAIR NOx allowances under paragraph (b) of this section. The CAIR NOx allowance allocation request must be submitted before January 1 of the first control period for which the CAIR NOx allowances are requested and after the date on which the CAIR unit commences commercial operation.~~

~~(3) In a CAIR NOx 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—~~

~~— (i) 1.00 lb/MWh for boilers, coal-fired combustion turbines, and integrated gasification combined cycle plants, 0.56 lb/MWh for gas-fired combustion turbines, or 1.01 lb/MWh for all other combustion turbines;~~

~~— (ii) multiplied by the CAIR unit's heat input for the control period immediately preceding the control period for which the allowances are requested; and~~

~~— (iii) rounded to the nearest whole allowance as appropriate.~~

~~— (4) The permitting authority 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) Upon receipt of an allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, the request is consistent with the requirements of paragraphs (c) (2) and (3) of this section.~~

~~— (ii) On or after January 1 of the control period, the permitting authority will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c) (4) (i) of this section) in all CAIR NO_x allowance allocation~~

~~requests under paragraph (c) (2) of this section for the control period.~~

~~(iii) If the amount of CAIR NOx 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, the permitting authority will allocate the amount of CAIR NOx allowances requested (as adjusted under paragraph (c) (4) (i) of this section) to each CAIR unit covered by an allocation request under paragraph (c) (2) of this section.~~

~~(iv) If the amount of CAIR NOx allowances in the new unit set aside for the control period is less than the sum under paragraph (c) (4) (ii) of this section, the permitting authority will allocate to each CAIR unit covered by an allocation request under paragraph (c) (2) of this section the amount of the CAIR NOx allowances requested (as adjusted under paragraph (c) (4) (i) of this section), multiplied by the number of CAIR NOx 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 permitting authority will notify each CAIR designated representative that submitted an allowance allocation request, and the Administrator (in a format prescribed by the Administrator), of the amount of CAIR NOx~~

~~allowances (if any) allocated for the control period to the CAIR unit covered by the allowance allocation request.~~

~~(d) If, after completion of the procedures under paragraph (c)(4) of this section, any unallocated CAIR NO_x allowances remain in the new unit set aside for a control period, the permitting authority will reallocate to each CAIR unit that was allocated CAIR NO_x allowances under paragraph (b) 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 98 percent of the amount of tons of CAIR NO_x emissions in the State trading program budget, and rounded to the nearest whole allowance as appropriate. The permitting authority will notify the Administrator (in a format prescribed by the Administrator) of the amounts of CAIR NO_x allowances (if any) allocated for the control period to such CAIR units under this paragraph.~~

~~**Subpart FF CAIR NO_x Allowance Tracking System**~~

~~**§ 96.150 CAIR NO_x Allowance Tracking System accounts.**~~

~~(a) Nature and function of compliance accounts. Consistent with § 96.151(a), the Administrator will establish one compliance account for each CAIR source with one or more CAIR units. Allocations of CAIR NO_x allowances to CAIR units pursuant to subpart EE of this part, and~~

~~deductions or transfers of CAIR NOx allowances pursuant § 96.154, § 96.156, or subpart GG of this part will be recorded in compliance accounts in accordance with this subpart.~~

~~_____ (b) Nature and function of general accounts.~~

~~Consistent with § 96.151(b), the Administrator will establish, upon request, a general account for any person. Transfers of CAIR NOx allowances pursuant to subpart GG of this part will be recorded in general accounts in accordance with this subpart.~~

~~**§ 96.151 Establishment of accounts.**~~

~~_____ (a) Compliance accounts. Upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR source for which the certificate of representation was submitted.~~

~~_____ (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 NOx allowances. An application for a general account may designate one and only one CAIR NOx authorized account representative and one and only one alternate CAIR NOx authorized account representative who may act on behalf of the CAIR NOx~~

