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(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.

[70 FR 25382, May 12, 2005, as amended at 71 FR 25396, Apr. 28, 2006]

# PART 97—FEDERAL $NO_X$ BUDGET TRADING PROGRAM, CAIR $NO_X$ AND $SO_2$ TRADING PROGRAMS, CSAPR $NO_X$ AND $SO_2$ TRADING PROGRAMS, AND TEXAS $SO_2$ TRADING PROGRAM

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97.1033 Notifications concerning monitoring.
97.1034 Recordkeeping and reporting.
97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

AUTHORITY: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

SOURCE: 65 FR 2727, Jan. 18, 2000, unless otherwise noted. 71 FR 25396, 25422, and 25443, Apr. 28, 2006

## Subpart A—$NO_X$ Budget Trading Program General Provisions

### §97.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the federal $NO_X$ Budget Trading Program, under section 126 of the CAA and §52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

### §97.2 Definitions.

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

*Account number* means the identification number given by the Administrator to each $NO_X$ Allowance Tracking System account.

*Acid Rain emissions limitation* means, as defined in §72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

*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 $NO_X$ allowances, the determination by the Administrator of the number of $NO_X$ allowances to be initially

credited to a $NO_X$ Budget unit or an allocation set-aside.

*Automated data acquisition and handling system* or *DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under subpart H 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 H 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.

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

*Combined cycle system* means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

*Combustion turbine* means an enclosed fossil or other fuel-fired device that is comprised of 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.

*Commence commercial operation* means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is a $NO_X$ Budget unit under § 97.4(a) on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a $NO_X$ Budget unit under § 97.4(a) on the date the unit commences commercial operation, the date the unit becomes a $NO_X$ Budget unit under § 97.4(a) shall be the unit's date of commencement of commercial operation.

*Commence operation* means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 97.4(b), § 97.5, or subpart I of this part for a unit that is a $NO_X$ Budget unit under § 97.4(a) on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a $NO_X$ Budget unit under § 97.4(a) on the date of commencement of operation, the date the unit becomes a $NO_X$ Budget unit under § 97.4(a) shall be the unit's date of commencement of operation.

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

*Compliance account* means a $NO_X$ Allowance Tracking System account, established by the Administrator for a $NO_X$ Budget unit under subpart F of this part, in which the $NO_X$ allowance allocations for the unit are initially recorded and in which are held $NO_X$ allowances available for use by the unit for a control period for the purpose of meeting the unit's $NO_X$ Budget emissions limitation.

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

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a $NO_X$

pollutant concentration monitor and an automated DAHS. A $NO_X$ concentration monitoring system provides a permanent, continuous record of $NO_X$ emissions in units of parts per million (ppm);

(3) A nitrogen oxides emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated DAHS. A $NO_X$ concentration monitoring system provides a permanent, continuous record of: $NO_X$ concentration in units of parts per million (ppm), diluent gas concentration in units of percent $O_2$ or $CO_2$ (percent $O_2$ or $CO_2$), and $NO_X$ emission rate in units of pounds per million British thermal units (lb/mmBtu); and

(4) A moisture monitoring system, as defined in §75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent $H_2O$ (percent $H_2O$).

*Control period* means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

*Electricity for sale under firm contract to the grid* means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the $NO_X$ authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

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

*Excess emissions* means any tonnage of nitrogen oxides emitted by a $NO_X$ Budget unit during a control period that exceeds the $NO_X$ Budget emissions limitation for the unit.

*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:

(1) For units that commenced operation before January 1, 1996, the combustion of fossil fuel, 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 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(2) For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combustion of fossil fuel, 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 1996; or

(3) For units that commence operation on or after January 1, 1997:

(i) The combination of fossil fuel, alone or in combustion 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; or

(ii) The combination of fossil fuel, 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, provided that the unit shall be ''fossil fuel-fired'' as of the date, during such year, on which the unit begins combusting fossil fuel.

*General account* means a $NO_X$ Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

*Generator* means a device that produces electricity.

*Heat input* means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the $NO_X$ authorized account representative and as determined by the Administrator in accordance with subpart H of this part. Heat input does not include the heat derived from preheated combustion air, recirculated

flue gases, or exhaust from other sources.

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

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

(1) For the life of the unit;

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

(3) For a period equal to or greater 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 ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as determined by the physical design and physical characteristics of the unit.

*Maximum potential hourly heat input* means an hourly heat input (in mmBtu/hr) used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent $CO_2$) or the minimum oxygen concentration (in percent O2).

*Maximum potential $NO_X$ emission rate* means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential concentration of $NO_X$ under section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O2) or the minimum carbon dioxide concentration (in percent $CO_2$), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

*Maximum rated hourly heat input* means a unit specific maximum hourly heat input (in mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

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

*Most stringent State or Federal $NO_X$ emissions limitation* means the lowest $NO_X$ emissions limitation (in 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 the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

*Non-title V permit* means a federally enforceable permit administered by the permitting authority pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than title V of the Clean Air Act and part 70 or 71 of this chapter.

*$NO_X$ allowance* means a limited authorization by the Administrator under the $NO_X$ Budget Trading Program to emit up to one ton of nitrogen oxides

during the control period of the specified year or of any year thereafter, except as provided under §97.54(f). No provision of the $NO_X$ Budget Trading Program, the $NO_X$ Budget permit application, the $NO_X$ Budget permit, or an exemption under §97.4(b) or §97.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except §97.40, §97.41, §97.42, §97.43, or §97.88, ''$NO_X$ allowance'' also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State $NO_X$ Budget Trading Program established, and approved and administered by the Administrator, pursuant to §51.121 of this chapter.

*$NO_X$ allowance deduction* or *deduct $NO_X$ allowances* means the permanent withdrawal of $NO_X$ allowances by the Administrator from a $NO_X$ Allowance Tracking System compliance account or overdraft account to account for the number of tons of $NO_X$ emissions from a $NO_X$ Budget unit for a control period, determined in accordance with subparts H and F of this part, or for any other $NO_X$ allowance withdrawal requirement under this part.

*$NO_X$ Allowance Tracking System* means the system by which the Administrator records allocations, deductions, and transfers of $NO_X$ allowances under the $NO_X$ Budget Trading Program.

*$NO_X$ Allowance Tracking System account* means an account in the $NO_X$ Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of $NO_X$ allowances.

*$NO_X$ allowance transfer deadline* means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which $NO_X$ allowances must be submitted for recordation in a $NO_X$ Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's $NO_X$ Budget emissions limitation for the control period immediately preceding such deadline.

*$NO_X$ allowances held* or *hold $NO_X$ allowances* means the $NO_X$ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a $NO_X$ Allowance Tracking System account.

*$NO_X$ authorized account representative* means, for a $NO_X$ Budget source or $NO_X$ Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all $NO_X$ Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the $NO_X$ Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of $NO_X$ allowances held in the general account.

*$NO_X$ Budget emissions limitation* means, for a $NO_X$ Budget unit, the tonnage equivalent of the $NO_X$ allowances available for compliance deduction for the unit under §97.54(a), (b), (e), and (f) in a control period adjusted by deductions of such $NO_X$ allowances to account for actual heat input under §97.42(e) for the control period or to account for excess emissions for a prior control period under §97.54(d) or to account for withdrawal from the $NO_X$ Budget Trading Program, or for a change in regulatory status, of a $NO_X$ Budget opt-in unit under §97.86 or §97.87.

*$NO_X$ Budget opt-in permit* means a $NO_X$ Budget permit covering a $NO_X$ Budget opt-in unit.

*$NO_X$ Budget opt-in unit* means a unit that has been elected to become a $NO_X$ Budget unit under the $NO_X$ Budget Trading Program and whose $NO_X$ Budget opt-in permit has been issued and is in effect under subpart I of this part.

*$NO_X$ Budget permit* means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the $NO_X$ Budget Trading Program requirements applicable to a $NO_X$ Budget source, to each $NO_X$ Budget unit at the $NO_X$ Budget source, and to the owners and operators and the $NO_X$ authorized account

representative of the $NO_X$ Budget source and each $NO_X$ Budget unit.

*$NO_X$ Budget source* means a source that includes one or more $NO_X$ Budget units.

*$NO_X$ Budget Trading Program* means a multistate nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with this part and pursuant to § 52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

*$NO_X$ Budget unit* means a unit that is subject to the $NO_X$ Budget emissions limitation under § 97.4(a) or § 97.80.

*Operating* means, with regard to a unit under §§ 97.22(d)(2) and 97.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial $NO_X$ Budget permit under § 97.83(a). The unit's documented heat input will be determined in accordance with part 75 of this chapter if the unit was otherwise subject to the requirements of part 75 of this chapter during that 6-month period or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter during that 6-month period.

*Operator* means any person who operates, controls, or supervises a $NO_X$ Budget unit, a $NO_X$ Budget source, or a unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

*Opt-in* means to be elected to become a $NO_X$ Budget unit under the $NO_X$ Budget Trading Program through a final, effective $NO_X$ Budget opt-in permit under subpart I of this part.

*Overdraft account* means the $NO_X$ Allowance Tracking System account, established by the Administrator under subpart F of this part, for each $NO_X$ Budget source where there are two or more $NO_X$ Budget units.

*Owner* means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a $NO_X$ Budget unit or in a unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a $NO_X$ Budget unit or in a unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a $NO_X$ Budget unit or from a unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, 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, upon the revenues or income from the $NO_X$ Budget unit or the unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

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

*Percent monitor data availability* means, for purposes of § 97.43 (a)(1) and § 97.84(b), total unit operating hours for which quality-assured data were recorded under subpart H of this part in a control period, divided by the total number of unit operating hours in the control period, and multiplied by 100 percent.

*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 $NO_X$ Budget Trading Program in accordance with subpart C of this part.

*Potential electrical output capacity* means 33 percent of a unit's maximum design heat input.

*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 writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

*Recordation, record, or recorded* means, with regard to $NO_X$ allowances, the movement of $NO_X$ allowances by the Administrator from one $NO_X$ Allowance Tracking System account to another, 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 appendix A of part 60 of this chapter.

*Serial number* means, when referring to $NO_X$ allowances, the unique identification number assigned to each $NO_X$ allowance by the Administrator, under §97.53(c).

*Source* means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Clean Air Act. 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 48 contiguous States or a portion thereof or the District of Columbia that is specified in §52.34 of this chapter and in which are located units for which the Administrator makes an effective finding under §52.34 of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

*Ton* or *tonnage* means any ''short ton'' (i.e., 2,000 pounds). For the purpose of determining compliance with the $NO_X$ Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

*Unit* means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

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

*Unit operating hour* or *hour of unit operation* means any hour (or fraction of an hour) during which a unit combusts any fuel.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21645, Apr. 21, 2004]

### §97.3 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.
$CO_2$-carbon dioxide.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
lb-pounds.
mmBtu-million Btu.
MWe-megawatt electrical.
$NO_X$-nitrogen oxides.
$O_2$-oxygen.
ton-2000 pounds.

### §97.4 Applicability.

(a) The following units in a State shall be a $NO_X$ Budget unit, and any source that includes one or more such units shall be a $NO_X$ Budget source, subject to the requirements of this part:

(1)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator—

(*1*) With a nameplate capacity greater than 25 MWe and

(*2*) Producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator—

(*1*) With a nameplate capacity greater than 25 MWe and

(*2*) Producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator—

(*1*) With a nameplate capacity greater than 25 MWe and

(*2*) Producing electricity for sale.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1995 or 1996 under the Acid Rain Program.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity grater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1997 or 1998 under the Acid Rain Program.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for any year.

(2)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit—

(*1*) With a maximum design heat input greater than 250 mmBtu/hr and

(*2*) Not serving during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit—

(*1*) With a maximum design heat input greater than 250 mmBtu/hr and

(*2*) Not serving during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr:

(*1*) At no time serving a generator producing electricity for sale; or

(*2*) At any time serving a generator with a nameplate capacity of 25 MWe or less producing electricity for sale and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for 1995 and 1996.

(B) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) under the Acid Rain Program for 1997 and 1998.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for each year.

(b)(1) Notwithstanding paragraph (a) of this section, a unit under paragraph (a)(1) or (a)(2) of this section that has a federally enforceable permit that restricts the unit to combusting only natural gas or fuel oil (as defined in § 75.2 of this chapter) during a control period includes a $NO_X$ emission limitation restricting $NO_X$ emissions during a control period to 25 tons or less, and includes the special provisions in paragraph (b)(4) of this section shall be exempt from the requirements of the $NO_X$ Budget Trading Program, except for the provisions of this paragraph (b), § 97.2, § 97.3, § 97.4(a), § 97.7, and subparts E, F, and G of this part. The $NO_X$ emission limitation under this paragraph

(b)(1) shall restrict $NO_X$ emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly $NO_X$ mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default $NO_X$ emission rate otherwise applicable to the unit under §75.19 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective as follows:

(i) The exemption shall become effective on the date on which the $NO_X$ emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final; or

(ii) If the $NO_X$ emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided that such $NO_X$ emission limitation and the special provisions apply to the unit as of such first date of operation. If such $NO_X$ emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (b)(1) of this section shall become effective on October 1 of the year during which such $NO_X$ emission limitation and the special provisions become final.

(3) The permitting authority that issues a federally enforceable permit under paragraph (b)(1) of this section for a unit under paragraph (a)(1) or (a)(2) of this section will provide the Administrator written notice of the issuance of such permit and, upon request, a copy of the permit.

(4) *Special provisions.* (i) A unit exempt under paragraph (b)(1) of this section shall comply with the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section during the control period in each year.

(ii) The Administrator will allocate $NO_X$ allowances to the unit under §§97.41(a) through (c) and 97.42(a) through (c). For each control period for which the unit is allocated $NO_X$ allowances under §§97.41(a) through (c) and 97.42(a) through (c):

(A) The owners and operators of the unit must specify a general account, in which the Administrator will record the $NO_X$ allowances; and

(B) After the Administrator records a $NO_X$ allowance allocations under §§97.41(a) through (c) and 97.42(a) through (c), the Administrator will deduct, from the general account under paragraph (b)(4)(ii)(A) of this section, $NO_X$ allowances that are allocated for the same or a prior control period as the $NO_X$ allowances allocated to the unit under §§97.41(a) through (c) and 97.42(a) through (c) and that equal the $NO_X$ emission limitation (in tons of $NO_X$) on which the unit's exemption under paragraph (b)(1) of this section is based. The $NO_X$ authorized account representative shall ensure that such general account contains the $NO_X$ allowances necessary for completion of such deduction.

(iii) A unit exempt under this paragraph (b) shall report hours of unit operation during the control period in each year to the permitting authority by November 1 of that year.

(iv) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (b)(1) of this section shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (b)(1) of this section were met, including the restriction on fuel use or unit operating hours. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit met the restriction on fuel use or unit operating hours.

(v) The owners and operators and, to the extent applicable, the $NO_X$ authorized account representative of a unit exempt under paragraph (b)(1) of this section shall comply with the requirements of the $NO_X$ Budget 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.

(vi) On the earlier of the following dates, a unit exempt under paragraph (b)(1) of this section shall lose its exemption:

(A) The date on which the restriction on fuel use or unit operating hours described in paragraph (b)(1) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(B) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use or unit operating hours described in paragraph (b)(1) of this section during any control period starting in 2004.

(vii) A unit that loses its exemption in accordance with paragraph (b)(4)(vi) of this section shall be subject to the requirements of this part. For the purpose of applying permitting requirements under subpart C of this part, allocating allowances under subpart E of this part, and applying monitoring requirements under subpart H of this part, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (a)(1) of this section, commencing commercial operation on the date the unit loses its exemption.

(viii) A unit that is exempt under paragraph (b)(1) of this section is not eligible to be a $NO_X$ Budget opt-in unit under subpart I of this part.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21645, Apr. 21, 2004]

### § 97.5 Retired unit exemption.

(a) This section applies to any $NO_X$ Budget unit, other than a $NO_X$ Budget opt-in unit, that is permanently retired.

(b)(1) Any $NO_X$ Budget unit, other than a $NO_X$ Budget opt-in unit, that is permanently retired shall be exempt from the $NO_X$ Budget Trading Program, except for the provisions of this section, § 97.2, § 97.3, § 97.4, § 97.7, and subparts E, F, and G of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the $NO_X$ authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any $NO_X$ Budget permit for the unit. The $NO_X$ authorized account representative shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.* (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator will allocate $NO_X$ allowances under subpart E of this part to a unit exempt under this section. For each control period for which the unit is allocated one or more $NO_X$ allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such $NO_X$ allowances.

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

(4) The owners and operators and, to the extent applicable, the $NO_X$ authorized account representative of a unit exempt under this section shall comply with the requirements of the $NO_X$ Budget 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)(i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the $NO_X$ authorized account representative of the source submits a complete $NO_X$ Budget permit application under §97.22 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the unit resumes operation.

(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the $NO_X$ authorized account representative of the source submits a complete $NO_X$ Budget permit application under §97.22 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the unit is to first resume operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(i) The date on which the $NO_X$ authorized account representative submits a $NO_X$ Budget permit application under paragraph (c)(5) of this section;

(ii) The date on which the $NO_X$ authorized account representative is required under paragraph (c)(5) of this section to submit a $NO_X$ Budget permit application; or

(iii) The date on which the unit resumes operation, if the unit is not required to submit a $NO_X$ permit application.

