

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, Division of Air Pollution Control, located at 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243 at 9:00 a.m. on the 19th day of December, 2006.

Written comments will be included in the hearing records if received by the close of business on December 19, 2006, 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 December 19, 2006.

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 December 19, 2006, 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, 12th Floor L & C Tower, 401 Church Street, Nashville TN 37243, (615) 532-0207. 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 Annex, 401 Church Street, Nashville, TN 37243.

Summary

Rule 1200-3-27-.11 of the Tennessee Air Pollution Control Regulations (CAIR NO_x Ozone Season Trading Program) is being amended. This rule requires the owner/operators of affected electric generating units (EGUs) and industrial boilers (non-EGUs) to comply with ozone season NO_x emission limitations by limiting emissions from these sources, or by purchasing emission credits through a cap-and-trade program. The proposed changes will update the language of EPA's Federal rule (70 FR 25362, May 12, 2005), and the State-specific revisions to this rule, with EPA's additions and corrections to the Federal rule language (71 FR 25386, April 28, 2006). Tennessee is also proposing to remove the opt-out provisions for non-EGUs (1200-3-27-.11(2)(a)4 in the current rule), and to allow future updates of the allowance allocation method for non-EGUs (1200-3-27-.11(2)(c)2.(ii)(I)).

Tennessee is also proposing to revise the non-EGU allowance allocation method specified in item (I) of subpart (2)(c)2.(ii) of rule 1200-3-27-.11. Specifically, Tennessee is proposing several alternative allowance allocation methods for non-EGUs to reallocate or retire 938 tons of surplus CAIR NO_x Ozone Season allowances that were allocated to retired units. Tennessee is not proposing to reduce the existing allocations to non-EGUs or to reduce the existing new unit set-aside below the current value of 278 tons. These revisions would become effective for the 2009 ozone season, and for each subsequent ozone season. Tennessee is soliciting public comments on the following allowance allocation methods:

1. Allocate 938 additional tons of CAIR NO_x Ozone Season allowances to existing sources at the beginning of each ozone season. Maintain the new unit set-aside at 5% of the total non-EGU budget (278 tons).
2. Allocate 1,216 tons (278 tons + 938 tons) of CAIR NO_x Ozone Season allowances into the new unit set-aside. At the end of each ozone season, any unused allowances in the new-unit set-aside would be redistributed among existing NO_x Budget sources.
3. Allocate 1,216 tons of CAIR NO_x Ozone Season allowances into the new unit set-aside. At the end of each ozone season, a portion of the unused allowances in the new-unit set-aside (no less than 278 tons of NO_x allowances, if available) would be redistributed among existing NO_x Budget sources, and the remainder of allowances would be retired. Once retired, an allowance would no longer be available, but the allocation method could be revised to make these allowances available for future years.
4. Allocate 938 tons of CAIR NO_x Ozone Season allowances as “to be retired” during each ozone season. Once retired, an allowance would no longer be available, but the allocation method could be revised to make these allowances available for future years.
5. Request that EPA reduce Tennessee’s ozone season NO_x budget for non-EGUs by 938 tons. These allowances would no longer be available for use, and the allocation method could not be revised to make these allowances available for future years.
6. Interested parties may submit comments on other allocation or retirement methods not listed above.

Only the portions of the rule affected by these amendments are open to public comment.

Rule Text

Chapter 1200-3-27
CAIR NO_x Ozone Season Trading Program

Table of Contents

1200-3-27-.11 CAIR NO_x Ozone Season Trading Program

1200-3-27-.11 CAIR NO_x OZONE SEASON TRADING PROGRAM

- (1) The provisions of this rule supersede the provisions of 1200-3-27-.06 (NO_x Budget Trading Program for State Implementation Programs) as follows:
 - (a) The provisions of this rule supersede all requirements of 1200-3-27-.06 for the control period beginning in 2009, and for each control period thereafter.
 - (b) The provisions of 1200-3-27-.06 shall not apply to the control period beginning in 2009 and any control period thereafter.
- (2) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Ozone Season Trading Program are hereby adopted by reference with the following revisions:
 - (a) The provisions of Sec. 96.304 as adopted for Tennessee are revised to read as follows:

Sec. 96.304 Applicability.

