

times the number of tons of the source's excess emissions.

(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.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74612, Oct. 26, 2016]

**§ 97.525 Compliance with CSAPR NO<sub>x</sub> Ozone Season Group 1 assurance provisions.**

(a) *Availability for deduction.* CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances are available to be deducted for compliance with the CSAPR NO<sub>x</sub> Ozone Season Group 1 assurance provisions for a control period in a given year by the owners and operators of a group of one or more CSAPR NO<sub>x</sub> Ozone Season Group 1 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of CSAPR NO<sub>x</sub> Ozone Season Group 1 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances available under paragraph (a) of this section for compliance with the CSAPR NO<sub>x</sub> Ozone Season Group 1 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2018 and June 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO<sub>x</sub> emissions from all CSAPR NO<sub>x</sub> Ozone Season Group 1 units at CSAPR NO<sub>x</sub> Ozone Season Group 1 sources in the State (and Indian country within the borders of such State) during the control period in the

year before the year of this calculation deadline and the amount, if any, by which such total NO<sub>x</sub> emissions exceed the State assurance level as described in § 97.506(c)(2)(iii); and

(ii) Promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO<sub>x</sub> emissions from each CSAPR NO<sub>x</sub> Ozone Season Group 1 source.

(2) For each notice of data availability required in paragraph (b)(1)(ii) of this section and for any State (and Indian country within the borders of such State) identified in such notice as having CSAPR NO<sub>x</sub> Ozone Season Group 1 units with total NO<sub>x</sub> emissions exceeding the State assurance level for a control period in a given year, as described in § 97.506(c)(2)(iii):

(i) By July 1 immediately after the promulgation of such notice, the designated representative of each CSAPR NO<sub>x</sub> Ozone Season Group 1 source in each such State (and Indian country within the borders of such State) shall submit a statement, in a format prescribed by the Administrator, providing for each CSAPR NO<sub>x</sub> Ozone Season Group 1 unit (if any) at the source that operates during, but is not allocated an amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances for, such control period, the unit's allowable NO<sub>x</sub> emission rate for such control period and, if such rate is expressed in lb per mmBtu, the unit's heat rate.

(ii) By August 1 immediately after the promulgation of such notice, the Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO<sub>x</sub> Ozone Season Group 1 sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO<sub>x</sub> emissions from all CSAPR NO<sub>x</sub> Ozone Season Group 1 units at CSAPR NO<sub>x</sub> Ozone Season Group 1 sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of

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CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in §97.506(c)(2)(i) and will promulgate a notice of data availability of the results of these calculations.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice of data availability required in paragraph (b)(1)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section are in accordance with §97.506(c)(2)(iii), §§97.506(b) and 97.530 through 97.535, the definitions of “common designated representative”, “common designated representative’s assurance level”, and “common designated representative’s share” in §97.502, and the calculation formula in §97.506(c)(2)(i).

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(iii)(A) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iii)(A) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(iii)(B) of this section as having CSAPR NO<sub>x</sub> Ozone Season Group 1 units with total NO<sub>x</sub> emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and op-

erators referenced, in the notice of data availability required under paragraph (b)(2)(iii)(B) of this section, as all of the owners and operators of a group of CSAPR NO<sub>x</sub> Ozone Season Group 1 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph (b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section and after the recordation, in accordance with §97.523, of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such

State) established under paragraph (b)(3) of this section, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(iii)(B) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(iii)(B) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that the owners and operators are required to hold in accordance with § 97.506(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(iii)(B) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.506(c)(2)(i) for such control period with regard to the CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(ii) If any such data are revised by the owners and operators of a CSAPR NO<sub>x</sub> Ozone Season Group 1 source and CSAPR NO<sub>x</sub> Ozone Season Group 1 unit whose designated representative submitted such data under paragraph (b)(2)(i) of this section, as a result of a decision in or settlement of litigation concerning such submission, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.506(c)(2)(i) for such control period with regard to the CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) involved, provided that such litigation was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) and (ii) of this section, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that the owners and operators are required to hold for such control period with regard to the CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances in the assurance account established by the Administrator for the appropriate CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional

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amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate CSAPR NO<sub>x</sub> Ozone Season Group 1 sources, CSAPR NO<sub>x</sub> Ozone Season Group 1 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO<sub>x</sub> Ozone Season Group 1 assurance provisions for such control period must be a CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

[76 FR 48406, Aug. 8, 2011, as amended at 77 FR 10338, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74612, Oct. 26, 2016]

### § 97.526 Banking.

(a) A CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance 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 CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance is deducted or transferred under § 97.511(c), § 97.523, § 97.524, § 97.525, § 97.527, or § 97.528 or removed under paragraph (c) of this section.

(c) *Replacement of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances with CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances.* Notwithstanding any other provision of this subpart or any provision of a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will remove CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances from compliance accounts and general accounts and allocate in their place amounts of CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances as provided in paragraphs (c)(1) through (5) of this section and will record CSAPR NO<sub>x</sub> Ozone Season Group 2 allowances in lieu of initially recording CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances as provided in paragraph (c)(6) of this section.

(1) As soon as practicable after the completion of deductions under § 97.524 for the control period in 2016, but not later than March 1, 2018, the Administrator will temporarily suspend acceptance of CSAPR NO<sub>x</sub> Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO<sub>x</sub> Ozone Season Group 1 source located in a State listed in § 52.38(b)(2)(i) of this chapter or Indian country within the borders of such a State:

(i) The Administrator will remove all CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances allocated for the control periods in 2015 and 2016 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all CSAPR NO<sub>x</sub> Ozone Season Group 1