(7) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

(8) A unit that is exempt under this section is not eligible to be a $NO_X$ Budget opt-in unit under subpart I of this part.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

### §97.6 Standard requirements.

(a) *Permit requirements.* (1) The $NO_X$ authorized account representative of each $NO_X$ Budget source required to have a federally enforceable permit and each $NO_X$ Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete $NO_X$ Budget permit application under §97.22 in accordance with the deadlines specified in §97.21(b) and (c);

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

(2) The owners and operators of each $NO_X$ Budget source required to have a federally enforceable permit and each $NO_X$ Budget unit required to have a federally enforceable permit at the source shall have a $NO_X$ Budget permit issued by the permitting authority and operate the unit in compliance with such $NO_X$ Budget permit.

(3) The owners and operators of a $NO_X$ Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a $NO_X$ Budget permit application, and to have a $NO_X$ Budget permit, under subpart C of this part for such $NO_X$ Budget source.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the $NO_X$ authorized account representative of each $NO_X$ Budget source and each $NO_X$ Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.

(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the $NO_X$ Budget emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides requirements.* (1) The owners and operators of each $NO_X$ Budget source and each $NO_X$ Budget

unit at the source shall hold $NO_X$ allowances available for compliance deductions under § 97.54(a), (b), (e), or (f) as of the $NO_X$ allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total $NO_X$ emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual heat input under § 97.42(e) for the control period or to account for excess emissions for a prior control period under § 97.54(d) or to account for withdrawal from the $NO_X$ Budget Trading Program, or a change in regulatory status, of a $NO_X$ Budget opt-in unit under § 97.86 or § 97.87.

(2) Each ton of nitrogen oxides emitted in excess of the $NO_X$ Budget emissions limitation shall constitute a separate violation of this part, the Clean Air Act, and applicable State law.

(3) A $NO_X$ Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 31, 2004 or the date on which the unit commences operation.

(4) $NO_X$ allowances shall be held in, deducted from, or transferred among $NO_X$ Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.

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

(6) A $NO_X$ allowance allocated by the Administrator under the $NO_X$ Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the $NO_X$ Budget Trading Program. No provision of the $NO_X$ Budget Trading Program, the $NO_X$ Budget permit application, the $NO_X$ Budget permit, or an exemption under § 97.4(b) or § 97.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) A $NO_X$ allowance allocated by the Administrator under the $NO_X$ Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of a $NO_X$ allowance to or from a $NO_X$ Budget unit's compliance account or the overdraft account of the source where the unit is located is incorporated automatically in any $NO_X$ Budget permit of the $NO_X$ Budget unit.

(d) *Excess emissions requirements.* (1) The owners and operators of a $NO_X$ Budget unit that has excess emissions in any control period shall:

(i) Surrender the $NO_X$ allowances required for deduction under § 97.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 97.54(d)(3).

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the $NO_X$ Budget source and each $NO_X$ Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation under § 97.13 for the $NO_X$ authorized account representative for the source and each $NO_X$ Budget unit at the source and all documents that demonstrate the truth of the statements in the account 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 account certificate of representation under § 97.13 changing the $NO_X$ authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H 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 $NO_X$ Budget Trading Program.

(iv) Copies of all documents used to complete a $NO_X$ Budget permit application and any other submission under the $NO_X$ Budget Trading Program or to

demonstrate compliance with the requirements of the $NO_X$ Budget Trading Program.

(2) The $NO_X$ authorized account representative of a $NO_X$ Budget source and each $NO_X$ Budget unit at the source shall submit the reports and compliance certifications required under the $NO_X$ Budget Trading Program, including those under subpart D, H, or I of this part.

(f) *Liability*. (1) Any person who knowingly violates any requirement or prohibition of the $NO_X$ Budget Trading Program, a $NO_X$ Budget permit, or an exemption under §97.4(b) or §97.5 shall be subject to enforcement pursuant to applicable State or Federal law.

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

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

(4) Each $NO_X$ Budget source and each $NO_X$ Budget unit shall meet the requirements of the $NO_X$ Budget Trading Program.

(5) Any provision of the $NO_X$ Budget Trading Program that applies to a $NO_X$ Budget source or the $NO_X$ authorized account representative of a $NO_X$ Budget source shall also apply to the owners and operators of such source and of the $NO_X$ Budget units at the source.

(6) Any provision of the $NO_X$ Budget Trading Program that applies to a $NO_X$ Budget unit or the $NO_X$ authorized account representative of a $NO_X$ budget unit shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the $NO_X$ authorized account representative of one $NO_X$ Budget unit shall not be liable for any violation by any other $NO_X$ Budget unit of which they are not owners or operators or the $NO_X$ authorized account representative and that is located at a source of which they are not owners or operators or the $NO_X$ authorized account representative.

(g) *Effect on other authorities*. No provision of the $NO_X$ Budget Trading Program, a $NO_X$ Budget permit application, a $NO_X$ Budget permit, or an exemption under §97.4(b) or §97.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the $NO_X$ authorized account representative of a $NO_X$ Budget source or $NO_X$ Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

### §97.7 Computation of time.

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

## Subpart B—$NO_X$ Authorized Account Representative for $NO_X$ Budget Sources

### §97.10 Authorization and responsibilities of $NO_X$ authorized account representative.

(a) Except as provided under §97.11, each $NO_X$ Budget source, including all $NO_X$ Budget units at the source, shall have one and only one $NO_X$ authorized account representative, with regard to all matters under the $NO_X$ Budget Trading Program concerning the source or any $NO_X$ Budget unit at the source.

(b) The $NO_X$ authorized account representative of the $NO_X$ Budget source

shall be selected by an agreement binding on the owners and operators of the source and all $NO_X$ Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 97.13, the $NO_X$ authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the $NO_X$ Budget source represented and each $NO_X$ Budget unit at the source in all matters pertaining to the $NO_X$ Budget Trading Program, not withstanding any agreement between the $NO_X$ authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the $NO_X$ authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No $NO_X$ Budget permit shall be issued, and no $NO_X$ Allowance Tracking System account shall be established for a $NO_X$ Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 97.13 for a $NO_X$ authorized account representative of the source and the $NO_X$ Budget units at the source.

(e) (1) Each submission under the $NO_X$ Budget Trading Program shall be submitted, signed, and certified by the $NO_X$ authorized account representative for each $NO_X$ Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the $NO_X$ authorized account representative: ''I am authorized to make this submission on behalf of the owners and operators of the $NO_X$ Budget sources or $NO_X$ Budget 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 $NO_X$ Budget source or a $NO_X$ Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

### § 97.11 Alternate $NO_X$ authorized account representative.

(a) An account certificate of representation may designate one and only one alternate $NO_X$ authorized account representative who may act on behalf of the $NO_X$ authorized account representative. The agreement by which the alternate $NO_X$ authorized account representative is selected shall include a procedure for authorizing the alternate $NO_X$ authorized account representative to act in lieu of the $NO_X$ authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 97.13, any representation, action, inaction, or submission by the alternate $NO_X$ authorized account representative shall be deemed to be a representation, action, inaction, or submission by the $NO_X$ authorized account representative.

(c) Except in this section and §§ 97.10(a), 97.12, 97.13, and 97.51, whenever the term ''$NO_X$ authorized account representative'' is used in this part, the term shall be construed to include the alternate $NO_X$ authorized account representative.

### § 97.12 Changing $NO_X$ authorized account representative and alternate $NO_X$ authorized account representative; changes in owners and operators.

(a) *Changing $NO_X$ authorized account representative.* The $NO_X$ authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 97.13. Notwithstanding any such

change, all representations, actions, inactions, and submissions by the previous $NO_X$ authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new $NO_X$ authorized account representative and the owners and operators of the $NO_X$ Budget source and the $NO_X$ Budget units at the source.

(b) *Changing alternate $NO_X$ authorized account representative.* The alternate $NO_X$ authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under §97.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate $NO_X$ authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate $NO_X$ authorized account representative and the owners and operators of the $NO_X$ Budget source and the $NO_X$ Budget units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a $NO_X$ Budget source or a $NO_X$ Budget unit is not included in the list of owners and operators submitted in the account certificate of representation under §97.13, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a $NO_X$ Budget source or a $NO_X$ Budget unit, including the addition of a new owner or operator, the $NO_X$ authorized account representative or alternate $NO_X$ authorized account representative shall submit a revision to the account certificate of representation under §97.13 amending the list of owners and operators to include the change.

**§97.13 Account certificate of representation.**

(a) A complete account certificate of representation for a $NO_X$ authorized account representative or an alternate $NO_X$ authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the $NO_X$ Budget source and each $NO_X$ Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative.

(3) A list of the owners and operators of the $NO_X$ Budget source and of each $NO_X$ Budget unit at the source.

(4) The following certification statement by the $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative: ''I certify that I was selected as the $NO_X$ authorized account representative or alternate $NO_X$ authorized account representative, as applicable, by an agreement binding on the owners and operators of the $NO_X$ Budget source and each $NO_X$ Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the $NO_X$ Budget Trading Program on behalf of the owners and operators of the $NO_X$ Budget source and of each $NO_X$ Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit.''

(5) The signature of the $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted

to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

### § 97.14 Objections concerning $NO_X$ authorized account representative.

(a) Once a complete account certificate of representation under § 97.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 97.13 is received by the Administrator.

(b) Except as provided in § 97.12 (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 $NO_X$ authorized account representative shall affect any representation, action, inaction, or submission of the $NO_X$ authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the $NO_X$ Budget 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 $NO_X$ authorized account representative, including private legal disputes concerning the proceeds of $NO_X$ allowance transfers.

## Subpart C—Permits

### § 97.20 General $NO_X$ Budget Trading Program permit requirements.

(a) For each $NO_X$ Budget source required to have a federally enforceable permit, such permit shall include a $NO_X$ Budget permit administered by the permitting authority for the federally enforceable permit.

(1) For $NO_X$ Budget sources required to have a title V operating permit, the $NO_X$ Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part.

(2) For $NO_X$ Budget sources required to have a non-title V permit, the $NO_X$ Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part.

(b) Each $NO_X$ Budget permit shall contain all applicable $NO_X$ Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

### § 97.21 Submission of $NO_X$ Budget permit applications.

(a) *Duty to apply.* The $NO_X$ authorized account representative of any $NO_X$ Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete $NO_X$ Budget permit application under § 97.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For $NO_X$ Budget sources required to have a title V operating permit:

(i) For any source, with one or more $NO_X$ Budget units under § 97.4(a) that commence operation before January 1, 2001, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under § 97.22 covering such $NO_X$ Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

(ii) For any source, with any $NO_X$ Budget unit under § 97.4(a) that commences operation on or after January 1, 2001, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under § 97.22 covering such $NO_X$ Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the $NO_X$ Budget unit commences operation.

(2) For $NO_X$ Budget sources required to have a non-title V permit:

(i) For any source, with one or more $NO_X$ Budget units under §97.4(a) that commence operation before January 1, 2001, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under §97.22 covering such $NO_X$ Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

(ii) For any source, with any $NO_X$ Budget unit under §97.4(a) that commences operation on or after January 1, 2001, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under §97.22 covering such $NO_X$ Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the $NO_X$ Budget unit commences operation.

(c) *Duty to reapply*. (1) For a $NO_X$ Budget source required to have a title V operating permit, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under §97.22 for the $NO_X$ Budget source covering the $NO_X$ Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a $NO_X$ Budget source required to have a non-title V permit, the $NO_X$ authorized account representative shall submit a complete $NO_X$ Budget permit application under §97.22 for the $NO_X$ Budget source covering the $NO_X$ Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

### §97.22 Information requirements for $NO_X$ Budget permit applications.

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

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

(b) Identification of each $NO_X$ Budget unit at the $NO_X$ Budget source and whether it is a $NO_X$ Budget unit under §97.4(a) or under subpart I of this part;

(c) The standard requirements under §97.6; and

(d) For each $NO_X$ Budget opt-in unit at the $NO_X$ Budget source, the following certification statements by the $NO_X$ authorized account representative:

(1) ''I certify that each unit for which this permit application is submitted under subpart I of this part is not a $NO_X$ Budget unit under 40 CFR 97.4(a) and is not covered by an exemption under 40 CFR 97.4(b) or 97.5 that is in effect.''

(2) If the application is for an initial $NO_X$ Budget opt-in permit, ''I certify that each unit for which this permit application is submitted under subpart I of 40 CFR part 97 is operating, as that term is defined under 40 CFR 97.2.''

### §97.23 $NO_X$ Budget permit contents.

(a) Each $NO_X$ Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete $NO_X$ Budget permit application under §97.22.

(b) Each $NO_X$ Budget permit is deemed to incorporate automatically the definitions of terms under §97.2 and, upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of a $NO_X$ allowance to or from the compliance accounts of the $NO_X$ Budget units covered by the permit or the overdraft account of the $NO_X$ Budget source covered by the permit.

### §97.24 $NO_X$ Budget permit revisions.

(a) For a $NO_X$ Budget source with a title V operating permit, except as provided in §97.23(b), the permitting authority will revise the $NO_X$ Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a $NO_X$ Budget source with a non-title V permit, except as provided in §97.23(b), the permitting authority will revise the $NO_X$ Budget permit, as

necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

## Subpart D—Compliance Certification

### § 97.30 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more $NO_X$ Budget units at a source are subject to the $NO_X$ Budget emissions limitation, the $NO_X$ authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The $NO_X$ authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the $NO_X$ Budget emissions limitation for the control period covered by the report:

(1) Identification of each $NO_X$ Budget unit;

(2) At the $NO_X$ authorized account representative's option, the serial numbers of the $NO_X$ allowances that are to be deducted from each unit's compliance account under § 97.54 for the control period;

(3) At the $NO_X$ authorized account representative's option, for units sharing a common stack and having $NO_X$ emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under § 97.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under paragraph (a) of this section, the $NO_X$ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the $NO_X$ Budget units at the source in compliance with the $NO_X$ Budget Trading Program, whether each $NO_X$ Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the $NO_X$ Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the $NO_X$ Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute $NO_X$ emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the $NO_X$ emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, have changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

### § 97.31 Administrator's action on compliance certifications.

(a) The Administrator may review and conduct independent audits concerning any compliance certification

or any other submission under the $NO_X$ Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct $NO_X$ allowances from or transfer $NO_X$ allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

## Subpart E—$NO_X$ Allowance Allocations

### §97.40 Trading program budget.

In accordance with §§97.41 and 97.42, the Administrator will allocate to the $NO_X$ Budget units under §97.4(a) in a State, for each control period specified in §97.41, a total number of $NO_X$ allowances equal to the trading budget for the State, as set forth in appendix C to this subpart, less the sum of the $NO_X$ emission limitations (in tons) for each unit exempt under §97.4(b) that is not allocated any $NO_X$ allowances under §97.42 (b) or (c) for the control period and whose $NO_X$ emission limitation (in tons of $NO_X$) is not included in the amount calculated under §97.42(d)(5)(ii)(B) for the control period.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21646, Apr. 21, 2004; 81 FR 74604, Oct., 2016]

### §97.41 Timing requirements for $NO_X$ allowance allocations.

(a) The $NO_X$ allowance allocations, determined in accordance with §§97.42(a) through (c), for the control periods in 2004 through 2007 are set forth in appendices A and B to this subpart.

(b) By April 1, 2005, the Administrator will determine by order the $NO_X$ allowance allocations, in accordance with §§97.42 (a) through (c), for the control periods in 2008 through 2012.

(c) By April 1, 2010, by April 1 of 2015, and thereafter by April 1 of the year that is 5 years after the last year for which $NO_X$ allowances allocations are determined, the Administrator will determine by order the $NO_X$ allowance allocations, in accordance with §§97.42(a) through (c), for the control periods in the years that are 3, 4, 5, 6, and 7 years after the applicable deadline under this paragraph (c).

(d) By April 1, 2004 and April 1 of each year thereafter, the Administrator will determine by order the $NO_X$ allowance allocations, in accordance with §97.42(d), for the control period in the year of the applicable deadline under this paragraph (d).

(e) The Administrator will make available to the public each determination of $NO_X$ allowance allocations under paragraph (b), (c), or (d) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with §97.42. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with §97.42.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 81 FR 74604, Oct. 26, 2016]

### §97.42 $NO_X$ allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating $NO_X$ allowance allocations for each $NO_X$ Budget unit under §97.4(a) will be:

(i) For a $NO_X$ allowance allocation under §97.41(a):

(A) For a unit under §97.4(a)(1), the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998; or

(B) For a unit under §97.4(a)(2), the control period in 1995 or, if the Administrator determines that reasonably reliable data are available for control periods in 1996 through 1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998.

(ii) For a $NO_X$ allowance allocation under §97.41(b), the unit's average heat input for the control periods in 2002 through 2004.

(iii) For a $NO_X$ allowance allocation under §97.41(c), the unit's average heat input for the control period in the years that are 4, 5, 6, 7, and 8 years before the first year for which the allocation is being calculated.

(2) The unit's heat input for the control period in each year specified under

paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter. Notwithstanding the first sentence of this paragraph (a)(2):

(i) For a $NO_X$ allowance allocation under § 97.41(a), such heat input will be determined using the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the control period.

(ii) For a $NO_X$ allowance allocation under § 97.41(b) or (c) for a unit exempt under § 97.4(b), such heat input shall be treated as zero if the unit is exempt under § 97.4(b) during the control period.

(b) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all $NO_X$ Budget units in a given State under § 97.4(a)(1) that commenced operation before May 1, 1997 for allocations under § 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of $NO_X$ allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate $NO_X$ allowances to each $NO_X$ Budget unit under § 97.4(a)(1) for each control period in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(2) If the initial total number of $NO_X$ allowances allocated to all $NO_X$ Budget units under § 97.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of $NO_X$ allowances allocated to all such $NO_X$ Budget units for the control period under paragraph (b)(1) of this section so that the total number of $NO_X$ allowances allocated equals 95 percent of such portion of the State's trading program budget. This adjustment will be made by: multiplying each unit's allocation by 95 percent of such portion of the State's trading program budget; dividing by the total number of $NO_X$ allowances allocated under paragraph (b)(1) of this section for the control period; and rounding to the nearest whole number of $NO_X$ allowances as appropriate.