The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule:

1. Except as provided in part 2. of this subparagraph:
 - (i) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.
 - (ii) If a stationary boiler or stationary combustion turbine that, under subpart (i) of this part, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in subpart (i) of this part on the first date on which it both combusts fossil fuel and serves such generator.
2. The units in a State that meet the requirements set forth in item 2.(i)(I), 2.(ii)(I), or 2.(ii)(II) of this part shall not be CAIR NO_x Ozone Season units:
 - (i) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this part:
 - I. Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

- II. Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.
 - (II) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of item 2.(i)(I) of this subparagraph for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subitem 2.(i)(I)II. of this subparagraph.
 - (ii) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation before January 1, 1985:
 - I. Qualifying as a solid waste incineration unit; and
 - II. With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
 - (II) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation on or after January 1, 1985:
 - I. Qualifying as a solid waste incineration unit; and
 - II. With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
 - (III) If a unit qualifies as a solid waste incineration unit and meets the requirements of item 2.(ii)(I) or (II) of this subparagraph for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.
2. Any stationary boiler or stationary combustion turbine that is not a unit under part 1.. of this subparagraph and that meets each of the following requirements:
 - (i) The stationary boiler's or stationary combustion turbine's maximum design heat input is greater than 250 mmBtu/hr, and;
 - (ii) The stationary boiler or stationary combustion turbine combusts, or will

combust during any year, fossil fuel in the following amounts:

- I. Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
- II. Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.

(b) The provisions of Sec. 96.340 as adopted for Tennessee are revised to read as follows:

Sec. 96.340 State trading budgets.

- 1. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule for the control periods in 2009 through 2014 is 22,842 tons/season, and for the control period in 2015 and thereafter is 19,035 tons/season.
- 2. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule for the control period in 2009 and thereafter is 5,666 tons/season.

(c) The provisions of Sec. 96.342 as adopted for Tennessee are revised to read as follows:

Sec. 96.342 CAIR NO_x Ozone Season allowance allocations.

- 1. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule:
 - (i) (I) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under subpart (ii) of this part for each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule will be:
 - I. For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:
 - A. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - B. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - C. If the unit is not subject to section (i)(I)A. or B. of this subpart, the unit's control period heat input for such year is multiplied by 40 percent.
 - II. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of

the unit's total converted control period heat input over the first such 5 years.

- (II) I. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subitem (i)(I)I. of this part , and a unit's total tons of NO_x emissions during a control period in a calendar year under item (iii)(III) of this part, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.
- II. A unit's converted control period heat input for a calendar year specified under subitem (i)(I)II. of this part equals:
 - A. Except as provided in section (i)(II)II.B. or C. of this part, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;
 - B. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or
 - C. For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.
- (ii) (I) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units identified in parts (2)(a)1. and (2)(a)2. of this rule that have a baseline heat input (as determined under subpart (i) of this part) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under part (b)1. of this paragraph (except as provided in subpart (iv) of this part).

- (II) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under item (ii)(I) of this part in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under item (ii)(I) of this part by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)1. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:
 - (I) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.
 - (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
 - (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
 - (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:
 - I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.

- II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.
 - III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.
 - IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under subitem (iii)(IV)II. of this part, and rounded to the nearest whole allowance as appropriate.
 - V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit identified in parts (2)(a)1. and (2)(a)2. of this rule that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under subpart (ii) of this part, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.
2. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule:
- (i) For all CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule, the heat input used for calculating NO_x allowance allocations for each CAIR Ozone Season NO_x unit shall be:
 - (I) The heat input (in mmBtu) used for calculating NO_x Ozone Season allowance allocations shall be the unit's heat input for the control period

that is four years before the control period for which the NO_x allocation is being calculated.