~~authorized account representative. The agreement by which the alternate CAIR NOx authorized account representative is selected shall include a procedure for authorizing the alternate CAIR NOx authorized account representative to act in lieu of the CAIR NOx 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 NOx authorized account representative and any alternate CAIR NOx authorized account representative;~~

~~(B) Organization name and type of organization;~~

~~(C) A list of all persons subject to a binding agreement for the CAIR NOx authorized account representative and any alternate CAIR NOx authorized account representative to represent their ownership interest with respect to the allowances held in the general account;~~

~~(D) The following certification statement by the CAIR NOx authorized account representative and any alternate CAIR NOx authorized account representative: "I certify that I was selected as the CAIR NOx authorized account representative or the CAIR NOx alternate authorized account representative,~~

~~as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to 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 NOx 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 NOx authorized account representative and any alternate CAIR NOx 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 NOx authorized account representative. Upon receipt by the Administrator of a complete application for a general account under paragraph (b) (1) of this section:~~

~~—— (i) The Administrator will establish a general account~~

~~for the person or persons for whom the application is submitted.~~

~~(ii) The CAIR NOx authorized account representative and any alternate CAIR NOx 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 NOx allowances held in the general account in all matters pertaining to the CAIR NOx Trading Program, notwithstanding any agreement between the CAIR NOx authorized account representative or any alternate CAIR NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR NOx authorized account representative or any alternate CAIR NOx authorized account representative by the Administrator or a court regarding the general account.~~

~~(iii) Any representation, action, inaction, or submission by any alternate CAIR NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR NOx authorized account representative.~~

~~(iv) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR NOx authorized account representative or any alternate CAIR NOx~~

~~authorized account representative for the persons having an ownership interest with respect to CAIR NOx allowances held in the general account. Each such submission shall include the following certification statement by the CAIR NOx authorized account representative or any alternate CAIR NOx authorizing account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NOx 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."~~

~~(v) 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) (iv) of this section.~~

~~(3) Changing CAIR NOx authorized account representative~~

~~and alternate CAIR NOx authorized account representative;
changes in persons with ownership interest.~~

~~(i) The CAIR NOx 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 NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR NOx authorized account representative and the persons with an ownership interest with respect to the CAIR NOx allowances in the general account.~~

~~(ii) The alternate CAIR NOx 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 NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR~~

~~NOx authorized account representative and the persons with an ownership interest with respect to the CAIR NOx allowances in the general account.~~

~~—— (iii) (A) In the event a new person having an ownership interest with respect to CAIR NOx 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 NOx authorized account representative and any alternate CAIR NOx authorized account representative of the account, and the decisions, orders, actions, and inactions of the Administrator, 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 NOx allowances in the general account, including the addition of persons, the CAIR NOx authorized account representative or any alternate CAIR NOx 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 NOx allowances in the general account to include the change.~~

~~—— (4) Objections concerning CAIR NOx 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 NO_x authorized account representative or any alternative CAIR NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR NO_x authorized account representative or any alternative CAIR NO_x authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x 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 NO_x authorized account representative or any alternative CAIR NO_x authorized account representative for a general~~

~~account, including private legal disputes concerning the proceeds of CAIR NOx 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.~~

~~**§ 96.152 Responsibilities of CAIR NOx authorized account representative.**~~

~~(a) Following the establishment of a CAIR NOx 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 NOx allowances in the account, shall be made only by the CAIR NOx authorized account representative for the account.~~

~~(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each CAIR NOx authorized account representative.~~

~~**§ 96.153 Recordation of CAIR NOx allowance allocations.**~~

~~(a) By January 1, 2007, the Administrator will record the CAIR NOx allowances for 2010, 2011, 2012, 2013, and 2014 for the CAIR units at a source allocated in accordance with § 96.142(a) and (b) in the source's compliance account.~~

~~(b) Each year starting with 2011, after the Administrator has made all deductions from a CAIR source's~~