(c) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all $NO_X$ Budget units in a given State under § 97.4(a)(2) that commenced operation before May 1, 1997 for allocations under § 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of $NO_X$ allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate $NO_X$ allowances to each $NO_X$ Budget unit under § 97.4(a)(2) for each control period in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(2) If the initial total number of $NO_X$ allowances allocated to all $NO_X$ Budget units under § 97.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of $NO_X$ allowances allocated to all such $NO_X$ Budget units for the control period under paragraph (a)(1) of this section so that the total number of $NO_X$ allowances allocated equals 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. This adjustment will be made by: multiplying each unit's allocation by 95 percent of the portion of the State's trading program budget under § 97.40 covering such units; dividing by the total number of $NO_X$ allowances allocated under paragraph (c)(1) of this section for the control period; and

rounding to the nearest whole number of $NO_X$ allowances as appropriate.

(d) For each control period specified in §97.41(d), the Administrator will allocate $NO_X$ allowances to $NO_X$ Budget units in a given State under §97.4(a) (except for units exempt under §97.4(b)) that commence operation, or are projected to commence operation, on or after: May 1, 1997 (for control periods under §97.41(a)); May 1, 2003, (for control periods under §97.41(b)); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the control period (for control periods under §97.41(c)). The Administrator will make the allocations under this paragraph (d) in accordance with the following procedures:

(1) The Administrator will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated $NO_X$ allowances equal to 5 percent of the tons of $NO_X$ emission in the State's trading program budget under §97.40, rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(2) The $NO_X$ authorized account representative of a $NO_X$ Budget unit specified in this paragraph (d) may submit to the Administrator a request, in a format specified by the Administrator, to be allocated $NO_X$ allowances for the control period. The $NO_X$ allowance allocation request must be received by the Administrator on or after the date on which the State permitting authority issues a permit to construct the unit and by January 1 before the control period for which $NO_X$ allowances are requested.

(3) In a $NO_X$ allowance allocation request under paragraph (d)(2) of this section, the $NO_X$ authorized account representative for a $NO_X$ Budget unit under §97.4(a)(1) may request for the control period $NO_X$ allowances in an amount that does not exceed the lesser of:

(i) 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate; or

(ii) The unit's most stringent State or Federal $NO_X$ emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(4) In a $NO_X$ allowance allocation request under paragraph (d)(2) of this section, the $NO_X$ authorized account representative for a $NO_X$ Budget unit under §97.4(a)(2) may request for the control period $NO_X$ allowances in an amount that does not exceed the lesser of:

(i) 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate; or

(ii) The unit's most stringent State or Federal $NO_X$ emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(5) The Administrator will review each $NO_X$ allowance allocation request submitted in accordance with paragraph (d)(2) of this section and will allocate $NO_X$ allowances pursuant to such request as follows:

(i) Upon receipt of the $NO_X$ allowance allocation request, the Administrator will make any necessary adjustments to the request to ensure that the requirements of paragraphs (d) introductory text, (d)(2), (d)(3), and (d)(4) are met.

(ii) The Administrator will determine the following amounts:

(A) The sum of the $NO_X$ allowances requested (as adjusted under paragraph (d)(5)(i) of this section) in all $NO_X$ allowance allocation requests under paragraph (d)(2) of this section for the control period; and

(B) For units exempt under § 97.4(b) in the State that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)), the sum of the $NO_X$ emission limitations (in tons of $NO_X$) on which each unit's exemption under § 97.4(b) is based.

(iii) If the number of $NO_X$ allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is not less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate the amount of the $NO_X$ allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the $NO_X$ Budget unit for which the allocation request was submitted.

(iv) If the number of $NO_X$ allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate, to the $NO_X$ Budget unit for which the allocation request was submitted, the amount of $NO_X$ allowances requested (as adjusted under paragraph (d)(5)(i) of this section) multiplied by the number of $NO_X$ allowances in the allocation set-aside for the control period less the amount determined under paragraph (d)(5)(ii)(B) of this section, divided by the amount determined under paragraph (d)(5)(ii)(A) of this section, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(e)(1) For a $NO_X$ Budget unit that is allocated $NO_X$ allowances under paragraph (d) of this section for a control period, the Administrator will deduct $NO_X$ allowances under § 97.54(b), (e), or (f) to account for the actual heat input of the unit during the control period. The Administrator will calculate the number of $NO_X$ allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of $NO_X$ allowance as appropriate, provided that the number of $NO_X$ allowances to be deducted shall be zero if the number calculated is less than zero:

$NO_X$ allowances deducted for actual heat input for a unit under § 97.4(a)(1) = Unit's $NO_X$ allowances allocated for control period − (Unit's actual control period heat input × the lesser of 0.15 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton); and $NO_X$ allowances deducted for actual heat input for a unit under § 97.4(a)(2) = Unit's $NO_X$ allowances allocated for control period − (Unit's actual control period heat input × the lesser of 0.17 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton)

Where:

''Unit's $NO_X$ allowances allocated for control period'' is the number of $NO_X$ allowances allocated to the unit for the control period under paragraph (d) of this section; and

''Unit's actual control period heat input'' is the heat input (in mmBtu) of the unit during the control period.

(2) The Administrator will transfer any $NO_X$ allowances deducted under paragraph (e)(1) of this section to the allocation set-aside for the control period for which they were allocated.

(f) After making the deductions for compliance under § 97.54(b), (e), or (f) for a control period, the Administrator will determine whether any $NO_X$ allowances remain in the allocation set-aside for the control period. The Administrator will allocate any such $NO_X$ allowances to the $NO_X$ Budget units in the State using the following formula and rounding to the nearest whole number of $NO_X$ allowances as appropriate:

Unit's share of $NO_X$ allowances remaining in allocation set-aside = Total

$NO_X$ allowances remaining in allocation set-aside × (Unit's $NO_X$ allowance allocation ÷ State's 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 control period;

''Unit's $NO_X$ allowance allocation'' is the number of $NO_X$ allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

''State's trading program budget excluding allocation set-aside'' is the State's trading program budget under §97.40 for the control period to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(g) If the Administrator determines that $NO_X$ allowances were allocated under paragraph (b), (c), or (d) of this section for a control period and the recipient of the allocation is not actually a $NO_X$ Budget unit under §97.4(a), the Administrator will notify the $NO_X$ authorized account representative and then will act in accordance with the following procedures:

(1)(i) The Administrator will not record such $NO_X$ allowances for the control period in an account under §97.53;

(ii) If the Administrator already recorded such $NO_X$ allowances for the control period in an account under §97.53 and if the Administrator makes such determination before making all deductions pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) for the control period, then the Administrator will deduct from the account $NO_X$ allowances equal in number to and allocated for the same or a prior control period as the $NO_X$ allowances allocated to such recipient for the control period. The $NO_X$ authorized account representative shall ensure that the account contains the $NO_X$ allowances necessary for completion of such deduction. If account does not contain the necessary $NO_X$ allowances, the Administrator will deduct the required number of $NO_X$ allowances, regardless of the control period for which they were allocated, whenever $NO_X$ allowances are recorded in the account; or

(iii) If the Administrator already recorded such $NO_X$ allowances for the control period in an account under §97.53 and if the Administrator makes such determination after making all deductions pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) for the control period, then the Administrator will apply paragraph (g)(1)(ii) of this section to any subsequent control period for which $NO_X$ allowances were allocated to such recipient.

(2) The Administrator will transfer the $NO_X$ allowances that are not recorded, or that are deducted, pursuant to paragraph (g)(1) of this section to an allocation set-aside for the State in which such source is located.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

### §97.43 Compliance Supplement Pool.

(a) For any $NO_X$ Budget unit that reduces its $NO_X$ emission rate in the 2001 through 2003 control period, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) Each $NO_X$ Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with paragraph (a)(4) of this section shall monitor and report $NO_X$ emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's percent monitor data availability shall not be less than 90 percent during the 2000 control period, and the unit must be in full compliance with any applicable State or Federal $NO_X$ emission control requirements during 2000 through 2002.

(2) $NO_X$ emission rate and heat input under paragraphs (a)(3) and (4) of this section shall be determined in accordance with subpart H of this part.

(3) Each $NO_X$ Budget unit for which the owners and operators intend to request, or request, any early reduction credits under paragraph (a)(4) of this section shall reduce its $NO_X$ emission rate, for each control period for which early reduction credits are requested,

to less than both 0.25 lb/mmBtu and 80 percent of the unit's $NO_X$ emission rate in the 2000 control period.

(4) The $NO_X$ authorized account representative of a $NO_X$ Budget unit that meets the requirements of paragraphs (a) (1) and (3) of this section may submit to the Administrator a request for early reduction credits for the unit based on $NO_X$ emission rate reductions made by the unit in the control period for 2001 through 2003.

(i) In the early reduction credit request, the $NO_X$ authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's $NO_X$ emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

(ii) The early reduction credit request must be submitted, in a format specified by the Administrator, by February 1, 2004.

(b) For any $NO_X$ Budget unit that is subject to the Ozone Transport Commission $NO_X$ Budget Program under title I of the Clean Air Act, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) The $NO_X$ authorized account representative of the unit may submit to the Administrator a request for early reduction credits in an amount equal to the amount of banked allowances under the Ozone Transport Commission $NO_X$ Budget Program that were allocated for the control period in 2001 through 2003 and are held by the unit, in accordance with the Ozone Transport Commission $NO_X$ Budget Program, as of the date of submission of the request. During the entire control period in 2001 through 2003 for which the allowances were allocated, the unit must have monitored and reported $NO_X$ emissions in accordance with part 75 (except for subpart H) of this chapter and the Guidance for Implementation of Emission Monitoring Requirements for the $NO_X$ Budget Program (January 28, 1997).

(2) The early reduction credit request under paragraph (b)(1) must be submitted, in a format specified by the Administrator, by February 1, 2004.

(3) The $NO_X$ authorized account representative of the unit shall not submit a request for early reduction credits under paragraph (b)(1) of this section for banked allowances under the Ozone Transport Commission $NO_X$ Budget Program that were allocated for any control period during which the unit made $NO_X$ emission reductions for which he or she submits a request for early reduction credits under paragraph (a) of this section for the unit.

(c) The Administrator will review each early reduction credit request submitted in accordance with paragraph (a) or (b) of this section and will allocate $NO_X$ allowances to $NO_X$ Budget units in a given State and covered by such request as follows:

(1) Upon receipt of each early reduction credit request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of paragraph (a) or (b) of this section.

(2) After February 1, 2004, the Administrator will make available to the public a statement of the total number of early reduction credits requested by $NO_X$ Budget units in the State.

(3) If the State's compliance supplement pool set forth in appendix D to this subpart has a number of $NO_X$ allowances not less than the amount of early reduction credits in all early reduction credit requests under paragraph (a) or (b) of this section for 2001 through 2003 (as adjusted under paragraph (c)(1) of this section) submitted by February 1, 2004, the Administrator will allocate to each $NO_X$ Budget unit covered by such requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(1) of this section).

(4) If the State's compliance supplement pool set forth in appendix D to this subpart has a smaller number of $NO_X$ allowances than the amount of early reduction credits in all early reduction credit requests under paragraph (a) or (b) of this section for 2001 through 2003 (as adjusted under paragraph (c)(1) of this section) submitted by February 1, 2004, the Administrator will allocate $NO_X$ allowances to each

$NO_X$ Budget unit covered by such requests according to the following formula and rounding to the nearest whole number of $NO_X$ allowances as appropriate:

Unit's allocation for early reduction credits = Unit's adjusted early reduction credits × (State's compliance supplement pool ÷ Total adjusted early reduction credits for all units)

Where:

''Unit's allocation for early reduction credits'' is the number of $NO_X$ allowances allocated to the unit for early reduction credits.

''Unit's adjusted early reduction credits'' is the amount of early reduction credits requested for the unit for 2001 and 2002 in early reduction credit requests under paragraph (a) or (b) of this section, as adjusted under paragraph (c)(1) of this section.

''State's compliance supplement pool'' is the number of $NO_X$ allowances in the State's compliance supplement pool set forth in appendix D to this subpart.

''Total adjusted early reduction credits for all units'' is the amount of early reduction credits requested for all units for 2001 and 2002 in early reduction credit requests under paragraph (a) or (b) of this section, as adjusted under paragraph (c)(1) of this section.

(5) By April 1, 2004, the Administrator will determine by order the allocations under paragraph (c)(3) or (4) of this section. The Administrator will make available to the public each determination of $NO_X$ allowance allocations and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (c)(1), (3), or (4) of this section. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with paragraph (c)(1), (3), or (4) of this section.

(6) By May 1, 2004, the Administrator will record the allocations under paragraph (c)(3) or (4) of this section.

(7) $NO_X$ allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under § 97.54 for the control period in 2004 or 2005. Notwithstanding § 97.55(a), the Administrator will deduct as retired any $NO_X$ allowance that is recorded under paragraph (c)(6) of this section and that is not deducted for compliance under § 97.54 for the control period in 2003 or 2004.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004; 81 FR 74604, Oct. 26, 2016]