- (II) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period in a calendar year under subpart 4.(iii) of this subparagraph, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.
- (ii) For all CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule, the permitting authority will allocate CAIR NO_x Ozone Season allowances as follows:
 - (I) For each control period from 2009 until 2018, the permitting authority will allocate CAIR NO_x Ozone Season allowances in the amounts specified in Board Order [INSERT BOARD ORDER NUMBER] , approved by the Tennessee Air Pollution Control Board on [INSERT DATE OF ADOPTION OF BOARD ORDER] .
 - (II) For the control periods following 2018, the permitting authority will allocate CAIR NO_x Ozone Season allowances in a state implementation plan to be submitted to EPA for approval.
 - (iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:
 - (I) The permitting authority will establish a separate new unit set-aside for each control period. The set-aside for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule shall be separate from the set-aside for CAIR NO_x Ozone Season Units identified in parts (2)(a)1. and (2)(a)2. of this rule. For CAIR NO_x Ozone Season Units identified in part (2)(a)2. of this rule, the allocation set-aside for new source growth will be the NO_x allowances remaining in the state trading program budget for CAIR NO_x Ozone Season units identified in part (2)(a)2. of this rule after allocations are set for all CAIR NO_x Ozone Season units under part (b)2. of this paragraph. For CAIR NO_x Ozone Season Units identified in part (2)(a)2. of this rule, the new unit set-aside will be established as follows:
 - I. For each control period from 2009 until 2018, the new unit set-aside is established as the State emission budget established in subparagraph (b)2. of this rule minus the number of NO_x allowances allocated in item (ii)(I) of this part.
 - II. For the control periods following 2018, the new unit set-aside will be established in a state implementation plan to be submitted to EPA for approval.

- (II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
- (III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding any of the three following limits:
 - I. 0.15 lb/mmBtu;
 - II. The allowable NO_x emissions under any state or federal construction or operating permit;
 - III. Any provision in or that has been submitted to the EPA for amendment to the state implementation plan.
 - IV. The emission limits indicated in subitems I. through III. above shall be converted to tons by multiplying the emission limit by the heat input indicated in subpart 2.(i) of this subparagraph, dividing by 2,000, and rounding to the nearest whole number as appropriate.
- (IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:
 - I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.
 - II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.
 - III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.

- IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part , then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.
 - V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances using the following formula and rounding to the nearest whole NO_x allowance as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = (Total NO_x allowances remaining in allocation set-aside) x (Unit's NO_x allowance allocation) ÷ (State trading program budget excluding allocation set-aside)

where:

“Total NO_x allowances remaining in allocation set-aside” is the total number of NO_x allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies;

“Unit's NO_x allowance allocation” is the number of NO_x allowances allocated under item 2.(ii) of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

“State trading program budget excluding allocation set-aside” is the State trading program budget apportioned to the unit type for the control period to which the allocation set-aside applies minus the allocation set-aside.

- (v) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the NO_x allowance allocations for any NO_x allowances remaining in the applicable allocation set-aside for the prior control period.

(3) PART 96--CAIR NO_x Ozone Season Trading Program

Subpart AAAA--CAIR NO_x Ozone Season Trading Program General Provisions

96.301 Purpose.

96.302 Definitions.

- 96.303 Measurements, abbreviations, and acronyms.
- 96.304 Applicability.
- 96.305 Retired unit exemption.
- 96.306 Standard requirements.
- 96.307 Computation of time.
- 96.308 Appeal Procedures.

Subpart BBBB – CAIR Designated Representative for CAIR NO_x Ozone Season Sources

- 96.310 Authorization and responsibilities of CAIR designated representative.
- 96.311 Alternate CAIR designated representative.
- 96.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 96.313 Certificate of representation.
- 96.314 Objections concerning CAIR designated representative.

Subpart CCCC – Permits

- 96.320 General CAIR NO_x Ozone Season Trading Program permit requirements.
- 96.321 Submission of CAIR permit applications.
- 96.322 Information requirements for CAIR permit applications.
- 96.323 CAIR permit contents and term.
- 96.324 CAIR permit revisions.

Subpart DDDD – [Reserved]

Subpart EEEE – CAIR NO_x Ozone Season Allowance Allocations

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

Subpart FFFF – CAIR NO_x Ozone Season Allowance Tracking System

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

Subpart GGGG – CAIR NO_x Ozone Season Allowance Transfers

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

Subpart HHHH – Monitoring and Reporting

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

- 96.375 Petitions.
- 96.376 Additional requirements to provide heat input data.

Subpart IIII – CAIR NO_x Ozone Season Opt-in Units

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

Subpart AAAA—CAIR NO_x Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII 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) NO_x Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII 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 § 51.123(aa)(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 § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

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

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

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

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

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

Allocate or allocation means, with regard to CAIR NO_x Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day) immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with § 96.354.

