Notice of Rulemaking Hearing
Tennessee Department of Environment and Conservation
Division of Air Pollution Control

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 17th day of November, 2005.

Written comments will be included in the hearing records if received by the close of business on November 17, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531. Additionally, comments may be submitted via attachments through electronic mail until the close of business on November 17, 2005.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to November 17, 2005, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Travis Blake at 615-532-0617. For complete copies of the text of the notice, please contact Travis Blake, Department of Environment and Conservation, 9th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243.

Summary

Chapter 1200-3-14 Control of Sulfur Dioxide Emissions is being amended by adding Rule 1200-3-14-.04 CAIR SO_2 ANNUAL TRADING PROGRAM. This new rule is necessary to meet the EPA requirement that Tennessee revise it's State Implementation Plan pursuant to 40 CFR 96 Subparts AAA through III. This new rule will require the owner/operators of affected electric utility steam generating units (EUSGUs) to comply with annual SO_2 emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The SO_2 emissions reductions achieved through implementation of this new rule will be collectively adequate to provide for compliance with Tennessee's annual SO_2 budget as established under the Clean Air Interstate Rule (CAIR).

MEMO

FROM: Malcolm Butler

TO: Richard Arnold

DATE: September 27, 2005

SUBJECT: **Notice of Rulemaking Filing**

Please change the date and location for the following rule notices:

1200-3-3
1200-3-14-.04 CAIR SO_2 ANNUAL TRADING PROGRAM
1200-3-27-.10 CAIR NO_x ANNUAL TRADING PROGRAM
1200-3-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES
1200-3-27-.11 CAIR NO_x OZONE SEASON TRADING PROGRAM

from November 17 & 18, 2005, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

to will take place in the Multimedia Room of the Tennessee Tower, located at 312 8th Avenue North, Nashville, Tennessee 37243 at 9:30 a.m. on the 18th day of November, 2005.

Thank you,
Malcolm

Chapter 1200-3-14
Control of Sulfur Dioxide Emissions

New Rule

Table of Contents

1200-3-14-.04 CAIR SO_2 Annual Trading Program

1200-3-14-.04 CAIR SO_2 ANNUAL TRADING PROGRAM (40 CFR 96)

(1) The provisions of 40 CFR Part 96 concerning the CAIR SO_2 Annual Trading Program are hereby adopted by reference with the following revisions:

(a) (Reserved)

(2) PART 96--CAIR SO_2 Annual Trading Program

Subpart AAA – CAIR SO_2 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 SO_2 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 SO_2 Trading Program permit requirements.
96.221 Submission of CAIR permit applications.
96.222 Information requirements for CAIR permit applications.
96.223 CAIR permit contents and term.
96.224 CAIR permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO_2 Allowance Tracking System

96.250 [Reserved]
96.251 Establishment of accounts.
96.252 Responsibilities of CAIR authorized account representative.

96.253 Recordation of CAIR SO_2 allowances.
96.254 Compliance with CAIR SO_2 emissions limitation.
96.255 Banking.
96.256 Account error.
96.257 Closing of general accounts.

Subpart GGG – CAIR SO_2 Allowance Transfers

96.260 Submission of CAIR SO_2 allowance transfers.
96.261 EPA recordation.
96.262 Notification.

Subpart HHH – Monitoring and Reporting

96.270 General requirements.
96.271 Initial certification and recertification procedures.
96.272 Out of control periods.
96.273 Notifications.
96.274 Recordkeeping and reporting.
96.275 Petitions.
96.276 Additional requirements to provide heat input data.

Subpart III – CAIR SO_2 Opt-in Units

96.280 Applicability.
96.281 General.
96.282 CAIR designated representative.
96.283 Applying for CAIR opt-in permit.
96.284 Opt-in process.
96.285 CAIR opt-in permit contents.
96.286 Withdrawal from CAIR SO_2 Trading Program.
96.287 Change in regulatory status.
96.288 SO_2 allowance allocations to CAIR SO_2 opt-in units.

Subpart AAA – CAIR SO_2 Trading Program General Provisions

§ 96.201 Purpose.

This subpart and subparts BBB through III establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under section 110 of the Clean Air Act and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBB through III as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR SO_2 Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

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

Allocate or allocation means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit and, with regard to CAIR SO_2 allowances issued under § 96.288, the determination by the permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.

Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with § 96.254.

Alternate CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB and III of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_X Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X Ozone Season source means a source that includes one or more CAIR NO_X Ozone Season units.

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_X Ozone Season unit means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under § 96.304 and a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part.

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

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 96.104 and a CAIR NO_X opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program, or by a permitting authority under § 96.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 96.254(b);

(2) For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 96.254(b); and

(3) For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 96.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program or under the provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter shall not be a CAIR SO_2 allowance.

CAIR SO_2 allowance deduction or deduct CAIR SO_2 allowances means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO_2 Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO_2 allowances under the Acid Rain Program.

CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO_2 allowances held or hold CAIR SO_2 allowances means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO_2 Allowance Tracking System account.

CAIR SO_2 emissions limitation means, for a CAIR SO_2 source, the tonnage equivalent of the CAIR SO_2 allowances available for deduction for the source under § 96.254(a) and (b) for a control period.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and, except for purposes of § 96.205, a CAIR SO_2 opt-in unit under subpart III of this part.

Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity –

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

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

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

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

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR SO_2 source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO_2 source under subpart FFF or III of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with § 96.254.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(4) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period means the period beginning January 1 of a calendar year, except as provided in § 96.206(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

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

(1) For the life of the unit;

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

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

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

specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO_2 emissions limitation means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

(ii) Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

(iii) Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO_2 unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR SO_2 Trading Program pursuant to § 51.124 (o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

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

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device. Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:
Btu-British thermal unit.

CO_2-carbon dioxide.
NO_X-nitrogen oxides.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O_2-oxygen.
ppm-parts per million.
lb-pound.
scfh-standard cubic feet per hour.
SO_2-sulfur dioxide.
H_2O-water.
yr-year.

§ 96.204 Applicability.

The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.205 Retired unit exemption.

(a) (1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under subpart III of this part shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(4) through (8), § 96.207, and subparts BBB, FFF, and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at

which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) Special provisions.

(1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 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 (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a title V operating permit and each CAIR SO_2 unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) Sulfur dioxide emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period, as determined in accordance with § 96.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1),(2), or (5) and for each control period thereafter.

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 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.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO_2 unit.

(d) Excess emissions requirements. If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under § 96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) Recordkeeping and reporting requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 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 SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) Liability.

(1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program.

(2) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) Effect on other authorities. No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB – CAIR designated representative for CAIR SO_2 sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.211, each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in § 96.213(a)(4)(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 SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR SO_2 unit at a source, until

the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e) (1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 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) and (d), 96.212, 96.213, 96.251, and 96.282, whenever the term "CAIR designated representative" is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 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 before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR

designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.

(c) Changes in owners and operators.

(1) In the event a new owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit is not included in the list of owners and operators in the certificate of representation under § 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 and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 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 SO_2 source, and each CAIR SO_2 unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative--

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of the owners and operators of the source and of each CAIR SO_2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR SO_2 unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO_2 unit, or where a customer purchases power from a CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 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 SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

Subpart CCC – Permits

§ 96.220 General CAIR SO_2 Trading Program permit requirements.

(a) For each CAIR SO_2 source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally

enforceable permits as applicable, except as provided otherwise by this subpart and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR SO_2 Trading Program, CAIR NO_X Annual Trading Program, and CAIR NO_X Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR SO_2 source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO_2 unit commences operation.

(b) Duty to Reapply. For a CAIR SO_2 source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO_2 source;

(b) Identification of each CAIR SO_2 unit at the CAIR SO_2 source; and

(c) The standard requirements under § 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 subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's title V operating permit or other federally enforceable permit as applicable.

§ 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 or the

permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO_2 Allowance Tracking System

§ 96.250 [Reserved]

§ 96.251 Establishment of accounts.

(a) Compliance accounts. Except as provided in § 96.284(e), upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR SO_2 source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) General accounts.

(1) Application for general account.

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound

by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

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

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

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

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

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

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR

authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.253 Recordation of CAIR SO_2 allowances.

(a) (1) After a compliance account is established under § 96.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO_2 allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b) (1) After a general account is established under § 96.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the general account any CAIR SO_2 allowance allocated for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) Serial numbers for allocated CAIR SO_2 allowances. When recording the allocation of CAIR

SO_2 allowances issued by a permitting authority under § 96.288, the Administrator will assign each such CAIR SO_2 allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

(a) Allowance transfer deadline. The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under § 96.260 by the allowance transfer deadline for the control period; and

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

(b) Deductions for compliance. Following the recordation, in accordance with § 96.261, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR SO_2 source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(B) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO_2

allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(2) For a CAIR SO_2 source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(ii) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(c) (1) Identification of CAIR SO_2 allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO_2 allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO_2 allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO_2 allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) Deductions for excess emissions.

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO_2 source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 96.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section, 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) Administrator's action on submissions.

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 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 SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted

allowance transfer under § 96.260 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under § 96.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG – CAIR SO_2 Allowance Transfers

§ 96.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b) (1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator."

§ 96.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO_2 allowances allocated to a CAIR SO_2 unit or as provided in paragraph (b) of this section) of receiving a CAIR SO_2 allowance transfer, the Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.260; and

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 96.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of non-recordation.

Subpart HHH – Monitoring and Reporting

§ 96.270 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 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 SO_2 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 SO_2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO_2 unit.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR SO_2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration,

and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 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 monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner or operator of a CAIR SO_2 opt-in unit under subpart III of this part, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 96.284(g).