## APPENDIX A TO SUBPART E OF PART 97—FINAL SECTION 126 RULE: EGU ALLOCATIONS, 2004–2007

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| DC | BENNING | 603 | 15 | 80 |
| DC | BENNING | 603 | 16 | 117 |
| DE | CHRISTIANA SUB | 591 | 11 | 5 |
| DE | CHRISTIANA SUB | 591 | 14 | 5 |
| DE | DELAWARE CITY | 52193 | B4 | 141 |
| DE | DELAWARE CITY | 52193 | ST_1 | 155 |
| DE | DELAWARE CITY | 52193 | ST_2 | 159 |
| DE | DELAWARE CITY | 52193 | ST_3 | 158 |
| DE | EDGE MOOR | 593 | 3 | 234 |
| DE | EDGE MOOR | 593 | 4 | 401 |
| DE | EDGE MOOR | 593 | 5 | 602 |
| DE | HAY ROAD | 7153 | **3 | 184 |
| DE | HAY ROAD | 7153 | —1 | 235 |
| DE | HAY ROAD | 7153 | —2 | 207 |
| DE | INDIAN RIVER | 594 | 1 | 187 |
| DE | INDIAN RIVER | 594 | 2 | 194 |
| DE | INDIAN RIVER | 594 | 3 | 369 |
| DE | INDIAN RIVER | 594 | 4 | 729 |
| DE | MCKEE RUN | 599 | 3 | 119 |
| DE | VAN SANT STATION | 7318 | **11 | 7 |
| IN | ANDERSON | 7336 | —ACT1 | 5 |
| IN | ANDERSON | 7336 | —ACT2 | 5 |
| IN | CLIFTY CREEK | 983 | 1 | 558 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| IN | CLIFTY CREEK | 983 | 2 | 543 |
| IN | CLIFTY CREEK | 983 | 3 | 564 |
| IN | CLIFTY CREEK | 983 | 4 | 525 |
| IN | CLIFTY CREEK | 983 | 5 | 561 |
| IN | CLIFTY CREEK | 983 | 6 | 509 |
| IN | CONNERSVILLE | 1002 | 1 | 1 |
| IN | CONNERSVILLE | 1002 | 2 | 1 |
| IN | GALLAGHER | 1008 | 1 | 290 |
| IN | GALLAGHER | 1008 | 2 | 276 |
| IN | GALLAGHER | 1008 | 3 | 347 |
| IN | GALLAGHER | 1008 | 4 | 329 |
| IN | NOBLESVILLE | 1007 | 1 | 48 |
| IN | NOBLESVILLE | 1007 | 2 | 45 |
| IN | NOBLESVILLE | 1007 | 3 | 45 |
| IN | RICHMOND | 7335 | —RCT1 | 5 |
| IN | RICHMOND | 7335 | —RCT2 | 5 |
| IN | TANNERS CREEK | 988 | U1 | 297 |
| IN | TANNERS CREEK | 988 | U2 | 235 |
| IN | TANNERS CREEK | 988 | U3 | 387 |
| IN | TANNERS CREEK | 988 | U4 | 906 |
| IN | WHITEWATER VALLEY | 1040 | 1 | 74 |
| IN | WHITEWATER VALLEY | 1040 | 2 | 173 |
| KY | BIG SANDY | 1353 | BSU1 | 565 |
| KY | BIG SANDY | 1353 | BSU2 | 1,741 |
| KY | CANE RUN | 1363 | 4 | 397 |
| KY | CANE RUN | 1363 | 5 | 332 |
| KY | CANE RUN | 1363 | 6 | 430 |
| KY | COOPER | 1384 | 1 | 183 |
| KY | COOPER | 1384 | 2 | 367 |
| KY | DALE | 1385 | 3 | 161 |
| KY | DALE | 1385 | 4 | 158 |
| KY | E W BROWN | 1355 | 1 | 193 |
| KY | E W BROWN | 1355 | 10 | 37 |
| KY | E W BROWN | 1355 | 2 | 317 |
| KY | E W BROWN | 1355 | 3 | 863 |
| KY | E W BROWN | 1355 | 8 | 34 |
| KY | E W BROWN | 1355 | 9 | 34 |
| KY | E.W. BROWN | 1355 | 11 | 21 |
| KY | EAST BEND | 6018 | 2 | 1,413 |
| KY | GHENT | 1356 | 1 | 1,232 |
| KY | GHENT | 1356 | 2 | 1,081 |
| KY | GHENT | 1356 | 3 | 1,104 |
| KY | GHENT | 1356 | 4 | 1,132 |
| KY | H L SPURLOCK | 6041 | 1 | 697 |
| KY | H L SPURLOCK | 6041 | 2 | 1,589 |
| KY | MILL CREEK | 1364 | 1 | 528 |
| KY | MILL CREEK | 1364 | 2 | 600 |
| KY | MILL CREEK | 1364 | 3 | 941 |
| KY | MILL CREEK | 1364 | 4 | 1,096 |
| KY | PADDY'S RUN | 1366 | 12 | 8 |
| KY | PINEVILLE | 1360 | 3 | 67 |
| KY | TRIMBLE COUNTY | 6071 | 1 | 1,221 |
| KY | TYRONE | 1361 | 1 | 3 |
| KY | TYRONE | 1361 | 2 | 3 |
| KY | TYRONE | 1361 | 3 | 3 |
| KY | TYRONE | 1361 | 4 | 3 |
| KY | TYRONE | 1361 | 5 | 117 |
| MD | BRANDON SHORES | 602 | 1 | 1,827 |
| MD | BRANDON SHORES | 602 | 2 | 1,713 |
| MD | C P CRANE | 1552 | 1 | 434 |
| MD | C P CRANE | 1552 | 2 | 463 |
| MD | CHALK POINT | 1571 | —GT2 | 1 |
| MD | CHALK POINT | 1571 | —GT3 | 36 |
| MD | CHALK POINT | 1571 | —GT4 | 39 |
| MD | CHALK POINT | 1571 | —GT5 | 55 |
| MD | CHALK POINT | 1571 | —GT6 | 60 |
| MD | CHALK POINT | 1571 | —SGT1 | 24 |
| MD | CHALK POINT | 1571 | 1 | 833 |
| MD | CHALK POINT | 1571 | 2 | 861 |
| MD | CHALK POINT | 1571 | 3 | 585 |
| MD | CHALK POINT | 1571 | 4 | 522 |
| MD | DICKERSON | 1572 | —GT2 | 36 |
| MD | DICKERSON | 1572 | —GT3 | 66 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| MD | DICKERSON | 1572 | 1 | 447 |
| MD | DICKERSON | 1572 | 2 | 441 |
| MD | DICKERSON | 1572 | 3 | 481 |
| MD | GOULD STREET | 1553 | 3 | 81 |
| MD | HERBERT A WAGNER | 1554 | 1 | 134 |
| MD | HERBERT A WAGNER | 1554 | 2 | 399 |
| MD | HERBERT A WAGNER | 1554 | 3 | 723 |
| MD | HERBERT A WAGNER | 1554 | 4 | 301 |
| MD | MORGANTOWN | 1573 | —GT3 | 9 |
| MD | MORGANTOWN | 1573 | —GT4 | 9 |
| MD | MORGANTOWN | 1573 | —GT5 | 9 |
| MD | MORGANTOWN | 1573 | —GT6 | 8 |
| MD | MORGANTOWN | 1573 | 1 | 1,151 |
| MD | MORGANTOWN | 1573 | 2 | 1,375 |
| MD | PANDA BRANDYWINE | 54832 | 1 | 95 |
| MD | PANDA BRANDYWINE | 54832 | 2 | 84 |
| MD | PERRYMAN | 1556 | **51 | 56 |
| MD | PERRYMAN | 1556 | —GT1 | 8 |
| MD | PERRYMAN | 1556 | —GT2 | 9 |
| MD | PERRYMAN | 1556 | —GT3 | 6 |
| MD | PERRYMAN | 1556 | —GT4 | 10 |
| MD | R P SMITH | 1570 | 11 | 143 |
| MD | R P SMITH | 1570 | 9 | 11 |
| MD | RIVERSIDE | 1559 | —GT6 | 11 |
| MD | RIVERSIDE | 1559 | 4 | 40 |
| MD | VIENNA | 1564 | 8 | 169 |
| MD | WESTPORT | 1560 | —GT5 | 28 |
| MI | ADA COGEN LTD | 10819 | CA_Ltd | 23 |
| MI | BELLE RIVER | 6034 | 1 | 1,589 |
| MI | BELLE RIVER | 6034 | 2 | 1,672 |
| MI | DAN E KARN | 1702 | 1 | 552 |
| MI | DAN E KARN | 1702 | 2 | 530 |
| MI | DAN E KARN | 1702 | 3 | 288 |
| MI | DAN E KARN | 1702 | 4 | 310 |
| MI | ECKERT STATION | 1831 | 1 | 52 |
| MI | ECKERT STATION | 1831 | 2 | 47 |
| MI | ECKERT STATION | 1831 | 3 | 65 |
| MI | ECKERT STATION | 1831 | 4 | 116 |
| MI | ECKERT STATION | 1831 | 5 | 154 |
| MI | ECKERT STATION | 1831 | 6 | 131 |
| MI | ENDICOTT GENERATING STATION | 4259 | 1 | 98 |
| MI | ERICKSON | 1832 | 1 | 381 |
| MI | GREENWOOD | 6035 | 1 | 373 |
| MI | HANCOCK | 1730 | 5 | 3 |
| MI | HANCOCK | 1730 | 6 | 3 |
| MI | HARBOR BEACH | 1731 | 1 | 97 |
| MI | J C WEADOCK | 1720 | 7 | 346 |
| MI | J C WEADOCK | 1720 | 8 | 342 |
| MI | J R WHITING | 1723 | 1 | 225 |
| MI | J R WHITING | 1723 | 2 | 204 |
| MI | J R WHITING | 1723 | 3 | 249 |
| MI | JAMES DE YOUNG | 1830 | 5 | 69 |
| MI | MARYSVILLE | 1732 | 10 | 22 |
| MI | MARYSVILLE | 1732 | 11 | 16 |
| MI | MARYSVILLE | 1732 | 12 | 17 |
| MI | MARYSVILLE | 1732 | 9 | 17 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 003 | 269 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 004 | 276 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 005 | 271 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 006 | 273 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 007 | 280 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 008 | 277 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 009 | 273 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 010 | 271 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 011 | 274 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 012 | 269 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 013 | 275 |
| MI | MIDLAND COGENERATION VENTURE | 10745 | 014 | 269 |
| MI | MISTERSKY | 1822 | 5 | 33 |
| MI | MISTERSKY | 1822 | 6 | 155 |
| MI | MISTERSKY | 1822 | 7 | 98 |
| MI | MONROE | 1733 | 1 | 1,902 |
| MI | MONROE | 1733 | 2 | 1,555 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| MI | MONROE | 1733 | 3 | 1,574 |
| MI | MONROE | 1733 | 4 | 1,822 |
| MI | RIVER ROUGE | 1740 | 1 | 0 |
| MI | RIVER ROUGE | 1740 | 2 | 627 |
| MI | RIVER ROUGE | 1740 | 3 | 652 |
| MI | ROUGE POWERHOUSE #1 | 10272 | 1 | 232 |
| MI | ST CLAIR | 1743 | 1 | 339 |
| MI | ST CLAIR | 1743 | 2 | 304 |
| MI | ST CLAIR | 1743 | 3 | 351 |
| MI | ST CLAIR | 1743 | 4 | 349 |
| MI | ST CLAIR | 1743 | 5 | 0 |
| MI | ST CLAIR | 1743 | 6 | 646 |
| MI | ST CLAIR | 1743 | 7 | 733 |
| MI | TRENTON CHANNEL | 1745 | 16 | 132 |
| MI | TRENTON CHANNEL | 1745 | 17 | 124 |
| MI | TRENTON CHANNEL | 1745 | 18 | 130 |
| MI | TRENTON CHANNEL | 1745 | 19 | 126 |
| MI | TRENTON CHANNEL | 1745 | 9A | 968 |
| MI | WYANDOTTE | 1866 | 5 | 8 |
| MI | WYANDOTTE | 1866 | 7 | 81 |
| MI | WYANDOTTE | 1866 | 8 | 36 |
| NC | ASHEVILLE | 2706 | 1 | 491 |
| NC | ASHEVILLE | 2706 | 2 | 479 |
| NC | BELEWS CREEK | 8042 | 1 | 2,306 |
| NC | BELEWS CREEK | 8042 | 2 | 2,688 |
| NC | BUCK | 2720 | 5 | 59 |
| NC | BUCK | 2720 | 6 | 65 |
| NC | BUCK | 2720 | 7 | 69 |
| NC | BUCK | 2720 | 8 | 284 |
| NC | BUCK | 2720 | 9 | 300 |
| NC | BUTLER WARNER GEN PL | 1016 | —1 | 40 |
| NC | BUTLER WARNER GEN PL | 1016 | —2 | 40 |
| NC | BUTLER WARNER GEN PL | 1016 | —3 | 40 |
| NC | BUTLER WARNER GEN PL | 1016 | —6 | 42 |
| NC | BUTLER WARNER GEN PL | 1016 | —7 | 40 |
| NC | BUTLER WARNER GEN PL | 1016 | —8 | 40 |
| NC | BUTLER WARNER GEN PL | 1016 | —9 | 103 |
| NC | CAPE FEAR | 2708 | 5 | 255 |
| NC | CAPE FEAR | 2708 | 6 | 361 |
| NC | CLIFFSIDE | 2721 | 1 | 67 |
| NC | CLIFFSIDE | 2721 | 2 | 73 |
| NC | CLIFFSIDE | 2721 | 3 | 95 |
| NC | CLIFFSIDE | 2721 | 4 | 107 |
| NC | CLIFFSIDE | 2721 | 5 | 1,180 |
| NC | COGENTRIX-ROCKY MOUNT | 50468 | ST_unt | 303 |
| NC | COGENTRIX ELIZABETHTOWN | 10380 | ST_OWN | 111 |
| NC | COGENTRIX KENANSVILLE | 10381 | ST_LLE | 102 |
| NC | COGENTRIX LUMBERTON | 10382 | ST_TON | 111 |
| NC | COGENTRIX ROXBORO | 10379 | ST_ORO | 166 |
| NC | COGENTRIX SOUTHPORT | 10378 | ST_ORT | 335 |
| NC | DAN RIVER | 2723 | 1 | 117 |
| NC | DAN RIVER | 2723 | 2 | 128 |
| NC | DAN RIVER | 2723 | 3 | 271 |
| NC | G G ALLEN | 2718 | 1 | 311 |
| NC | G G ALLEN | 2718 | 2 | 316 |
| NC | G G ALLEN | 2718 | 3 | 525 |
| NC | G G ALLEN | 2718 | 4 | 470 |
| NC | G G ALLEN | 2718 | 5 | 514 |
| NC | L V SUTTON | 2713 | 1 | 162 |
| NC | L V SUTTON | 2713 | 2 | 176 |
| NC | L V SUTTON | 2713 | 3 | 717 |
| NC | L V SUTTON | 2713 | CT2B | 2 |
| NC | LEE | 2709 | 1 | 129 |
| NC | LEE | 2709 | 2 | 142 |
| NC | LEE | 2709 | 3 | 414 |
| NC | LEE | 2709 | CT4 | 1 |
| NC | LINCOLN | 7277 | 1 | 33 |
| NC | LINCOLN | 7277 | 10 | 31 |
| NC | LINCOLN | 7277 | 11 | 33 |
| NC | LINCOLN | 7277 | 12 | 31 |
| NC | LINCOLN | 7277 | 13 | 26 |
| NC | LINCOLN | 7277 | 14 | 26 |
| NC | LINCOLN | 7277 | 15 | 25 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| NC | LINCOLN | 7277 | 16 | 25 |
| NC | LINCOLN | 7277 | 2 | 33 |
| NC | LINCOLN | 7277 | 3 | 31 |
| NC | LINCOLN | 7277 | 4 | 31 |
| NC | LINCOLN | 7277 | 5 | 29 |
| NC | LINCOLN | 7277 | 6 | 30 |
| NC | LINCOLN | 7277 | 7 | 24 |
| NC | LINCOLN | 7277 | 8 | 25 |
| NC | LINCOLN | 7277 | 9 | 32 |
| NC | MARSHALL | 2727 | 1 | 899 |
| NC | MARSHALL | 2727 | 2 | 940 |
| NC | MARSHALL | 2727 | 3 | 1,588 |
| NC | MARSHALL | 2727 | 4 | 1,570 |
| NC | MAYO | 6250 | 1A | 893 |
| NC | MAYO | 6250 | 1B | 875 |
| NC | PANDA-ROSEMARY | 50555 | CT_ary | 62 |
| NC | PANDA-ROSEMARY | 50555 | CW_ary | 47 |
| NC | RIVERBEND | 2732 | 10 | 266 |
| NC | RIVERBEND | 2732 | 7 | 193 |
| NC | RIVERBEND | 2732 | 8 | 200 |
| NC | RIVERBEND | 2732 | 9 | 253 |
| NC | ROANOKE VALLEY | 50254 | 1 | 440 |
| NC | ROANOKE VALLEY | 50254 | 2 | 140 |
| NC | ROXBORO | 2712 | 1 | 766 |
| NC | ROXBORO | 2712 | 2 | 1,426 |
| NC | ROXBORO | 2712 | 3A | 792 |
| NC | ROXBORO | 2712 | 3B | 785 |
| NC | ROXBORO | 2712 | 4A | 778 |
| NC | ROXBORO | 2712 | 4B | 733 |
| NC | TOBACCOVILLE | 50221 | 1 | 53 |
| NC | TOBACCOVILLE | 50221 | 2 | 53 |
| NC | TOBACCOVILLE | 50221 | 3 | 53 |
| NC | TOBACCOVILLE | 50221 | 4 | 53 |
| NC | UNC—CHAPEL HILL | 54276 | ST_ill | 14 |
| NC | W H WEATHERSPOON | 2716 | 1 | 76 |
| NC | W H WEATHERSPOON | 2716 | 2 | 86 |
| NC | W H WEATHERSPOON | 2716 | 3 | 161 |
| NC | W H WEATHERSPOON | 2716 | CT–1 | 4 |
| NC | W H WEATHERSPOON | 2716 | CT–2 | 3 |
| NC | W H WEATHERSPOON | 2716 | CT–3 | 2 |
| NC | W H WEATHERSPOON | 2716 | CT–4 | 4 |
| NJ | B L ENGLAND | 2378 | 1 | 353 |
| NJ | B L ENGLAND | 2378 | 2 | 417 |
| NJ | B L ENGLAND | 2378 | 3 | 114 |
| NJ | BAYONNE | 50497 | 1 | 139 |
| NJ | BAYONNE | 50497 | 2 | 143 |
| NJ | BAYONNE | 50497 | 3 | 140 |
| NJ | BERGEN | 2398 | 1101 | 152 |
| NJ | BERGEN | 2398 | 1201 | 157 |
| NJ | BERGEN | 2398 | 1301 | 155 |
| NJ | BERGEN | 2398 | 1401 | 152 |
| NJ | BURLINGTON | 2399 | 101 | 30 |
| NJ | BURLINGTON | 2399 | 102 | 34 |
| NJ | BURLINGTON | 2399 | 103 | 39 |
| NJ | BURLINGTON | 2399 | 104 | 47 |
| NJ | BURLINGTON | 2399 | 11–1 | 2 |
| NJ | BURLINGTON | 2399 | 11–2 | 2 |
| NJ | BURLINGTON | 2399 | 11–3 | 2 |
| NJ | BURLINGTON | 2399 | 11–4 | 2 |
| NJ | BURLINGTON | 2399 | 7 | 17 |
| NJ | BURLINGTON | 2399 | 9–1 | 4 |
| NJ | BURLINGTON | 2399 | 9–2 | 4 |
| NJ | BURLINGTON | 2399 | 9–3 | 4 |
| NJ | BURLINGTON | 2399 | 9–4 | 4 |
| NJ | CAMDEN | 10751 | 1 | 378 |
| NJ | CARLL'S CORNER STATION | 2379 | 1 | 2 |
| NJ | CARLL'S CORNER STATION | 2379 | 2 | 16 |
| NJ | CARNEYS POINT (CCLP) NUG | 10566 | ST_NUG | 527 |
| NJ | CEDAR STATION | 2380 | 1E&W | 5 |
| NJ | CUMBERLAND | 5083 | —GT1 | 40 |
| NJ | DEEPWATER | 2384 | 1 | 49 |
| NJ | DEEPWATER | 2384 | 4 | 5 |
| NJ | DEEPWATER | 2384 | 6 | 42 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| NJ | DEEPWATER | 2384 | 8 | 195 |
| NJ | EDISON | 2400 | 1–1A&B | 3 |
| NJ | EDISON | 2400 | 1–2A&B | 3 |
| NJ | EDISON | 2400 | 1–3A&B | 3 |
| NJ | EDISON | 2400 | 1–4A&B | 3 |
| NJ | EDISON | 2400 | 2–1A&B | 7 |
| NJ | EDISON | 2400 | 2–2A&B | 7 |
| NJ | EDISON | 2400 | 2–3A&B | 7 |
| NJ | EDISON | 2400 | 2–4A&B | 7 |
| NJ | EDISON | 2400 | 3–1A&B | 7 |
| NJ | EDISON | 2400 | 3–2A&B | 7 |
| NJ | EDISON | 2400 | 3–3A&B | 7 |
| NJ | EDISON | 2400 | 3–4A&B | 7 |
| NJ | ESSEX | 2401 | 10–1A&B | 10 |
| NJ | ESSEX | 2401 | 10–2A&B | 10 |
| NJ | ESSEX | 2401 | 10–3A&B | 10 |
| NJ | ESSEX | 2401 | 10–4A&B | 10 |
| NJ | ESSEX | 2401 | 11–1A&B | 11 |
| NJ | ESSEX | 2401 | 11–2A&B | 11 |
| NJ | ESSEX | 2401 | 11–3A&B | 11 |
| NJ | ESSEX | 2401 | 11–4A&B | 11 |
| NJ | ESSEX | 2401 | 12–1A&B | 13 |
| NJ | ESSEX | 2401 | 12–2A&B | 13 |
| NJ | ESSEX | 2401 | 12–3A&B | 13 |
| NJ | ESSEX | 2401 | 12–4A&B | 13 |
| NJ | ESSEX | 2401 | 9 | 66 |
| NJ | FORKED RIVER | 7138 | —1 | 17 |
| NJ | FORKED RIVER | 7138 | —2 | 17 |
| NJ | GILBERT | 2393 | 03 | 47 |
| NJ | GILBERT | 2393 | 04 | 64 |
| NJ | GILBERT | 2393 | 05 | 63 |
| NJ | GILBERT | 2393 | 06 | 61 |
| NJ | GILBERT | 2393 | 07 | 63 |
| NJ | GILBERT | 2393 | 1 | 4 |
| NJ | GILBERT | 2393 | 2 | 4 |
| NJ | GILBERT | 2393 | CT–9 | 61 |
| NJ | HUDSON | 2403 | 1 | 175 |
| NJ | HUDSON | 2403 | 2 | 884 |
| NJ | HUDSON | 2403 | 3 | 3 |
| NJ | KEARNY | 2404 | 10 | 26 |
| NJ | KEARNY | 2404 | 11 | 34 |
| NJ | KEARNY | 2404 | 12–1 | 8 |
| NJ | KEARNY | 2404 | 12–2 | 8 |
| NJ | KEARNY | 2404 | 12–3 | 8 |
| NJ | KEARNY | 2404 | 12–4 | 8 |
| NJ | KEARNY | 2404 | 7 | 35 |
| NJ | KEARNY | 2404 | 8 | 16 |
| NJ | LINDEN | 2406 | 11 | 16 |
| NJ | LINDEN | 2406 | 12 | 11 |
| NJ | LINDEN | 2406 | 13 | 20 |
| NJ | LINDEN | 2406 | 2 | 52 |
| NJ | LINDEN | 2406 | 6 | 2 |
| NJ | LINDEN | 2406 | 7 | 60 |
| NJ | LINDEN | 2406 | 8 | 70 |
| NJ | LINDEN COGEN | 50006 | 100 | 276 |
| NJ | LINDEN COGEN | 50006 | 200 | 280 |
| NJ | LINDEN COGEN | 50006 | 300 | 274 |
| NJ | LINDEN COGEN | 50006 | 400 | 272 |
| NJ | LINDEN COGEN | 50006 | 500 | 278 |
| NJ | LOGAN GENERATING PLANT | 10043 | 1 | 424 |
| NJ | MERCER | 2408 | 1 | 489 |
| NJ | MERCER | 2408 | 2 | 558 |
| NJ | MICKELTON | 8008 | 1 | 28 |
| NJ | MIDDLE ST | 2382 | 3 | 4 |
| NJ | MILFORD POWER LP | 10616 | 1 | 44 |