Alternate CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

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

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

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

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB, FFFF, and IIII of this part, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State implementation plan that are approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, or under subpart EEEE of part 97 or §97.388 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_x Budget Trading Program in accordance with §51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in §51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or subpart EEEE of part 97 or §97.388 of this chapter or under the NO_x Budget Trading Program as described in the prior sentence shall not be a CAIR NO_x Ozone Season allowance.

CAIR NO_x Ozone Season allowance deduction or deduct CAIR NO_x Ozone Season allowances means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, e. g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_x Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

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

CAIR NO_x Ozone Season allowances held or hold CAIR NO_x Ozone Season allowances means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_x Ozone Season Allowance Tracking System account.

CAIR NO_x Ozone Season emissions limitation means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x Ozone Season allowances available for deduction for the source under §96.354(a) and (b) for the control period.

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 or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

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

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and, except for purposes of § 96.305 and subpart EEEE of this part, a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

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

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ 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 or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

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

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

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

Coal-fired means:

- (1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or
- (2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

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

- (1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and
- (2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—
 - (i) For a topping-cycle cogeneration unit,
 - (A) Useful thermal energy not less than 5 percent of total energy output; and
 - (B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent

of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

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

Combustion turbine means:

- (1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and
- (2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit:

- (1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).
 - (i) For a unit that is a CAIR NOX Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit that is a CAIR NOX Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.
- (2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NOX Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NOX Ozone Season unit under § 96.304.
 - (i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.
 - (ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

- (1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).
- (2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.
- (3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.384(h)

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

Compliance account means a CAIR NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with § 96.354.

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

- (1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);
- (2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);
- (4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
- (5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and

- (6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂ in percent O₂.

Control period or ozone season means the period beginning May 1 of a calendar year, except as provided in §96.306(c)(2), and ending on September 30 of the same year, inclusive.

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

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

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

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

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

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

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

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

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

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

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

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

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

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

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

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

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

Owner means any of the following persons:

- (1) With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:
 - (i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;
 - (ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or
 - (iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x Ozone Season unit; or

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

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

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

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

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

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

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit)

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

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

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

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.

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

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

State means one of the States or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter.

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

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

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

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

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

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

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

Unit means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

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

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

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

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

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (e.g., space heating or domestic hot water heating); or
- (3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

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

§ 96.303 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
CO₂—carbon dioxide
H₂O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O₂—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO₂—sulfur dioxide
yr—year

§ 96.304 Applicability

- (a) Except as provided in paragraph (b) of this section:
 - (1) The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

- (2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.
- (b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:
- (1) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section:
- (A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and
- (B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.
- (ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.
- (2) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:
- (A) Qualifying as a solid waste incineration unit; and
- (B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:
- (A) Qualifying as a solid waste incineration unit; and
- (B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1

after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 Retired unit exemption.

- (a) (1) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, §96.302, §96.303, §96.304, § 96.306(c)(4) through (7), § 96.307, §96.308, and subparts BBBB and EEEE through GGGG of this part.
- (2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.
- (3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.
- (b) Special provisions.
 - (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.
 - (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.
 - (3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.
 - (4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
 - (5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

- (6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:
 - (i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;
 - (ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or
 - (iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 96.306 Standard requirements.

(a) Permit requirements.

- (1) The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall:
 - (i) Submit to the permitting authority a complete CAIR permit application under §96.322 in accordance with the deadlines specified in § 96.321; and
 - (ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
- (2) The owners and operators of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.
- (3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.

(b) Monitoring, reporting, and recordkeeping requirements.

- (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.
- (2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_x Ozone Season

source with the CAIR NO_x Ozone Season emissions limitation under paragraph (c) of this section.

- (c) Nitrogen oxides ozone season emission requirements.
 - (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.
 - (2) A CAIR NO_x Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.
 - (3) A CAIR NO_x Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.
 - (4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GGGG, and IIII of this part.
 - (5) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 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 NO_x Ozone Season allowance does not constitute a property right.
 - (7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.
- (d) Excess emissions requirements.
 - (1) The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under § 96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and
 - (2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.
- (e) Recordkeeping and reporting requirements.
 - (1) Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall keep on site at the

source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

- (i) The certificate of representation under § 96.313 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.313 changing the CAIR designated representative.
 - (ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.
 - (iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program.
 - (iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.
- (2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under subpart HHHH of this part.
- (f) Liability.
- (1) Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.
 - (2) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.
 - (3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.
- (g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

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

- (b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.308 Appeal procedures.