~~compliance account under § 96.154, the Administrator will record CAIR NOx allowances, in the source's compliance account, as allocated to the CAIR units at the source in accordance with § 96.142(a) and (b), for the fourth year after the year of the control period for which such deductions were or could have been made.~~

~~(c) Each year starting with 2010, after the Administrator is notified, in accordance with § 96.142(c)(v) and (d), by the permitting authority of the amounts of CAIR NOx allowances allocated to the CAIR units at the source, the Administrator will record the allocated allowances in the source's compliance account.~~

~~(d) Serial numbers for allocated CAIR NOx allowances. When allocating CAIR NOx allowances to a CAIR unit and recording them in an account, the Administrator will assign each CAIR NOx allowance a unique identification number that will include digits identifying the year for which the CAIR NOx allowance is allocated.~~

~~**§ 96.154 Compliance with CAIR NOx emissions limitation.**~~

~~(a) CAIR NOx allowance transfer deadline. The CAIR NOx allowances are available to be deducted for compliance with a source's CAIR NOx emissions limitation for a control period in a given year only if the CAIR NOx allowances:~~

~~(1) Were allocated for the year or a prior year;~~

~~(2) Are held in the compliance account as of the CAIR NOx allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NOx allowance transfer correctly submitted for recordation under § 96.160 by the CAIR NOx 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 § 96.161, of CAIR NOx allowance transfers submitted for recordation in a source's compliance account by the CAIR NOx allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NOx allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NOx emissions limitation for the control period, as follows:~~

~~(1) Until the amount of CAIR NOx allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart III of this part, from all CAIR units at the source for the control period; or~~

~~(2) Until no more CAIR NOx allowances available under~~

~~paragraph (a) of this section remain in the compliance account.~~

~~(c)(1) Identification of CAIR NOx allowances by serial number. The CAIR NOx authorized account representative for a source's compliance account may request that specific CAIR NOx 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 source and the appropriate serial numbers.~~

~~(2) First in, first out. The Administrator will deduct CAIR NOx 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 NOx 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) Those CAIR NOx allowances that were allocated to the units at the source under subpart EE of this part, in the order of recordation; and then~~

~~(ii) Those CAIR NOx allowances that were allocated to~~

~~any unit 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 which the CAIR source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NOx allowances, allocated for the year after such control period, equal to three 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 source or the CAIR units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:~~

~~(i) For purposes of determining the number of days of violation, if a CAIR source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be~~

~~considered.~~

~~(ii) Each ton of excess emissions is a separate violation.~~

~~(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 NOx Trading Program and make appropriate adjustments of the information in the submissions.~~

~~(2) The Administrator may deduct CAIR NOx allowances from or transfer CAIR NOx allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f) (1) of this section.~~

~~**§ 96.155 Banking.**~~

~~(a) CAIR NOx 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 NOx allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NOx allowance is deducted or~~

~~transferred under § 96.154, § 96.156, or subpart GG of this part.~~

~~§ 96.156 Account error.~~

~~— The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NOx Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR NOx authorized account representative for the account.~~

~~§ 96.157 Closing of general accounts.~~

~~— (a) The CAIR NOx 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 § 96.160 for any CAIR NOx allowances in the account to one or more other CAIR NOx Allowance Tracking System accounts.~~

~~— (b) If a general account has no allowance transfers in or out of the account and does not contain any CAIR NOx allowances, the Administrator may notify the CAIR NOx 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 NOx allowances into the account under § 96.160 or a statement submitted by the CAIR NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.~~

~~Subpart GG CAIR NOx Allowance Transfers~~

~~§ 96.160 Submission of CAIR NOx allowance transfers.~~

~~An CAIR NOx authorized account representative seeking recordation of a CAIR NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NOx allowance transfer shall include the following elements, in a format specified by the Administrator:~~

~~(a) The numbers identifying both the transferor and transferee accounts;~~

~~(b) The serial number of each CAIR NOx allowance (which must be in transferor account) to be transferred; and~~