| NJ | MOBIL NUG | n114 | CT_NUG | 40 |
| NJ | NEWARK BAY COGEN | 50385 | 1 | 9 |
| NJ | NEWARK BAY COGEN | 50385 | 2 | 9 |
| NJ | NORTH JERSEY ENERGY ASSOCIATES | 10308 | 1 | 19 |
| NJ | NORTH JERSEY ENERGY ASSOCIATES | 10308 | 2 | 19 |
| NJ | O'BRIEN (NEWARK) COGENERATION, INC. | 50797 | 1 | 8 |
| NJ | O'BRIEN (PARLIN) COGENERATION, INC. | 50799 | 1 | 8 |
| NJ | O'BRIEN (PARLIN) COGENERATION, INC. | 50799 | 2 | 8 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| NJ | PEDRICKTOWN COGEN | 10099 | 1 | 13 |
| NJ | PRIME ENERGY LP | 50852 | 1 | 178 |
| NJ | SALEM | 2410 | 3A&B | 3 |
| NJ | SAYREVILLE | 2390 | 07 | 40 |
| NJ | SAYREVILLE | 2390 | 08 | 51 |
| NJ | SAYREVILLE | 2390 | C–1 | 16 |
| NJ | SAYREVILLE | 2390 | C–2 | 13 |
| NJ | SAYREVILLE | 2390 | C–3 | 11 |
| NJ | SAYREVILLE | 2390 | C–4 | 13 |
| NJ | SEWAREN | 2411 | 1 | 42 |
| NJ | SEWAREN | 2411 | 2 | 45 |
| NJ | SEWAREN | 2411 | 3 | 58 |
| NJ | SEWAREN | 2411 | 4 | 91 |
| NJ | SEWAREN | 2411 | 6 | 2 |
| NJ | SHERMAN | 7288 | CT–1 | 37 |
| NJ | VINELAND VCLP NUG | 54807 | GT_NUG | 40 |
| NJ | WERNER | 2385 | 04 | 14 |
| NJ | WERNER | 2385 | C–1 | 7 |
| NJ | WERNER | 2385 | C–2 | 6 |
| NJ | WERNER | 2385 | C–3 | 7 |
| NJ | WERNER | 2385 | C–4 | 7 |
| NJ | WEST STAT | 6776 | 1 | 10 |
| NY | 59TH STREET | 2503 | 114 | 41 |
| NY | 59TH STREET | 2503 | 115 | 32 |
| NY | 74TH STREET | 2504 | 120 | 70 |
| NY | 74TH STREET | 2504 | 121 | 80 |
| NY | 74TH STREET | 2504 | 122 | 65 |
| NY | ARTHUR KILL | 2490 | 20 | 524 |
| NY | ARTHUR KILL | 2490 | 30 | 380 |
| NY | ASTORIA | 8906 | 30 | 557 |
| NY | ASTORIA | 8906 | 40 | 505 |
| NY | ASTORIA | 8906 | 50 | 561 |
| NY | ASTORIA | 8906 | GT2–1 | 9 |
| NY | ASTORIA | 8906 | GT2–2 | 9 |
| NY | ASTORIA | 8906 | GT2–3 | 9 |
| NY | ASTORIA | 8906 | GT2–4 | 9 |
| NY | ASTORIA | 8906 | GT3–1 | 9 |
| NY | ASTORIA | 8906 | GT3–2 | 9 |
| NY | ASTORIA | 8906 | GT3–3 | 9 |
| NY | ASTORIA | 8906 | GT3–4 | 9 |
| NY | ASTORIA | 8906 | GT4–1 | 9 |
| NY | ASTORIA | 8906 | GT4–2 | 9 |
| NY | ASTORIA | 8906 | GT4–3 | 9 |
| NY | ASTORIA | 8906 | GT4–4 | 9 |
| NY | BOWLINE POINT | 2625 | 1 | 749 |
| NY | BOWLINE POINT | 2625 | 2 | 566 |
| NY | BROOKLYN NAVY YARD | 54914 | 1 | 239 |
| NY | BROOKLYN NAVY YARD | 54914 | 2 | 220 |
| NY | CHARLES POLETTI | 2491 | 001 | 883 |
| NY | DANSKAMMER | 2480 | 1 | 34 |
| NY | DANSKAMMER | 2480 | 2 | 45 |
| NY | DANSKAMMER | 2480 | 3 | 229 |
| NY | DANSKAMMER | 2480 | 4 | 449 |
| NY | EF BARRETT | 2511 | 10 | 285 |
| NY | EF BARRETT | 2511 | 20 | 287 |
| NY | EAST RIVER | 2493 | 50 | 33 |
| NY | EAST RIVER | 2493 | 60 | 319 |
| NY | EAST RIVER | 2493 | 70 | 113 |
| NY | FAR ROCKAWAY | 2513 | 40 | 138 |
| NY | GLENWOOD | 2514 | 40 | 151 |
| NY | GLENWOOD | 2514 | 50 | 124 |
| NY | GLENWOOD | 2514 | U00020 | 1 |
| NY | GLENWOOD | 2514 | U00021 | 1 |
| NY | HUDSON AVENUE | 2496 | 100 | 162 |
| NY | LOVETT | 2629 | 3 | 74 |
| NY | LOVETT | 2629 | 4 | 304 |
| NY | LOVETT | 2629 | 5 | 380 |
| NY | NISSEQUOGUE COGEN PARTNERS | 4931 | 1 | 86 |
| NY | NORTHPORT | 2516 | 1 | 343 |
| NY | NORTHPORT | 2516 | 2 | 533 |
| NY | NORTHPORT | 2516 | 3 | 375 |
| NY | NORTHPORT | 2516 | 4 | 582 |
| NY | O&R HILLBURN GT | 2628 | 1 | 2 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| NY | O&R SHOEMAKER GT | 2632 | 1 | 10 |
| NY | PORT JEFFERSON | 2517 | 3 | 270 |
| NY | PORT JEFFERSON | 2517 | 4 | 253 |
| NY | RAVENSWOOD | 2500 | 10 | 299 |
| NY | RAVENSWOOD | 2500 | 20 | 363 |
| NY | RAVENSWOOD | 2500 | 30 | 1,360 |
| NY | RAVENSWOOD | 2500 | GT2–1 | 3 |
| NY | RAVENSWOOD | 2500 | GT2–2 | 3 |
| NY | RAVENSWOOD | 2500 | GT2–3 | 3 |
| NY | RAVENSWOOD | 2500 | GT2–4 | 3 |
| NY | RAVENSWOOD | 2500 | GT3–1 | 3 |
| NY | RAVENSWOOD | 2500 | GT3–2 | 3 |
| NY | RAVENSWOOD | 2500 | GT3–3 | 3 |
| NY | RAVENSWOOD | 2500 | GT3–4 | 3 |
| NY | RICHARD M FLYNN | 7314 | NA1 | 246 |
| NY | RICHARD M FLYNN | 7314 | NA2 | 25 |
| NY | ROSETON | 8006 | 1 | 479 |
| NY | ROSETON | 8006 | 2 | 595 |
| NY | TRIGEN-NDEC | 52056 | 4 | 105 |
| NY | WADING RIVER | 7146 | 1 | 8 |
| NY | WADING RIVER | 7146 | 2 | 8 |
| NY | WADING RIVER | 7146 | 3 | 8 |
| NY | WADING RIVER | 7146 | UGT013 | 1 |
| NY | WATERSIDE | 2502 | 61 | 84 |
| NY | WATERSIDE | 2502 | 62 | 91 |
| NY | WATERSIDE | 2502 | 80 | 208 |
| NY | WATERSIDE | 2502 | 90 | 208 |
| NY | WEST BABYLON | 2521 | 1 | 2 |
| OH | ASHTABULA | 2835 | 10 | 75 |
| OH | ASHTABULA | 2835 | 11 | 80 |
| OH | ASHTABULA | 2835 | 7 | 333 |
| OH | ASHTABULA | 2835 | 8 | 70 |
| OH | ASHTABULA | 2835 | 9 | 66 |
| OH | AVON LAKE | 2836 | 10 | 139 |
| OH | AVON LAKE | 2836 | 12 | 1,040 |
| OH | AVON LAKE | 2836 | 9 | 41 |
| OH | AVON LAKE | 2836 | CT10 | 3 |
| OH | BAY SHORE | 2878 | 1 | 208 |
| OH | BAY SHORE | 2878 | 2 | 229 |
| OH | BAY SHORE | 2878 | 3 | 213 |
| OH | BAY SHORE | 2878 | 4 | 330 |
| OH | CARDINAL | 2828 | 1 | 1,030 |
| OH | CARDINAL | 2828 | 2 | 1,083 |
| OH | CARDINAL | 2828 | 3 | 1,079 |
| OH | CONESVILLE | 2840 | 1 | 214 |
| OH | CONESVILLE | 2840 | 2 | 203 |
| OH | CONESVILLE | 2840 | 3 | 212 |
| OH | CONESVILLE | 2840 | 4 | 1,119 |
| OH | CONESVILLE | 2840 | 5 | 731 |
| OH | CONESVILLE | 2840 | 6 | 736 |
| OH | DICKS CREEK | 2831 | 1 | 7 |
| OH | EASTLAKE | 2837 | 1 | 214 |
| OH | EASTLAKE | 2837 | 2 | 230 |
| OH | EASTLAKE | 2837 | 3 | 251 |
| OH | EASTLAKE | 2837 | 4 | 371 |
| OH | EASTLAKE | 2837 | 5 | 974 |
| OH | EASTLAKE | 2837 | 6 | 1 |
| OH | EDGEWATER | 2857 | 13 | 65 |
| OH | EDGEWATER | 2857 | A | 1 |
| OH | EDGEWATER | 2857 | B | 1 |
| OH | FRANK M TAIT | 2847 | GT1 | 23 |
| OH | FRANK M TAIT | 2847 | GT2 | 25 |
| OH | GEN J M GAVIN | 8102 | 1 | 2,744 |
| OH | GEN J M GAVIN | 8102 | 2 | 2,981 |
| OH | HAMILTON | 2917 | 9 | 110 |
| OH | J M STUART | 2850 | 1 | 1,054 |
| OH | J M STUART | 2850 | 2 | 1,228 |
| OH | J M STUART | 2850 | 3 | 1,074 |
| OH | J M STUART | 2850 | 4 | 1,106 |
| OH | KILLEN STATION | 6031 | 2 | 1,706 |
| OH | KYGER CREEK | 2876 | 1 | 471 |
| OH | KYGER CREEK | 2876 | 2 | 471 |
| OH | KYGER CREEK | 2876 | 3 | 478 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| OH | KYGER CREEK | 2876 | 4 | 465 |
| OH | KYGER CREEK | 2876 | 5 | 455 |
| OH | LAKE SHORE | 2838 | 18 | 195 |
| OH | MAD RIVER | 2860 | A | 2 |
| OH | MAD RIVER | 2860 | B | 2 |
| OH | MIAMI FORT | 2832 | 5–1 | 35 |
| OH | MIAMI FORT | 2832 | 5–2 | 35 |
| OH | MIAMI FORT | 2832 | 6 | 398 |
| OH | MIAMI FORT | 2832 | 7 | 1,044 |
| OH | MIAMI FORT | 2832 | 8 | 1,015 |
| OH | MIAMI FORT | 2832 | CT2 | 1 |
| OH | MUSKINGUM RIVER | 2872 | 1 | 309 |
| OH | MUSKINGUM RIVER | 2872 | 2 | 316 |
| OH | MUSKINGUM RIVER | 2872 | 3 | 347 |
| OH | MUSKINGUM RIVER | 2872 | 4 | 349 |
| OH | MUSKINGUM RIVER | 2872 | 5 | 1,105 |
| OH | NILES | 2861 | 1 | 212 |
| OH | NILES | 2861 | 2 | 160 |
| OH | NILES | 2861 | A | 2 |
| OH | O H HUTCHINGS | 2848 | H–1 | 24 |
| OH | O H HUTCHING | 2848 | H–2 | 37 |
| OH | O H HUTCHINGS | 2848 | H–3 | 64 |
| OH | O H HUTCHINGS | 2848 | H–4 | 68 |
| OH | O H HUTCHINGS | 2848 | H–5 | 62 |
| OH | O H HUTCHINGS | 2848 | H–6 | 69 |
| OH | O H HUTCHINGS | 2848 | H–7 | 1 |
| OH | PICWAY | 2843 | 9 | 141 |
| OH | R E BURGER | 2864 | 1 | 0 |
| OH | R E BURGER | 2864 | 2 | 0 |
| OH | R E BURGER | 2864 | 3 | 0 |
| OH | R E BURGER | 2864 | 4 | 0 |
| OH | R E BURGER | 2864 | 5 | 14 |
| OH | R E BURGER | 2864 | 6 | 13 |
| OH | R E BURGER | 2864 | 7 | 337 |
| OH | R E BURGER | 2864 | 8 | 274 |
| OH | RICHARD GORSUCH | 7286 | 1 | 146 |
| OH | RICHARD GORSUCH | 7286 | 2 | 138 |
| OH | RICHARD GORSUCH | 7286 | 3 | 144 |
| OH | RICHARD GORSUCH | 7286 | 4 | 146 |
| OH | W H SAMMIS | 2866 | 1 | 402 |
| OH | W H SAMMIS | 2866 | 2 | 418 |
| OH | W H SAMMIS | 2866 | 3 | 400 |
| OH | W H SAMMIS | 2866 | 4 | 415 |
| OH | W H SAMMIS | 2866 | 5 | 631 |
| OH | W H SAMMIS | 2866 | 6 | 1,221 |
| OH | W H SAMMIS | 2866 | 7 | 1,259 |
| OH | W H ZIMMER | 6019 | 1 | 2,918 |
| OH | WALTER C BECKJORD | 2830 | 1 | 167 |
| OH | WALTER C BECKJORD | 2830 | 2 | 198 |
| OH | WALTER C BECKJORD | 2830 | 3 | 281 |
| OH | WALTER C BECKJORD | 2830 | 4 | 347 |
| OH | WALTER C BECKJORD | 2830 | 5 | 481 |
| OH | WALTER C BECKJORD | 2830 | 6 | 850 |
| OH | WALTER C BECKJORD | 2830 | CT1 | 3 |
| OH | WALTER C BECKJORD | 2830 | CT2 | 3 |
| OH | WALTER C BECKJORD | 2830 | CT3 | 4 |
| OH | WALTER C BECKJORD | 2830 | CT4 | 2 |
| OH | WEST LORAIN | 2869 | 1A | 0 |
| OH | WEST LORAIN | 2869 | 1B | 0 |
| OH | WOODSDALE | 7158 | —GT1 | 30 |
| OH | WOODSDALE | 7158 | —GT2 | 30 |
| OH | WOODSDALE | 7158 | —GT3 | 39 |
| OH | WOODSDALE | 7158 | —GT4 | 37 |
| OH | WOODSDALE | 7158 | —GT5 | 40 |
| OH | WOODSDALE | 7158 | —GT6 | 39 |
| PA | AES BEAVER VALLEY | 10676 | 032 | 144 |
| PA | AES BEAVER VALLEY | 10676 | 033 | 131 |
| PA | AES BEAVER VALLEY | 10676 | 034 | 133 |
| PA | AES BEAVER VALLEY | 10676 | 035 | 67 |
| PA | ARMSTRONG | 3178 | 1 | 363 |
| PA | ARMSTRONG | 3178 | 2 | 383 |
| PA | BRUCE MANSFIELD | 6094 | 1 | 1,657 |
| PA | BRUCE MANSFIELD | 6094 | 2 | 1,672 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| PA | BRUCE MANSFIELD | 6094 | 3 | 1,636 |
| PA | BRUNNER ISLAND | 3140 | 1 | 568 |
| PA | BRUNNER ISLAND | 3140 | 2 | 718 |
| PA | BRUNNER ISLAND | 3140 | 3 | 1,539 |
| PA | BRUNOT ISLAND | 3096 | 2A | 0 |
| PA | BRUNOT ISLAND | 3096 | 2B | 0 |
| PA | BRUNOT ISLAND | 3096 | 3 | 0 |
| PA | CAMBRIA COGEN | 10641 | 1 | 155 |
| PA | CAMBRIA COGEN | 10641 | 2 | 161 |
| PA | CHESWICK | 8226 | 1 | 1,119 |
| PA | COLVER POWER PROJECT | 10143 | 1 | 291 |
| PA | CONEMAUGH | 3118 | 1 | 2,167 |
| PA | CONEMAUGH | 3118 | 2 | 1,995 |
| PA | CROMBY | 3159 | 1 | 377 |
| PA | CROMBY | 3159 | 2 | 201 |
| PA | DELAWARE | 3160 | 71 | 61 |
| PA | DELAWARE | 3160 | 81 | 56 |
| PA | EBENSBURG POWER | 10603 | 1 | 191 |
| PA | EDDYSTONE | 3161 | 1 | 565 |
| PA | EDDYSTONE | 3161 | 2 | 636 |
| PA | EDDYSTONE | 3161 | 3 | 207 |
| PA | EDDYSTONE | 3161 | 4 | 237 |
| PA | ELRAMA | 3098 | 1 | 214 |
| PA | ELRAMA | 3098 | 2 | 209 |
| PA | ELRAMA | 3098 | 3 | 208 |
| PA | ELRAMA | 3098 | 4 | 428 |
| PA | FOSTER WHEELER MT. CARMEL | 10343 | AB_NUG | 152 |
| PA | GILBERTON POWER NUG | 010113 | AB_NUG | 273 |
| PA | GPU GENCO WAYNE | 3134 | 1 | 8 |
| PA | HATFIELD'S FERRY | 3179 | 1 | 1,155 |
| PA | HATFIELD'S FERRY | 3179 | 2 | 1,029 |
| PA | HATFIELD'S FERRY | 3179 | 3 | 1,087 |
| PA | HOLTWOOD | 3145 | 17 | 246 |
| PA | HOMER CITY | 3122 | 1 | 1,471 |
| PA | HOMER CITY | 3122 | 2 | 1,553 |
| PA | HOMER CITY | 3122 | 3 | 1,437 |
| PA | HUNLOCK PWR STATION | 3176 | 6 | 131 |
| PA | KEYSTONE | 3136 | 1 | 2,154 |
| PA | KEYSTONE | 3136 | 2 | 2,133 |
| PA | KIMBERLY-CLARK | 3157 | 10 | 211 |
| PA | MARTINS CREEK | 3148 | 1 | 314 |
| PA | MARTINS CREEK | 3148 | 2 | 293 |
| PA | MARTINS CREEK | 3148 | 3 | 543 |
| PA | MARTINS CREEK | 3148 | 4 | 500 |
| PA | MITCHELL | 3181 | 1 | 10 |
| PA | MITCHELL | 3181 | 2 | 6 |
| PA | MITCHELL | 3181 | 3 | 9 |
| PA | MITCHELL | 3181 | 33 | 556 |
| PA | MONTOUR | 3149 | 1 | 1,560 |
| PA | MONTOUR | 3149 | 2 | 1,673 |
| PA | MOUNTAIN | 3111 | 1 | 5 |
| PA | MOUNTAIN | 3111 | 2 | 5 |
| PA | NEW CASTLE | 3138 | 3 | 190 |
| PA | NEW CASTLE | 3138 | 4 | 195 |
| PA | NEW CASTLE | 3138 | 5 | 245 |
| PA | NORCON POWER PARTNERS LP | 54571 | 1 | 103 |
| PA | NORCON POWER PARTNERS LP | 54571 | 2 | 109 |
| PA | NORTHAMPTION GENERATING | 50888 | 1 | 291 |
| PA | NORTHEASTERN POWER | 50039 | | 188 |
| PA | PANTHER CREEK | 50776 | 1 | 134 |
| PA | PANTHER CREEK | 50776 | 2 | 130 |
| PA | PECO ENERGY CROYDEN | 8012 | 11 | 11 |
| PA | PECO ENERGY CROYDEN | 8012 | 12 | 9 |
| PA | PECO ENERGY CROYDEN | 8012 | 21 | 5 |
| PA | PECO ENERGY CROYDEN | 8012 | 22 | 11 |
| PA | PECO ENERGY CROYDEN | 8012 | 31 | 13 |
| PA | PECO ENERGY CROYDEN | 8012 | 32 | 6 |
| PA | PECO ENERGY CROYDEN | 8012 | 41 | 11 |
| PA | PECO ENERGY CROYDEN | 8012 | 42 | 9 |
| PA | PECO ENERGY RICHMOND | 3168 | 91 | 10 |
| PA | PECO ENERGY RICHMOND | 3168 | 92 | 9 |
| PA | PHILLIPS POWER STATION | 3099 | 3 | 0 |
| PA | PHILLIPS POWER STATION | 3099 | 4 | 0 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| PA | PHILLIPS POWER STATION | 3099 | 5 | 0 |
| PA | PHILLIPS POWER STATION | 3099 | 6 | 0 |
| PA | PINEY CREEK | 54144 | 1 | 102 |
| PA | PORTLAND | 3113 | —5 | 48 |
| PA | PORTLAND | 3113 | 1 | 266 |
| PA | PORTLAND | 3113 | 2 | 412 |
| PA | SCHUYLKILL | 3169 | 1 | 84 |
| PA | SCHUYLKILL ENERGY RESOURCES | 880010 | 1 | 289 |
| PA | SCHUYLKILL STATION (TURBI | 50607 | AB_NUG | 701 |
| PA | SCRUBGRASS GENERATING PLANT | 50974 | 1 | 124 |
| PA | SCRUBGRASS GENERATING PLANT | 50974 | 2 | 123 |
| PA | SEWARD | 3130 | 12 | 64 |
| PA | SEWARD | 3130 | 14 | 72 |
| PA | SEWARD | 3130 | 15 | 355 |
| PA | SHAWVILLE | 3131 | 1 | 295 |
| PA | SHAWVILLE | 3131 | 2 | 294 |
| PA | SHAWVILLE | 3131 | 3 | 380 |
| PA | SHAWVILLE | 3131 | 4 | 392 |
| PA | SUNBURY | 3152 | 1A | 134 |
| PA | SUNBURY | 3152 | 1B | 122 |
| PA | SUNBURY | 3152 | 2A | 130 |
| PA | SUNBURY | 3152 | 2B | 134 |
| PA | SUNBURY | 3152 | 3 | 263 |
| PA | SUNBURY | 3152 | 4 | 302 |
| PA | TITUS | 3115 | 1 | 161 |
| PA | TITUS | 3115 | 2 | 152 |
| PA | TITUS | 3115 | 3 | 151 |
| PA | TOLNA | 3116 | 1 | 3 |
| PA | TOLNA | 3116 | 2 | 4 |
| PA | TRIGEN ENERGY SANSOM | 880006 | 1 | 12 |
| PA | TRIGEN ENERGY SANSOM | 880006 | 2 | 10 |
| PA | TRIGEN ENERGY SANSOM | 880006 | 3 | 5 |
| PA | TRIGEN ENERGY SANSOM | 880006 | 4 | 6 |
| PA | WARREN | 3132 | 1 | 47 |
| PA | WARREN | 3132 | 2 | 32 |
| PA | WARREN | 3132 | 3 | 40 |
| PA | WARREN | 3132 | 4 | 42 |
| PA | WARREN | 3132 | CT1 | 14 |
| PA | WESTWOOD ENERGY PROPERTIE | 50611 | 031 | 98 |
| PA | WHEELABRATOR FRACKVILLE E | 50879 | GEN1 | 161 |
| PA | WILLIAMS GEN—HAZELTON | 10870 | HRSG | 16 |
| PA | WILLIAMS GEN—HAZELTON | 10870 | TURBN | 141 |
| VA | BELLMEADE | 7696 | 1 | 76 |
| VA | BELLMEADE | 7696 | 2 | 88 |
| VA | BREMO BLUFF | 3796 | 3 | 137 |
| VA | BREMO BLUFF | 3796 | 4 | 386 |
| VA | CHESAPEAKE | 3803 | 1 | 298 |
| VA | CHESAPEAKE | 3803 | 2 | 308 |
| VA | CHESAPEAKE | 3803 | 3 | 370 |
| VA | CHESAPEAKE | 3803 | 4 | 571 |
| VA | CHESAPEAKE CORP. | 10017 | ST_rp. | 59 |
| VA | CHESTERFIELD | 3797 | —8 | 263 |
| VA | CHESTERFIELD | 3797 | 3 | 232 |
| VA | CHESTERFIELD | 3797 | 4 | 389 |
| VA | CHESTERFIELD | 3797 | 5 | 769 |
| VA | CHESTERFIELD | 3797 | 6 | 1,348 |
| VA | CHESTERFIELD | 3797 | 7 | 316 |
| VA | CLINCH RIVER | 3775 | 1 | 548 |
| VA | CLINCH RIVER | 3775 | 2 | 520 |
| VA | CLINCH RIVER | 3775 | 3 | 575 |
| VA | CLOVER | 7213 | 1 | 1,033 |
| VA | CLOVER | 7213 | 2 | 1,118 |
| VA | COGENTRIX—HOPEWELL | 10377 | ST_ell | 327 |
| VA | COGENTRIX—PORTSMOUTH | 10071 | ST_uth | 356 |
| VA | COGENTRIX RICHMOND 1 | 54081 | ST_d 1 | 299 |
| VA | COGENTRIX RICHMOND 2 | 54081 | ST_d 2 | 209 |
| VA | COMMONWEALTH ATLANTIC LP | 52087 | GT_LP | 35 |
| VA | DARBYTOWN | 7212 | —1 | 29 |
| VA | DARBYTOWN | 7212 | —2 | 28 |
| VA | DARBYTOWN | 7212 | —3 | 30 |
| VA | DARBYTOWN | 7212 | —4 | 29 |
| VA | DOSWELL #1 | 52019 | CA_#1 | 46 |
| VA | DOSWELL #1 | 52019 | CT_#1 | 94 |