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

Subpart BBBB—CAIR Designated Representative for CAIR NO_x Ozone Season Sources

§ 96.310 Authorization and responsibilities of CAIR designated representative.

- (a) Except as provided under § 96.311, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.
- (b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).
- (c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.
- (d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.
- (e) (1) Each submission under the CAIR NO_x Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: “I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

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

§ 96.311 Alternate CAIR designated representative.

- (a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.
- (b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.
- (c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.315, 96.351, and 96.382 whenever the term “CAIR designated representative” is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

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

- (a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.
- (c) Changes in owners and operators.
- (1) In the event an owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under §96.313, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

- (2) Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.313 amending the list of owners and operators to include the change.

§ 96.313 Certificate of representation.

- (a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:
- (1) Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.
 - (2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.
 - (3) A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.
 - (4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—
 - (i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source.”
 - (ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”
 - (iii) “I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”
 - (iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x

Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.’’

- (5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.
- (b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.314 Objections concerning CAIR designated representative.

- (a) Once a complete certificate of representation under § 96.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.313 is received by the Administrator.
- (b) Except as provided in § 96.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Ozone Season Trading Program.
- (c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

§ 96.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

- (a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.
- (c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;
 - (2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

- (3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and
- (4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:
 - (i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me.”
 - (ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated.”
- (d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.
- (e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

§ 96.320 General CAIR NO_x Ozone Season Trading Program permit requirements.

- (a) For each CAIR NO_x Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority’s title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority’s regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.305, this subpart, and subpart IIII of this part.
- (b) Each CAIR permit shall contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, and CAIR SO₂ 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.

§ 96.321 Submission of CAIR permit applications.

- (a) Duty to apply. The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone

Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

- (b) Duty to Reapply. For a CAIR NO_x Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in §96.383(b).

§ 96.322 Information requirements for CAIR permit applications.

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

- (a) Identification of the CAIR NO_x Ozone Season source;
- (b) Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source; and
- (c) The standard requirements under § 96.306.

§ 96.323 CAIR permit contents and term.

- (a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.
- (b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.
- (c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 96.324 CAIR permit revisions.

Except as provided in § 96.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

- (a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–	State trading budget for
-------	--------------------------------	--------------------------

	2014 (tons)	2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

- (b) If a permitting authority issues additional CAIR NO_x Ozone Season allowance allocations under §51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under §51.123(aa)(2)(iii)(A) of this chapter for the year.

§ 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

- (a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with §96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the sixth yearafter the year of the applicable deadline for submission under this paragraph.
- (c) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(c), (a), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

§ 96.342 CAIR NO_x Ozone Season allowance allocations.

- (a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_x Ozone Season unit will be:
- (i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:
 - (A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;
 - (B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and
 - (C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.
 - (ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.
- (2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.
- (ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:
- (A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;
 - (B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or
 - (C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus

the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

- (b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).
- (2) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of all such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.
- (c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in a State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:
 - (1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.
 - (2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.
 - (3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.
 - (4) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

- (i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.
 - (ii) On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.
 - (iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.
 - (iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.
 - (v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.
- (d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

- (a) Compliance accounts. Except as provided in § 96.384(e), upon receipt of a complete certificate of representation under § 96.313, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.
- (b) General accounts—

- (1) Application for general account.
 - (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.
 - (ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:
 - (A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;
 - (B) Organization name and type of organization, if applicable;
 - (C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;
 - (D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative:
“I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.”
 - (E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.
 - (iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (2) Authorization of CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

- (A) The Administrator will establish a general account for the person or persons for whom the application is submitted.
 - (B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.
 - (C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.
- (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
 - (iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.
- (3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.
 - (i) The CAIR authorized account representative for a general account maybe changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

- (ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.
- (iii) (A) In the event a person having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account to include the change.
- (4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.
 - (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.
 - (ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.
 - (iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.
- (5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

- (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.
- (ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.
- (iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:
 - (A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;
 - (B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);
 - (C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;
 - (D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and
 - (E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.351(b)(5) is terminated.”.
- (iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace

any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

- (v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.
- (c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.352 Responsibilities of CAIR authorized account representative.

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

§ 96.353 Recordation of CAIR NO_x Ozone Season allowance allocations.

- (a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.
- (b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in 2015.
- (c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.
- (d) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.
- (e) Serial numbers for allocated CAIR NO_x Ozone Season allowances. When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_x emissions limitation.