~~(c) The name and signature of the CAIR NOx authorized account representative of the transferor account and the date signed.~~

~~§ 96.161 EPA recordation.~~

~~(a) Within 5 business days of receiving a CAIR NOx allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a CAIR NOx~~

~~allowance transfer by moving each CAIR NOx allowance from the transferor account to the transferee account as specified by the request, provided that:~~

~~—— (1) The transfer is correctly submitted under § 96.160; and~~

~~—— (2) The transferor account includes each CAIR NOx allowance identified by serial number in the transfer.~~

~~—— (b) a CAIR NOx allowance transfer that is submitted for recordation after the CAIR NOx allowance transfer deadline and that includes any CAIR NOx allowances allocated for a control period in any year before the year of the CAIR NOx allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.154 for the control period in the year immediately before the year of the CAIR NOx allowance transfer deadline.~~

~~—— (c) Where a CAIR NOx allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.~~

~~**§ 96.162 Notification.**~~

~~—— (a) Notification of recordation. Within 5 business days of recordation of a CAIR NOx allowance transfer under § 96.161, the Administrator will notify the CAIR NOx authorized account representatives of both the transferor~~

~~and transferee accounts.~~

~~(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NOx allowance transfer that fails to meet the requirements of § 96.161(a), the Administrator will notify the CAIR NOx 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 NOx allowance transfer for recordation following notification of non-recordation.~~

~~**Subpart III – Monitoring and Reporting**~~

~~**§ 96.170 General Requirements.**~~

~~The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR 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 § 96.102 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 unit," "CAIR designated representative," and "continuous emission~~

~~monitoring system" (or "CEMS") respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR 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 unit.~~

~~(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR unit shall:~~

~~(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input. This includes all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, in accordance with §§ 75.71 and 75.72 of this chapter;~~

~~(2) Successfully complete all certification tests required under § 96.171 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 certification and other requirements of paragraphs (a) (1) and (a) (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 unit that commences commercial operation before July 1, 2008, by January 1, 2009.~~

~~(2) For the owner or operator of a CAIR 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 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) or (b) (2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.~~

~~(c) Reporting data prior to initial certification. The owner or operator of a CAIR unit that does not meet the applicable compliance date set forth in paragraph (b) of this section shall determine, record, and report maximum potential (or, in some cases, 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 § 75.31(c) (3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.~~

~~(d) Prohibitions~~

~~(1) No owner or operator of a CAIR unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.175.~~

~~(2) No owner or operator of a CAIR 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 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 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 § 96.105 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 permitting authority 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 § 96.171(d)(3)(i).~~

~~**§ 96.171 Initial certification and recertification procedures.**~~

~~_____ (a) The owner or operator of a CAIR unit shall be exempt from the initial certification requirements of this section if the following conditions are met:~~

~~_____ (1) In 2008, the unit is subject to an Acid Rain emission limitation or is subject to the NO_x Budget Trading Program or another applicable State or Federal NO_x mass emission reduction program that has adopted the requirements of subpart H of part 75 of this chapter; and~~

~~_____ (2) Under the Acid Rain Program or the NO_x mass emission reduction program described in paragraph (a)(1) of this section, all of the monitoring systems required under this subpart for monitoring NO_x mass emissions and heat input have been previously certified in accordance with subpart H of part 75 of this chapter; and~~

~~_____ (3) The applicable quality assurance requirements of § 75.21 or § 75.74(c) of this chapter, or appendix B, appendix D, or appendix E to part 75 of this chapter are fully met in 2008 for all of the certified monitoring systems described in paragraph (a)(2) of this section.~~

~~(b) The recertification provisions of this section shall apply to the monitoring systems exempted 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 § 75.17 or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_x Trading Program.~~