| ST | Plant | Plant_id | Point_id | $NO_X$ allocation for EGUs |
|---|---|---|---|---|
| VA | DOSWELL #2 | 52019 | CA_#2 | 46 |
| VA | DOSWELL #2 | 52019 | CT_#2 | 94 |
| VA | GLEN LYN | 3776 | 51 | 101 |
| VA | GLEN LYN | 3776 | 52 | 110 |
| VA | GLEN LYN | 3776 | 6 | 487 |
| VA | GORDONSVILLE 1 | 54844 | CA_e 1 | 16 |
| VA | GORDONSVILLE 1 | 54844 | CT_e 1 | 33 |
| VA | GORDONSVILLE 2 | 54844 | CA_Xe 2 | 17 |
| VA | GORDONSVILLE 2 | 54844 | CT_e 2 | 34 |
| VA | GRAVEL NECK | 7032 | —3 | 21 |
| VA | GRAVEL NECK | 7032 | —X4 | 24 |
| VA | GRAVEL NECK | 7032 | —5 | 14 |
| VA | GRAVEL NECK | 7032 | —6 | 18 |
| VA | HOPEWELL COGEN, INC. | 10633 | CT_nc. | 102 |
| VA | HOPEWELL COGEN, INC. | 10633 | CW_nc. | 53 |
| VA | LG&E-WESTMORELAND ALTAVISTA | 10773 | 1 | 18 |
| VA | LG&E-WESTMORELAND ALTAVISTA | 10773 | 2 | 18 |
| VA | LG&E-WESTMORELAND HOPEWELL | 10771 | 1 | 17 |
| VA | LG&E-WESTMORELAND HOPEWELL | 10771 | 2 | 16 |
| VA | LG&E-WESTMORELAND SOUTHAMPTON | 10774 | 1 | 23 |
| VA | LG&E-WESTMORELAND SOUTHAMPTON | 10774 | 2 | 29 |
| VA | MECKLENBURG | 52007 | ST_urg | 234 |
| VA | POSSUM POINT | 3804 | 3 | 221 |
| VA | POSSUM POINT | 3804 | 4 | 528 |
| VA | POSSUM POINT | 3804 | 5 | 322 |
| VA | POTOMAC RIVER | 3788 | 1 | 203 |
| VA | POTOMAC RIVER | 3788 | 2 | 139 |
| VA | POTOMAC RIVER | 3788 | 3 | 232 |
| VA | POTOMAC RIVER | 3788 | 4 | 223 |
| VA | POTOMAC RIVER | 3788 | 5 | 222 |
| VA | SEI BIRCHWOOD | 12 | 1 | 305 |
| VA | TASLEY | 3785 | 10 | 6 |
| VA | YORKTOWN | 3809 | 1 | 386 |
| VA | YORKTOWN | 3809 | 2 | 419 |
| VA | YORKTOWN | 3809 | 3 | 764 |
| WV | ALBRIGHT | 3942 | 1 | 76 |
| WV | ALBRIGHT | 3942 | 2 | 71 |
| WV | ALBRIGHT | 3942 | 3 | 241 |
| WV | FORT MARTIN | 3943 | 1 | 887 |
| WV | FORT MARTIN | 3943 | 2 | 868 |
| WV | GRANT TOWN | 10151 | ST_own | 156 |
| WV | HARRISON | 3944 | 1 | 1,385 |
| WV | HARRISON | 3944 | 2 | 1,444 |
| WV | HARRISON | 3944 | 3 | 1,505 |
| WV | JOHN E AMOS | 3935 | 1 | 1,254 |
| WV | JOHN E AMOS | 3935 | 2 | 1,198 |
| WV | JOHN E AMOS | 3935 | 3 | 1,859 |
| WV | KAMMER | 3947 | 1 | 399 |
| WV | KAMMER | 3947 | 2 | 418 |
| WV | KAMMER | 3947 | 3 | 447 |
| WV | KANAWHA RIVER | 3936 | 1 | 336 |
| WV | KANAWHA RIVER | 3936 | 2 | 323 |
| WV | MITCHELL | 3948 | 1 | 1,288 |
| WV | MITCHELL | 3948 | 2 | 1,191 |
| WV | MORGANTOWN ENERGY ASSOCIATES | 27 | 1 | 80 |
| WV | MORGANTOWN ENERGY ASSOCIATES | 27 | 2 | 80 |
| WV | MOUNTAINEER (1301) | 6264 | 1 | 1,952 |
| WV | MT STORM | 3954 | 1 | 1,048 |
| WV | MT STORM | 3954 | 2 | 1,127 |
| WV | MT STORM | 3954 | 3 | 1,236 |
| WV | NORTH BRANCH | 7537 | 1A | 51 |
| WV | NORTH BRANCH | 7537 | 1B | 53 |
| WV | PHIL SPORN | 3938 | 11 | 239 |
| WV | PHIL SPORN | 3938 | 21 | 215 |
| WV | PHIL SPORN | 3938 | 31 | 239 |
| WV | PHIL SPORN | 3938 | 41 | 230 |
| WV | PHIL SPORN | 3938 | 51 | 708 |
| WV | PLEASANTS | 6004 | 1 | 1,296 |
| WV | PLEASANTS | 6004 | 2 | 1,165 |
| WV | RIVESVILLE | 3945 | 7 | 38 |
| WV | RIVESVILLE | 3945 | 8 | 88 |
| WV | WILLOW ISLAND | 3946 | 1 | 79 |
| WV | WILLOW ISLAND | 3946 | 2 | 246 |

[65 FR 2727, Jan. 18, 2000, as amended at 66 FR 48575, Sept. 21, 2001. Redesignated at 81 FR 74650, Oct. 26, 2016]