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

- (1) Were allocated for the control period in the year or a prior year, and;
 - (2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under § 96.360 and §96.361 by the allowance transfer deadline for the control period; and
- (b) Deductions for compliance. Following the recordation, in accordance with § 96.361, of CAIR NO_x Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:
- (1) Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_x Ozone Season units at the source for the control period; or
 - (2) If there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.
- (c)
- (1) Identification of CAIR NO_x Ozone Season allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.
 - (2) First-in, first-out. The Administrator will deduct CAIR NO_x Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:
 - (i) Any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then
 - (ii) Any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.
- (d) Deductions for excess emissions.
- (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

- (2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.
- (e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart III.
- (f) Administrator's action on submissions.
 - (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.
 - (2) The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 96.355 Banking.

- (a) CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.
- (b) Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GGGG or IIII of this part.

§ 96.356 Account error.

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

§ 96.357 Closing of general accounts.

- (a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.360 and 96.361 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.
- (b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under §§96.360 and 96.361 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

§ 96.360 Submission of CAIR NO_x Ozone Season allowance transfers.

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

- (a) The account numbers for both the transferor and transferee accounts;
- (b) The serial number of each CAIR NO_x Ozone Season allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.361 EPA recordation.

- (a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:
 - (1) The transfer is correctly submitted under § 96.360; and
 - (2) The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.
- (b) A CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.
- (c) Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.362 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:
 - (1) A decision not to record the transfer, and
 - (2) The reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CAIR NO_x Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting

§ 96.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.302 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR NO_x Ozone Season unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 96.302. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x Ozone Season unit.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x Ozone Season unit shall:
- (1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);
 - (2) Successfully complete all certification tests required under § 96.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and
 - (3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.
- (b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.
- (1) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.
 - (2) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or
 - (ii) May 1, 2008.
 - (3) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

- (ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.
- (4) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.
- (5) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under §96.374(d)(2)(ii), by the later of the following dates:
 - (i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or
 - (ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.
- (6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_x Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.384(b).
- (7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_x Ozone Season opt-in unit, by the date on which the CAIR NO_x Ozone Season opt-in unit under subpart III of this part enters the CAIR NO_x Ozone Season Trading Program as provided in § 96.384(g).
- (c) Reporting data. The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.
- (d) Prohibitions.
 - (1) No owner or operator of a CAIR NO_x Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.
 - (2) No owner or operator of a CAIR NO_x Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without

accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

- (3) No owner or operator of a CAIR NO_x Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.
- (4) No owner or operator of a CAIR NO_x Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:
 - (i) During the period that the unit is covered by an exemption under § 96.305 that is in effect;
 - (ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the 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 §96.371(d)(3)(i).
- (e) Long-term cold storage. The owner or operator of a CAIR NO_x Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 Initial certification and recertification procedures.

- (a) The owner or operator of a CAIRNO_x Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(a)(1) if the following conditions are met:
 - (1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and
 - (2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.
- (b) The recertification provisions of this section shall apply to a monitoring system under §96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.
- (c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.

- (d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.
- (1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under §96.370(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.
 - (2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flow meter systems, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.
 - (3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §96.370(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.
 - (i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.373.
 - (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 NO_x Ozone Season 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 NO_x Ozone Season Trading Program.
 - (A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the 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 NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit

application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(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 NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.
 - (3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.
 - (4) For a disapproved fuel flow meter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.
 - (5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.
 - (B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.
 - (C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the 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.

§ 96.372 Out of control periods.

- (a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.
- (b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §96.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart 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 § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

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

§ 96.374 Recordkeeping and reporting.

- (a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of § 96.310(e)(1).
- (b) Monitoring plans. The owner or operator of a CAIR NO_x Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.383 and 96.384(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 § 96.371, including the information required under § 75.63 of this chapter.

- (d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:
- (1) If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_x mass emissions) for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;
 - (ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;
 - (iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and
 - (iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).
 - (2) If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall either:
 - (i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or
 - (ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in §75.74(c) of this chapter) and report NO_x mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:
 - (A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;
 - (B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case

reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

- (C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and
 - (D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).
- (3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.
 - (4) For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.
- (e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
 - (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;
 - (2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions; and
 - (3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 96.375 Petitions.