~~(d) The owner or operator of a CAIR unit that is not exempted under paragraph (a) of this section from the initial certification requirements of this section shall comply with the following initial certification and recertification procedures, for CEMS and for excepted monitoring systems under appendices D and E to part 75 of this chapter. 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 monitoring system required by subpart H of part 75 of this chapter (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 § 96.170(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 monitoring system required by subpart H of part 75 of this chapter 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 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 CEMS 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. Fuel flowmeter systems and excepted NO_x monitoring systems under appendix E to part 75 of this chapter 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 (d)(3)(iv) of this section apply to both initial certification and recertification of continuous monitoring systems. 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 permitting authority, to the appropriate EPA Regional Office, and to the Administrator written notice of the dates of certification testing, in accordance with § 96.173.~~

~~(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in § 75.63 of this chapter. Notwithstanding this requirement, a certification application is not required by subpart H if the monitoring system has been previously certified in accordance with the Acid Rain Program or in accordance with the NO_x Budget Trading Program or another applicable State or Federal NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.~~

~~(iii) Provisional certification date. Except for units using the low mass emission excepted methodology under § 75.19 of this chapter, 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~~

~~Trading Program for a period not to exceed 120 days after receipt by the permitting authority 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 permitting authority 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 permitting authority.~~

~~(iv) Certification application formal approval process. The permitting authority 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 permitting authority 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 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 permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.~~

~~———— (B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (d) (3) (ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority 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 permitting authority may issue a notice of disapproval under paragraph (d) (3) (iv) (C) of this section. The 120 day review period shall not begin prior to 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 has been met, then the permitting authority 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 permitting authority 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 permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).~~

~~—— (v) Procedures for loss of certification. If the permitting authority 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(b)(5), § 75.21(e), or § 75.20(g)(7) 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 disapproved NO_x pollutant concentration monitors and flow monitors, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in section 2 of appendix A to part 75 of this chapter.~~

~~(3) For disapproved moisture and diluent gas monitoring systems, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in section 2 of appendix A to part 75 of this chapter.~~

~~(4) For disapproved fuel flowmeter systems, 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 permitting authority'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 gas-fired or oil-fired (as defined in § 72.2 of this chapter) unit using 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) in part 75 of this chapter. If the owner or operator of a low mass emissions 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 and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the notification and application procedures of paragraph (d)(1) of this section before using the system under the CAIR NO_x Trading Program. The CAIR designated representative shall also comply with the applicable notification and application procedures of paragraph (d)(2) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.~~

~~**§ 96.172 Out of control periods.**~~

~~—— (a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, subpart H, appendix D, or appendix E of 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 system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.171 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 permitting authority will issue a notice of disapproval of the certification status of such 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 permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the 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 system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved system.~~

~~§ 96.173 Notifications.~~

~~The CAIR designated representative for a CAIR unit~~

~~shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, 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 Recordkeeping and reporting.~~

~~_____ (a) General provisions.~~

~~_____ (1) 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 § 96.110(e)(1).~~

~~_____ (b) Monitoring Plans. The owner or operator of a CAIR 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 permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, 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 NO_x~~

~~mass emissions data and heat input data, 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. Data shall be reported from the first hour on January 1, 2009; or~~

~~—— (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 relevant deadline for initial certification under § 96.170(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. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.~~

~~—— (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 units that are also subject to an Acid Rain emissions limitation, the NO_x Budget Trading Program or~~

~~another applicable State or Federal NO_x mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, or an applicable State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of part 75 of this chapter, 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:~~

~~—— (i) 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~~

~~—— (ii) 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 of part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.~~

~~§ 96.175 Petitions.~~

~~(a) The CAIR designated representative of a CAIR unit that is subject to an Acid Rain emissions limitation 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 by the Administrator, in consultation with the permitting authority.~~

~~(b) The CAIR designated representative of a CAIR unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and 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 by both the~~

~~permitting authority and the Administrator.~~

~~**§ 96.176 Additional Requirements to Provide Heat Input Data.**~~

~~The owner or operator of a CAIR 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.~~