APPENDIX B TO SUBPART E OF PART 97—FINAL SECTION 126 RULE: NON-EGU ALLOCATIONS, 2004–2007

| State | County | Plant | Plant ID | Point ID | $NO_X$ allocation for non-EGUs |
|---|---|---|---|---|---|
| DC | Washington | GSA CENTRAL HEATING PLANT | 0025 | 003 | 0 |
| DC | Washington | GSA CENTRAL HEATING PLANT | 0025 | 004 | 0 |
| DC | Washington | GSA CENTRAL HEATING PLANT | 0025 | 005 | 0 |
| DC | Washington | GSA CENTRAL HEATING PLANT | 0025 | 006 | 0 |
| DC | Washington | GSA WEST HEATING PLANT | 0024 | 003 | 13 |
| DC | Washington | GSA WEST HEATING PLANT | 0024 | 005 | 12 |
| DE | Kent | KRAFT FOODS INC | 0007 | 001 | 0 |
| DE | New Castle | MOTIVA ENTERPRISES (FORMERLY STAR ENTERPRISE, DELAWARE CITY PLANT). | 0016 | 002 | 102 |
| DE | New Castle | MOTIVA ENTERPRISES (FORMERLY STAR ENTERPRISE, DELAWARE CITY PLANT). | 0016 | 012 | 118 |
| KY | Boyd | ASHLAND OIL INC | 0004 | 061 | 23 |
| KY | Lawrence | KENTUCKY POWER CO | 0003 | 004 | 0 |
| MD | Baltimore | BETHLEHEM STEEL | 0147 | 016 | 75 |
| MD | Baltimore | BETHLEHEM STEEL | 0147 | 017 | 75 |
| MD | Baltimore | BETHLEHEM STEEL | 0147 | 018 | 75 |
| MD | Baltimore | BETHLEHEM STEEL | 0147 | 019 | 75 |
| MD | Allegany | WESTVACO | 0011 | 001 | 289 |
| MD | Allegany | WESTVACO | 0011 | 002 | 373 |
| MI | Wayne | DETROIT EDISON CO | B2810 | 0003 | 31 |
| MI | Midland | DOW CHEMICAL USA | A4033 | 0401 | 6 |
| MI | Midland | DOW CHEMICAL USA | A4033 | 0402 | 0 |
| MI | Wayne | DSC LTD | B3680 | 0006 | 30 |
| MI | Genesee | GENERAL MOTORS CORP | A1178 | 0501 | 63 |
| MI | Genesee | GENERAL MOTORS CORP | A1178 | 0502 | 47 |
| MI | Oakland | GENERAL MOTORS CORP | B4031 | 0506 | 22 |
| MI | Genesee | GENERAL MOTORS CORP | A1178 | 0507 | 20 |
| MI | Oakland | GENERAL MOTORS CORP | B4032 | 0510 | 4 |
| MI | Kalamazoo | GEORGIA PACIFIC CORP | B4209 | 0005 | 6 |
| MI | Kalamazoo | JAMES RIVER PAPER CO INC | B1678 | 0003 | 90 |
| MI | Wayne | MARATHON OIL COMPANY | A9831 | 0001 | 109 |
| MI | Allegan | MENASHA CORP | A0023 | 0024 | 71 |
| MI | Allegan | MENASHA CORP | A0023 | 0025 | 69 |
| MI | Ingham | MICHIGAN STATE UNIVERSITY | K3249 | 0053 | 110 |
| MI | Ingham | MICHIGAN STATE UNIVERSITY | K3249 | 0054 | 118 |
| MI | Ingham | MICHIGAN STATE UNIVERSITY | K3249 | 0055 | 77 |
| MI | Ingham | MICHIGAN STATE UNIVERSITY | K3249 | 0056 | 73 |
| MI | Washtenaw | THE REGENTS OF THE UNIVERSITY OF MICHIGAN. | M0675 | 0001 | 40 |
| MI | Washtenaw | THE REGENTS OF THE UNIVERSITY OF MICHIGAN. | M0675 | 0002 | 37 |
| MI | Oakland | WILLIAM BEAUMONT HOSPITAL | G5067 | 0010 | 0 |
| MI | Oakland | WILLIAM BEAUMONT HOSPITAL | G5067 | 0011 | 0 |
| NC | Haywood | BLUE RIDGE PAPER PRODUCTS INC | 0159 | 005 | 129 |
| NC | Haywood | CHAMPION INT CORP | 0159 | 001 | 98 |
| NC | Haywood | CHAMPION INT CORP | 0159 | 002 | 88 |
| NC | Haywood | CHAMPION INT CORP | 0159 | 003 | 200 |
| NC | Haywood | CHAMPION INT CORP | 0159 | 004 | 176 |
| NC | Halifax | CHAMPION INTERNATIONAL CORP. ROANOKE RAP. | 0007 | 001 | 340 |
| NC | Guilford | CONE MILLS CORP—WHITE OAK PLANT | 0863 | 004 | 50 |
| NC | Cabarrus | FIELDCREST—CANNON PLT 1 KANNAPOLIS | 0006 | 001 | 77 |
| NC | Columbus | INTERNATIONAL PAPER: RIEGELWOOD | 0036 | 003 | 90 |
| NC | Columbus | INTERNATIONAL PAPER: RIEGELWOOD | 0036 | 004 | 228 |
| NC | Martin | WEYERHAEUSER PAPER CO. PLYMOUTH | 0069 | 001 | 265 |
| NC | Craven | WEYERHAUSER COMPANY NEW BERN MILL | 0104 | 005 | 205 |
| NC | Craven | WEYERHAEUSER COMPANY NEW BERN MILL | 0104 | 006 | 72 |
| NC | Martin | WEYERHAEUSER COMPANY PLYMOUTH | 0069 | 009 | 25 |
| NJ | Middlesex | BALL—INCON GLASS PACKAGING | 15035 | 001 | 46 |
| NJ | Hudson | BEST FOODS CPC INTERNATIONAL I | 10003 | 003 | 27 |
| NJ | Middlesex | CHEVRON U.S.A., INC | 15023 | 001 | 17 |
| NJ | Middlesex | CHEVRON U.S.A., INC | 15023 | 043 | 55 |
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 001 | 3 |
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 038 | 11 |
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 039 | 11 |
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 040 | 11 |

| State | County | Plant | Plant ID | Point ID | $NO_X$ allocation for non-EGUs |
|---|---|---|---|---|---|
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 064 | 38 |
| NJ | Gloucester | COASTAL EAGLE POINT OIL COMPAN | 55004 | 123 | 37 |
| NJ | Middlesex | DEGUSSA CORPORATION-METZ DIVIS | 15305 | 009 | 15 |
| NJ | Union | EXXON CORPORATION | 40003 | 001 | 57 |
| NJ | Union | EXXON CORPORATION | 40003 | 007 | 22 |
| NJ | Union | EXXON CORPORATION | 40003 | 014 | 98 |
| NJ | Union | EXXON CORPORATION | 40003 | 015 | 14 |
| NJ | Middlesex | HERCULES INCORPORATED | 15017 | 001 | 38 |
| NJ | Middlesex | HERCULES INCORPORATED | 15017 | 002 | 37 |
| NJ | Warren | HOFFMAN LAROCHE INC | 85010 | 034 | 45 |
| NJ | Mercer | HOMASCTE COMPANY | 60018 | 001 | 290 |
| NJ | Mercer | HOMASCTE COMPANY | 60018 | 002 | 312 |
| NJ | Passaic | INTERNATIONAL VEILING CORPORAT | 30098 | 001 | 22 |
| NJ | Bergen | MALT PRODUCTS CORPORATION | 00322 | 001 | 27 |
| NJ | Atlantic | MARINA ASSOCIATES | 70009 | 001 | 330 |
| NJ | Atlantic | MARINA ASSOCIATES | 70009 | 002 | 329 |
| NJ | Atlantic | MARINA ASSOCIATES | 70009 | 003 | 990 |
| NJ | Union | MERCK & CO., INC | 40009 | 001 | 66 |
| NJ | Union | MERCK & CO., INC | 40009 | 002 | 61 |
| NJ | Union | MERCK & CO., INC | 40009 | 003 | 56 |
| NJ | Union | MERCK & CO., INC | 40009 | 004 | 75 |
| NJ | Union | MERCK & CO., INC | 40009 | 005 | 89 |
| NJ | Union | MERCK & CO., INC | 40009 | 006 | 103 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 001 | 54 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 002 | 54 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 003 | 54 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 004 | 49 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 005 | 16 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 006 | 105 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 027 | 0 |
| NJ | Gloucester | MOBIL OIL CORPORATION | 55006 | 270 | 14 |
| NJ | Monmouth | NESTLE CO., INC., THE | 20004 | 006 | 13 |
| NJ | Monmouth | NESTLE CO., INC., THE | 20004 | 007 | 13 |
| NJ | Middlesex | NEW JERSEY STEEL CORPORATION | 15076 | 001 | 18 |
| NJ | Gloucester | PETROLEUM RECYCLING, INC | 55180 | 020 | 169 |
| NJ | Atlantic | SCOTT PAPER COMPANY | 70011 | 002 | 89 |
| NJ | Atlantic | SCOTT PAPER COMPANY | 70011 | 003 | 75 |
| NJ | Atlantic | SCOTT PAPER COMPANY | 70011 | 004 | 99 |
| NJ | Mercer | STONY BROOK REGIONAL SEWERAGE | 60248 | 001 | 55 |
| NJ | Mercer | STONY BROOK REGIONAL SEWERAGE | 60248 | 002 | 55 |
| NY | Kings | HUDSON AVENUE | 2496 | B71 | 19 |
| NY | Kings | HUDSON AVENUE | 2496 | B72 | 19 |
| NY | Kings | HUDSON AVENUE | 2496 | B81 | 19 |
| NY | Kings | HUDSON AVENUE | 2496 | B82 | 19 |
| NY | Queens | RAVENSWOOD-A-HOUSE | CE03 | B01 | 15 |
| NY | Queens | RAVENSWOOD-A-HOUSE | CE03 | B02 | 15 |
| NY | Queens | RAVENSWOOD-A-HOUSE | CE03 | B03 | 21 |
| NY | Queens | RAVENSWOOD-A-HOUSE | CE03 | B04 | 21 |
| OH | Butler | AK STEEL (FORMERLY ARMCO STEEL CO.) | 1409010006 | P009 | 66 |
| OH | Butler | AK STEEL (FORMERLY ARMCO STEEL CO.) | 1409010006 | P010 | 66 |
| OH | Butler | AK STEEL (FORMERLY ARMCO STEEL CO.) | 1409010006 | P011 | 66 |
| OH | Butler | AK STEEL (FORMERLY ARMCO STEEL CO.) | 1409010006 | P012 | 66 |
| OH | Stark | ASHLAND PETROLEUM COMPANY | 1576000301 | B015 | 18 |
| OH | Lucas | BP OIL COMPANY, TOLEDO REFINERY | 0448020007 | B004 | 39 |
| OH | Lucas | BP OIL COMPANY, TOLEDO REFINERY | 0448020007 | B020 | 102 |
| OH | Montgomery | CARGILL INCORPORATED | 0857041124 | B004 | 133 |
| OH | Montgomery | CARGILL INCORPORATED | 0857041124 | B006 | 1 |
| OH | Butler | CHAMPION INTERNATIONAL CORP | 1409040212 | B010 | 267 |
| OH | Summit | GOODYEAR TIRE & RUBBER COMPANY | 1677010193 | B001 | 101 |
| OH | Summit | GOODYEAR TIRE & RUBBER COMPANY | 1677010193 | B002 | 108 |
| OH | Hamilton | HENKEL CORP.—EMERY GROUP | 1431070035 | B027 | 209 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B001 | 139 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B002 | 150 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B003 | 159 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B004 | 158 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B007 | 155 |
| OH | Cuyahoga | LTV STEEL COMPANY, INC | 1318001613 | B905 | 14 |
| OH | Ross | MEAD CORPORATION | 0671010028 | B001 | 185 |
| OH | Ross | MEAD CORPORATION | 0671010028 | B002 | 208 |
| OH | Ross | MEAD CORPORATION | 0671010028 | B003 | 251 |
| OH | Scioto | NEW BOSTON COKE CORP | 0773010004 | B008 | 20 |
| OH | Scioto | NEW BOSTON COKE CORP | 0773010004 | B009 | 15 |

| State | County | Plant | Plant ID | Point ID | $NO_X$ allocation for non-EGUs |
|---|---|---|---|---|---|
| OH | Hamilton | PROCTER & GAMBLE CO | 1431390903 | B021 | 72 |
| OH | Hamilton | PROCTER & GAMBLE CO | 1431390903 | B022 | 296 |
| OH | Lorain | REPUBLIC ENGINEERED STEELS, INC. (FORMERLY USS/KOBE STEEL—LORAIN WORKS). | 0247080229 | B013 | 159 |
| OH | Lawrence | SOUTH POINT ETHANOL | 0744000009 | B003 | 107 |
| OH | Lawrence | SOUTH POINT ETHANOL | 0744000009 | B004 | 107 |
| OH | Lawrence | SOUTH POINT ETHANOL | 0744000009 | B007 | 107 |
| OH | Lucas | SUN REFINING & MARKETING CO, TOLEDO REF | 0448010246 | B044 | 47 |
| OH | Lucas | SUN REFINING & MARKETING CO, TOLEDO REF | 0448010246 | B046 | 34 |
| OH | Lucas | SUN REFINING & MARKETING CO, TOLEDO REF | 0448010246 | B047 | 18 |
| OH | Trumbull | W C I STEEL, INC | 0278000463 | B001 | 113 |
| OH | Trumbull | W C I STEEL, INC | 0278000463 | B004 | 142 |
| PA | Northampton | BETHLEHEM STEEL CORP | 0048 | 041 | 100 |
| PA | Northampton | BETHLEHEM STEEL CORP | 0048 | 042 | 66 |
| PA | Northampton | BETHLEHEM STEEL CORP | 0048 | 067 | 165 |
| PA | Armstrong | BMG ASPHALT CO | 0004 | 101 | 0 |
| PA | Erie | GENERAL ELECTRIC | 0009 | 032 | 16 |
| PA | York | GLATFELTER, P. H. CO | 0016 | 031 | 0 |
| PA | York | GLATFELTER, P. H. CO | 0016 | 034 | 137 |
| PA | York | GLATFELTER, P. H. CO | 0016 | 035 | 112 |
| PA | York | GLATFELTER, P. H. CO | 0016 | 036 | 211 |
| PA | Clinton | INTERNATIONAL PAPER: LOCKHAVEN | 0008 | 033 | 101 |
| PA | Clinton | INTERNATIONAL PAPER: LOCKHAVEN | 0008 | 034 | 90 |
| PA | Delaware | KIMBERLY CLARK (FORMERLY SCOTT PAPER CO.). | 0016 | 034 | 1 |
| PA | Delaware | KIMBERLY CLARK (FORMERLY SCOTT PAPER CO.). | 0016 | 035 | 345 |
| PA | Allegheny | LTV STEEL COMPANY—PITTSBURGH WORKS | 0022 | 015 | 25 |
| PA | Allegheny | LTV STEEL COMPANY—PITTSBURGH WORKS | 0022 | 017 | 15 |
| PA | Allegheny | LTV STEEL COMPANY—PITTSBURGH WORKS | 0022 | 019 | 29 |
| PA | Allegheny | LTV STEEL COMPANY—PITTSBURGH WORKS | 0022 | 021 | 55 |
| PA | Montgomery | MERCK SHARP & DOHME | 0028 | 039 | 126 |
| PA | Westmoreland | MONESSEN INC | 0007 | 031 | 0 |
| PA | Bucks | PECO | 0055 | 043 | 15 |
| PA | Bucks | PECO | 0055 | 045 | 32 |
| PA | Bucks | PECO | 0055 | 044 | 77 |
| PA | Wyoming | PROCTER & GAMBLE CO | 0009 | 035 | 187 |
| PA | Allegheny | SHENANGO IRON & COKE WORKS | 0050 | 006 | 18 |
| PA | Allegheny | SHENANGO IRON & COKE WORKS | 0050 | 009 | 15 |
| PA | Delaware | SUN REFINING & MARKETING CO | 0025 | 089 | 102 |
| PA | Delaware | SUN REFINING & MARKETING CO | 0025 | 090 | 163 |
| PA | Philadelphia | SUN REFINING AND MARKETING 1 O | 1501 | 020 | 49 |
| PA | Philadelphia | SUN REFINING AND MARKETING 1 O | 1501 | 021 | 83 |
| PA | Philadelphia | SUN REFINING AND MARKETING 1 O | 1501 | 022 | 105 |
| PA | Philadelphia | SUN REFINING AND MARKETING 1 O | 1501 | 023 | 127 |
| PA | Philadelphia | SUNOCO (FORMERLY ALLIED CHEMICAL CORP) | 1551 | 052 | 86 |
| PA | Perry | TEXAS EASTERN GAS PIPELINE COMPANY | 0001 | 031 | 0 |
| PA | Berks | TEXAS EASTERN GAS PIPELINE COMPANY | 0087 | 031 | 98 |
| PA | Delaware | TOSCO REFINING (FORMERLY BP OIL, INC.) | 0030 | 032 | 71 |
| PA | Delaware | TOSCO REFINING (FORMERLY BP OIL, INC.) | 0030 | 033 | 80 |
| PA | Philadelphia | U.S. NAVAL BASE | 9702 | 016 | 0 |
| PA | Philadelphia | U.S. NAVAL BASE | 9702 | 017 | 1 |
| PA | Philadelphia | U.S. NAVAL BASE | 9702 | 098 | 0 |
| PA | Philadelphia | U.S. NAVAL BASE | 9702 | 099 | 0 |
| PA | Elk | WILLAMETTE INDUSTRIES (FORMERLY PENNTECH PAPERS, INC. | 0005 | 040 | 90 |
| PA | Elk | WILLAMETTE INDUSTRIES (FORMERLY PENNTECH PAPERS, INC. | 0005 | 041 | 89 |
| PA | Beaver | ZINC CORPORATION OF AMERICA | 0032 | 034 | 176 |
| PA | Beaver | ZINC CORPORATION OF AMERICA | 0032 | 035 | 180 |
| VA | Hopewell | ALLIED-SIGNAL INC | 0026 | 002 | 499 |
| VA | York | AMOCO OIL CO | 0004 | 001 | 25 |
| VA | Giles | CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP). | 0004 | 007 | 148 |
| VA | Giles | CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP). | 0004 | 014 | 56 |
| VA | Pittsylvania | DAN RIVER INC. (SCHOOLFIELD DIV) | 0002 | 003 | 49 |
| VA | Bedford | GEORGIA-PACIFIC—BIG ISLAND MILL | 0003 | 002 | 86 |
| VA | Isle Of Wight | INTERNATIONAL PAPER—FRANKLIN (FORMERLY UNION CAMP CORP/FINE PAPER DIV). | 0006 | 003 | 272 |
| VA | Hopewell | JAMES RIVER COGENERATION (COGE | 0055 | 001 | 511 |
| VA | Hopewell | JAMES RIVER COGENERATION (COGE | 0055 | 002 | 512 |