(c) Reporting data.

(1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

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

(d) Prohibitions

(1) No owner or operator of a CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.275.

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO_2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 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 SO_2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.270(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.270(a)(1) exempt 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 SO_2 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 SO_2 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 96.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 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 emission monitoring system under § 96.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 96.270(a)(1)is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.270(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§

75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and 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. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the 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 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 SO_2 Trading Program.

(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. If the certification application is not complete, then the 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 before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section

is met, then the 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 or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator 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 or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*2*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*3*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 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 or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for each disapproved monitoring system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR SO_2 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. 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 SO_2 unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is

submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.283 and 96.284(a).

(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 the SO_2 mass emissions data and heat input data for the CAIR SO_2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; 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 applicable 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.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO_2 units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program or CAIR NO_X Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 96.275 Petitions.

(a) The CAIR designated representative of a CAIR SO_2 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 in writing by the Administrator, in consultation with the permitting authority.

(b) The CAIR designated representative of a CAIR SO_2 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 in writing by both the permitting authority and the Administrator.

§ 96.276 Additional requirements to provide heat input data.

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

Subpart III - CAIR SO_2 Opt-in Units

§ 96.280 Applicability.

A CAIR SO_2 opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHH of this part.

§ 96.281 General.

(a) Except as otherwise provided in §§ 96.201 through 96.204, §§ 96.206 through 96.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

§ 96.282 CAIR designated representative.

Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the

same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

§ 96.283 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR SO_2 opt-in unit in § 96.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not and, so long as the unit is a CAIR SO_2 opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack; and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 96.213 consistent with § 96.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g)).

(b) Duty to reapply.

(1) The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete CAIR permit application under § 96.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR SO_2 Trading Program in accordance with § 96.286 or the unit becomes a CAIR SO_2 unit under § 96.204, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.283 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO_2 emissions rate and heat input of the unit are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

(1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 96.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 Trading Program in accordance with § 96.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 Trading Program under § 96.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO_2 Trading Program under § 96.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) Baseline heat input. The unit's baseline heat rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) Baseline SO_2 emission rate. The unit's baseline SO_2 emission rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO_2 emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO_2 emission controls.

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline SO_2 emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 and meets the elements certified in § 96.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 or meets the elements certified in § 96.283(a)(2), the permitting authority will issue a denial of a CAIR SO_2 opt-in permit for the unit.

(g) Date of entry into CAIR SO_2 Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) Repowered CAIR SO_2 opt-in unit.

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c) and such unit is repowered after its date of entry into the CAIR SO_2 Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO_2 emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR SO_2 unit.

§ 96.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.222;

(2) The certification in § 96.283(a)(2);

(3) The unit's baseline heat input under § 96.284(c);

(4) The unit's baseline SO_2 emission rate under § 96.284(d);

(5) A statement whether the unit is to be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g));

(6) A statement that the unit may withdraw from the CAIR SO_2 Trading Program only in accordance with § 96.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part or this subpart, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format prescribed by the permitting authority, in the CAIR permit for the source where the CAIR opt-in unit is located.

§ 96.286 Withdrawal from CAIR SO_2 Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with paragraph (d) of this section.

(a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR SO_2 Trading Program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO_2 Trading Program under § 96.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a CAIR SO_2 opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO_2 Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under § 96.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in amount to and allocated for the

same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 Allowance Tracking System in accordance with subpart GGG of this part.

(c) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO_2 allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 Trading Program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) Ability to reapply to the CAIR SO_2 Trading Program. Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.283 for such CAIR SO_2 opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.284.

(g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 Trading Program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c).

§ 96.287 Change in regulatory status.

(a) Notification. If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, then the CAIR designated representative shall notify in writing the permitting authority and the

Administrator of such change in the CAIR SO_2 opt-in unit's regulatory status, within 30 days of such change.

(b) Permitting authority's and Administrator's actions.

(1) If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, the permitting authority will revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.223 as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204.

(2) (i) The Administrator will deduct from the compliance account of the source that includes a CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under § 96.204, CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204; and

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under § 96.204 contains the CAIR SO_2 allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

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

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.284(e), the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under § 96.284(c); or

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(2) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this paragraph (subject to the conditions in §§ 96.284(h) and 96.286(g)), the permitting authority will allocate to the CAIR SO_2 opt-in unit as follows:

(1) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d); or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.

(2) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.

(d) Recordation.

(1) The Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(2) of this section.

Authority: T.C.A. §§68-201-105 and 4-5-201 et. seq.

Legal contact and/or party who will approve final copy for publication:

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I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Division of Air Pollution Control.

Barry R. Stephens
Director
Tennessee Division of Air Pollution Control

Subscribed and sworn to before me this the 28 day of September, 2005.

Notary Public

My commission expires on the 23 day of May, 2009.

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

This notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of Sept., 2005.

Riley C. Darnell
Secretary of State

By:

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