- (a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x Ozone Season 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) (1) The CAIR designated representative of a CAIR NO_x Ozone Season 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.
- (2) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is 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 a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement 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.

Subpart III—CAIR NO_x Ozone Season Opt-in Units

§ 96.380 Applicability.

A CAIR NO_x Ozone Season opt-in unit must be a unit that:

- (a) Is located in the State;
- (b) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
- (c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
- (d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and
- (e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 96.381 General.

- (a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306 through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_x Ozone Season opt-in unit shall be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections and subparts of this part.
- (b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 96.382 CAIR designated representative.

Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x Ozone Season units shall have the

same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone Season units.

§ 96.383 Applying for CAIR opt-in permit.

- (a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:
- (1) A complete CAIR permit application under § 96.322;
 - (2) A certification, in a format specified by the permitting authority, that the unit:
 - (i) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;
 - (ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;
 - (iii) Vents all of its emissions to a stack; and
 - (iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;
 - (3) A monitoring plan in accordance with subpart HHHH of this part;
 - (4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and
 - (5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g)). If allocation under §96.388(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.
- (b) Duty to reapply.
- (1) The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.
 - (2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_x Ozone Season unit under § 96.304, the CAIR NO_x Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_x Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_x Ozone Season opt-in unit fails to submit a

CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.383 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 § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.
- (b) Monitoring and reporting.
 - (1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.386.
 - (ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.
 - (2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under §96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.
- (c) Baseline heat input. The unit's baseline heat rate shall equal:
 - (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section.

- (d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:
- (1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;
 - (2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section; or
 - (3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.
- (e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.
- (f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.
- (g) Date of entry into CAIR NO_x Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.
- (h) Repowered CAIR NO_x Ozone Season opt-in unit.
- (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.
 - (2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit shall no longer be treated as a CAIR NO_x Ozone Season opt-in unit or a CAIR NO_x Ozone Season unit.

§ 96.385 CAIR opt-in permit contents.

- (a) Each CAIR opt-in permit will contain:
 - (1) All elements required for a complete CAIR permit application under § 96.322;
 - (2) The certification in § 96.383(a)(2);
 - (3) The unit's baseline heat input under § 96.384(c);
 - (4) The unit's baseline NO_x emission rate under § 96.384(d);
 - (5) A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g));
 - (6) A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with § 96.386; and
 - (7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.
- (b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.
- (c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.

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

- (a) Requesting withdrawal. In order to withdraw a CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under §96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.
- (b) Conditions for withdrawal. Before a CAIR NO_x Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:
 - (1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the

requirement to hold CAIR NO_x Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.

- (2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.
- (c) Notification.
- (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.
 - (2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_x Ozone Season opt-in unit shall continue to be a CAIR NO_x Ozone Season opt-in unit.
- (d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- (e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.
- (f) Ability to reapply to the CAIR NO_x Ozone Season Trading Program. Once a CAIR NO_x Ozone Season opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_x Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.
- (g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x Ozone

Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

- (a) Notification. If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.
- (b) Permitting authority's and Administrator's actions.
 - (1) If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the permitting authority will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304.
 - (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x Ozone Season unit under §96.304, CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:
 - (A) Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304; and
 - (B) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.
 - (ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season unit that becomes a CAIR NO_x Ozone Season unit under § 96.304 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.
 - (3) (i) For every control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the CAIR NO_x Ozone Season opt-in unit will be allocated CAIR NO_x Ozone Season allowances under §96.342.
 - (ii) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is notSeptember 30, the following amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period that includes the date on which the CAIR NO_x

Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304:

- (A) The amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period multiplied by;
- (B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, divided by the total number of days in the control period; and
- (C) Rounded to the nearest whole allowance as appropriate.

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

(a) Timing requirements.

- (1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.
- (2) By no later than July 31 of the control period after the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.

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

- (1) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or
 - (ii) The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
- (2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (i) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or

- (ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
- (3) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.383(a)(5)) providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_x Ozone Season opt-in unit as follows:
 - (1) For each control period in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,
 - (i) The heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:
 - (A) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or
 - (B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).
 - (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
 - (2) For each control period in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,
 - (i) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.
 - (ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:
 - (A) 0.15 lb/mmBtu;
 - (B) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or

- (C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.
- (iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.
- (d) Recordation.
 - (1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(1) of this section.
 - (2) By September 1, of the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under §96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.

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

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2006. (10-19-06)