| State | County | Plant | Plant ID | Point ID | $NO_X$ allocation for non-EGUs |
|---|---|---|---|---|---|
| VA | King William | ST. LAURENT PAPER PRODUCTS CORP. | 0001 | 003 | 253 |
| VA | Alleghany | WESTVACO CORP | 0003 | 001 | 253 |
| VA | Alleghany | WESTVACO CORP | 0003 | 002 | 130 |
| VA | Alleghany | WESTVACO CORP | 0003 | 003 | 195 |
| VA | Alleghany | WESTVACO CORP | 0003 | 004 | 373 |
| VA | Alleghany | WESTVACO CORP | 0003 | 005 | 170 |
| VA | Alleghany | WESTVACO CORP | 0003 | 011 | 105 |
| WV | Kanawha | AVENTIS CROPSCIENCE | 00007 | 010 | 113 |
| WV | Kanawha | AVENTIS CROPSCIENCE | 00007 | 011 | 102 |
| WV | Kanawha | AVENTIS CROPSCIENCE | 00007 | 012 | 105 |
| WV | Kanawha | DUPONT—BELLE | 00001 | 612 | 54 |
| WV | Fayette | ELKEM METALS COMPANY L.P.—ALLOY P PLANT. | 00001 | 006 | 116 |
| WV | Marshall | PPG INDUSTRIES, INC | 00002 | 001 | 195 |
| WV | Marshall | PPG INDUSTRIES, INC | 00002 | 003 | 419 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 070 | 8 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 071 | 73 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 080 | 7 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 081 | 66 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 090 | 8 |
| WV | Kanawha | RHONE-POLUENC | 00007 | 091 | 68 |
| WV | Kanawha | UNION CARBIDE—SOUTH CHARLESTON PLANT | 00003 | 0B6 | 66 |
| WV | Kanawha | UNION CARBIDE—SOUTH CHARLESTON PLANT | 0003 | 0B6 | 92 |
| WV | Kanawha | UNION CARBIDE—SOUTH CHARLESTON PLANT | 0003 | 0B7 | 45 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 030 | 31 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 088 | 30 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 089 | 2 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 090 | 110 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 091 | 253 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 092 | 208 |
| WV | Hancock | WEIRTON STEEL CORPORATION | 00001 | 093 | 200 |

[65 FR 2727, Jan. 18, 2000, as amended at 66 FR 48576, Sept. 21, 2001. Redesignated at 81 FR 74650, Oct. 26, 2016]

## Appendix C to Subpart E of Part 97—Final Section 126 Rule: Trading Budget

| ST | F126–EGU | F126–NEGU | Total |
|---|---|---|---|
| DC | 207 | 26 | 233 |
| DE | 4,306 | 232 | 4,538 |
| IN | 7,088 | 82 | 7,170 |
| KY | 19,654 | 53 | 19,707 |
| MD | 14,519 | 1,013 | 15,532 |
| MI | 25,689 | 2,166 | 27,855 |
| NC | 31,212 | 2,329 | 33,541 |
| NJ | 9,716 | 4,838 | 14,554 |
| NY | 16,081 | 156 | 16,237 |
| OH | 45,432 | 4,103 | 49,535 |
| PA | 47,224 | 3,619 | 50,843 |
| VA | 17,091 | 4,104 | 21,195 |
| WV | 26,859 | 2,184 | 29,043 |
| Total | 265,078 | 24,905 | 289,983 |

[65 FR 2727, Jan. 18, 2000. Redesignated at 81 FR 74650, Oct. 26, 2016]

## Appendix D to Subpart E of Part 97—Final Section 126 Rule: State Compliance supplement pools for the Section 126 Final Rule (Tons)

| State | Compliance supplement pool |
|---|---|
| Delaware | 168 |
| District of Columbia | 0 |
| Indiana | 2,454 |
| Kentucky | 7,314 |
| Maryland | 3,882 |
| Michigan | 9,398 |
| New Jersey | 1,550 |
| New York | 1,379 |
| North Carolina | 10,737 |
| Ohio | 22,301 |
| Pennsylvania | 15,763 |

| State | Compliance supplement pool |
|---|---|
| Virginia | 5,504 |
| West Virginia | 16,709 |
| Total | 97,159 |

[65 FR 2727, Jan. 18, 2000. Redesignated at 81 FR 74650, Oct. 26, 2016]

## Subpart F—$NO_X$ Allowance Tracking System

### §97.50 $NO_X$ Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with §97.51(a), the Administrator will establish one compliance account for each $NO_X$ Budget unit and one overdraft account for each source with two or more $NO_X$ Budget units. Allocations of $NO_X$ allowances pursuant to subpart E of this part or §97.88, and deductions or transfers of $NO_X$ allowances pursuant to §97.31, §96.54, §96.56, subpart G of this part, or subpart I of this part will be recorded in compliance accounts or overdraft accounts in accordance with this subpart.

(b) *Nature and function of general accounts.* Consistent with §97.51(b), the Administrator will establish, upon request, a general account for any person. Allocations of $NO_X$ allowances pursuant to §97.4(b)(4)(ii) or §97.5(c)(2) and transfers of allowances pursuant to subpart G of this part will be recorded in general accounts in accordance with this subpart.

### §97.51 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under §97.13, the Administrator will establish:

(1) A compliance account for each $NO_X$ Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more $NO_X$ Budget units.

(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 allowances. An application for a general account may designate one and only one $NO_X$ authorized account representative and one and only one alternate $NO_X$ authorized account representative who may act on behalf of the $NO_X$ authorized account representative. The agreement by which the alternate $NO_X$ authorized account representative is selected shall include a procedure for authorizing the alternate $NO_X$ authorized account representative to act in lieu of the $NO_X$ authorized account representative. 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 $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative;

(B) At the option of the $NO_X$ authorized account representative, organization name and type of organization;

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

(D) The following certification statement by the $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative: ''I certify that I was selected as the $NO_X$ authorized account representative or the $NO_X$ alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to $NO_X$ allowances held in the general account. I certify that I have all the necessary authority to

carry out my duties and responsibilities under the $NO_X$ Budget 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 $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative and the dates signed.

(ii) 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 $NO_X$ authorized account representative.* Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

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

(ii) The $NO_X$ authorized account representative and any alternate $NO_X$ authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to $NO_X$ allowances held in the general account in all matters pertaining to the $NO_X$ Budget Trading Program, not withstanding any agreement between the $NO_X$ authorized account representative or any alternate $NO_X$ authorized account representative and such person. Any such person shall be bound by any order or decision issued to the $NO_X$ authorized account representative or any alternate $NO_X$ authorized account representative by the Administrator or a court regarding the general account.

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

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

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

(3) *Changing $NO_X$ authorized account representative and alternate $NO_X$ authorized account representative; changes in persons with ownership interest.* (i) The $NO_X$ authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous $NO_X$ authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be

binding on the new $NO_X$ authorized account representative and the persons with an ownership interest with respect to the $NO_X$ allowances in the general account.

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

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

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

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

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the $NO_X$ authorized account representative or any alternative $NO_X$ authorized account representative for a general account shall affect any representation, action, inaction, or submission of the $NO_X$ authorized account representative or any alternative $NO_X$ authorized account representative or the finality of any decision or order by the Administrator under the $NO_X$ Budget Trading Program.

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

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

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21646, Apr. 21, 2004]

### § 97.52 $NO_X$ Allowance Tracking System responsibilities of $NO_X$ authorized account representative.

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

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each $NO_X$ authorized account representative.

**§ 97.53 Recordation of $NO_X$ allowance allocations.**

(a) The Administrator will record the $NO_X$ allowances for 2004 for a $NO_X$ Budget unit allocated under subpart E of this part in the unit's compliance account, except for $NO_X$ allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record $NO_X$ allowances for 2004 for a $NO_X$ Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(b) By May 1, 2003, the Administrator will record the $NO_X$ allowances for 2005 for a $NO_X$ Budget unit allocated under subpart E of this part in the unit's compliance account, except for $NO_X$ allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record $NO_X$ allowances for 2005 for a $NO_X$ Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(c) By May 1, 2003, the Administrator will record the $NO_X$ allowances for 2006 for a $NO_X$ Budget unit allocated under subpart E of this part in the unit's compliance account, except for $NO_X$ allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record $NO_X$ allowances for 2006 for a $NO_X$ Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(d) By May 1, 2004, the Administrator will record the $NO_X$ allowances for 2007 for a $NO_X$ Budget unit allocated under subpart E of this part in the unit's compliance account, except for $NO_X$ allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record $NO_X$ allowances for 2007 for a $NO_X$ Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(e) Each year starting with 2005, after the Administrator has made all deductions from a $NO_X$ Budget unit's compliance account and the overdraft account pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)), the Administrator will record:

(1) $NO_X$ allowances, in the compliance account, as allocated to the unit under subpart E of this part for the third year after the year of the control period for which such deductions were or could have been made;

(2) $NO_X$ allowances, in the general account specified by the owners and operators of the unit, as allocated under § 97.4(b)(4)(ii) or § 97.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

(3) $NO_X$ allowances, in the compliance account, as allocated to the unit under § 97.88(a).

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

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002]

**§ 97.54 Compliance.**

(a) $NO_X$ allowance transfer deadline. The $NO_X$ allowances are available to be deducted for compliance with a unit's $NO_X$ Budget emissions limitation for a control period in a given year only if the $NO_X$ allowances:

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

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the $NO_X$ allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a $NO_X$ allowance transfer correctly submitted for recordation under § 97.60 by the $NO_X$ allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 97.61, of $NO_X$ allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the $NO_X$ allowance transfer deadline for a control period, the Administrator will deduct $NO_X$ allowances

available under paragraph (a) of this section to cover the unit's $NO_X$ emissions (as determined in accordance with subpart H of this part), or to account for actual heat input under § 97.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more $NO_X$ allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest account number and end with the unit having the compliance account with the highest account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct $NO_X$ allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of $NO_X$ allowances deducted for the control period equals the number of tons of $NO_X$ emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of $NO_X$ allowances required for deduction to account for actual heat input under § 97.42(e) for the control period; or

(ii) Until no more $NO_X$ allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of $NO_X$ allowances by serial number.* The $NO_X$ authorized account representative for each compliance account may identify by serial number the $NO_X$ allowances to be deducted from the unit's compliance account under paragraph (b), (d), (e), or (f) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 97.30.

(2) *First-in, first-out.* The Administrator will deduct $NO_X$ allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of $NO_X$ allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those $NO_X$ allowances that were allocated for the control period to the unit under subpart E or I of this part;

(ii) Those $NO_X$ allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;

(iii) Those $NO_X$ allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and

(iv) Those $NO_X$ allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of $NO_X$ allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient $NO_X$ allowances, the Administrator will deduct the required number of $NO_X$ allowances, regardless of the control period for which they were allocated, whenever $NO_X$ allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the $NO_X$ Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a $NO_X$ Budget unit has excess emissions for a

control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:

(1) The $NO_X$ authorized account representative of the units may identify the percentage of $NO_X$ allowances to be deducted from each such unit's compliance account to cover the unit's share of $NO_X$ emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 97.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct $NO_X$ allowances for each such unit until the number of $NO_X$ allowances deducted equals the unit's identified percentage under paragraph (e)(1) of this section or, if no percentage is identified, an equal percentage for each unit multiplied by the number of tons of $NO_X$ emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined. In addition to the deductions under the first sentence of this paragraph (e)(1), the Administrator will deduct $NO_X$ allowances for each such unit until the number of $NO_X$ allowances deducted equals the number of $NO_X$ allowances required to account for actual heat input under § 97.42(e) for the unit for the control period.

(f) *Deduction of banked allowances.* Each year starting in 2006, after the Administrator has completed the designation of banked $NO_X$ allowances under § 97.55(b) and before May 1 of the year, the Administrator will determine the extent to which banked $NO_X$ allowances otherwise available under paragraph (a) of this section are available for compliance in the control period for the current year, as follows. For each State $NO_X$ Budget Trading Program that is established, and approved and administered by the Administrator pursuant to § 51.121 of this chapter, the terms ''compliance account'' or ''compliance accounts'', ''overdraft account'' or ''overdraft accounts'', ''general account'' or ''general accounts'', ''States'', and ''trading program budgets under § 97.40'' in paragraphs (f)(1) through (f)(3) of this section shall be read to include respectively: A compliance account or compliance accounts established under such State $NO_X$ Budget Trading Program; an overdraft account or overdraft accounts established under such State $NO_X$ Budget Trading Program; a general account or general accounts established under such State $NO_X$ Budget Trading Program; the State or portion of a State covered by such State $NO_X$ Budget Trading Program; and the trading program budget of the State or portion of a State covered by such State $NO_X$ Budget Trading Program.

(1) The Administrator will determine the total number of banked $NO_X$ allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked $NO_X$ allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10 percent of the sum of the trading program budgets under § 97.40 for all States for the control period, any banked $NO_X$ allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section.

(3) If the total number of banked $NO_X$ allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the trading program budgets under § 97.40 for all States for the control period, any banked allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets under § 97.40 for all States for the control period and divided by the total

number of banked $NO_X$ allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked $NO_X$ allowances in each compliance account or overdraft account by the ratio determined under paragraph (f)(3)(i) of this section. The resulting product is the number of banked $NO_X$ allowances in the account that may be deducted for compliance in accordance with paragraphs (a) through (e) of this section. Any banked $NO_X$ allowances in excess of the resulting product may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except that, if such $NO_X$ allowances are used to make a deduction under paragraph (b) or (e) of this section, two (rather than one) such $NO_X$ allowances shall authorize up to one ton of $NO_X$ emissions during the control period and must be deducted for each deduction of one $NO_X$ allowance required under paragraph (b) or (e) of this section.

(g) *Recordation of deductions.* The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraph (b), (d), (e), or (f) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

### §97.55 Banking.

$NO_X$ allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(a) Any $NO_X$ allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the $NO_X$ allowance is deducted or transferred under §97.31, §97.54, §97.56, or subpart G or I of this part.

(b) The Administrator will designate, as a ''banked'' $NO_X$ allowance, any $NO_X$ allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to §97.54 (except deductions pursuant to §97.54(d)(2)) and that was allocated for that control period or a control period in a prior year.

### §97.56 Account error.

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

### §97.57 Closing of general accounts.

(a) The $NO_X$ authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the $NO_X$ Allowance Tracking System and by correctly submitting for recordation under §97.60 an allowance transfer of all $NO_X$ allowances in the account to one or more other $NO_X$ Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any $NO_X$ allowances, the Administrator may notify the $NO_X$ authorized account representative for the account that the account will be closed and deleted from the $NO_X$ Allowance Tracking System 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 $NO_X$ allowances into the account under §97.60 or a statement submitted by the $NO_X$ authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

## Subpart G—$NO_X$ Allowance Transfers

### §97.60 Submission of $NO_X$ allowance transfers.

The $NO_X$ authorized account representatives seeking recordation of a $NO_X$ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the $NO_X$ allowance transfer shall include

the following elements in a format specified by the Administrator:

(a) The numbers identifying both the transferor and transferee accounts;

(b) A specification by serial number of each $NO_X$ allowance to be transferred; and

(c) The printed name and signature of the $NO_X$ authorized account representative of the transferor account and the date signed.

### § 97.61 EPA recordation.

(a) Within 5 business days of receiving a $NO_X$ allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a $NO_X$ allowance transfer by moving each $NO_X$ allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.60; and

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

(b) A $NO_X$ allowance transfer that is submitted for recordation following the $NO_X$ allowance transfer deadline and that includes any $NO_X$ allowances allocated for a control period prior to or the same as the control period to which the $NO_X$ allowance transfer deadline applies will not be recorded until after the Administrator completes the recordation of $NO_X$ allowance allocations under § 97.53 for the control period in the fourth year after the control period to which the $NO_X$ allowance transfer deadline applies.

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

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21647, Apr. 21, 2004]

### § 97.62 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a $NO_X$ allowance transfer under § 97.61, the Administrator will notify the $NO_X$ authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a $NO_X$ allowance transfer that fails to meet the requirements of § 97.61(a), the Administrator will notify the $NO_X$ authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

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

## Subpart H—Monitoring and Reporting

### § 97.70 General requirements.

The owners and operators, and to the extent applicable, the $NO_X$ authorized account representative of a $NO_X$ Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.2 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 ''$NO_X$ Budget unit,'' ''$NO_X$ authorized account representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.2. The owner or operator of a unit that is not a $NO_X$ Budget unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the monitoring, recordkeeping, and reporting requirements for a $NO_X$ Budget unit under this part.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each $NO_X$ Budget unit shall meet the following requirements. These provisions shall also apply to a unit for which an application for a $NO_X$ Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions. This includes all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration,

heat input rate, and stack flow rate, in accordance with §§75.71 and 75.72 of this chapter.

(2) Install all monitoring systems for monitoring heat input rate.

(3) Successfully complete all certification tests required under §97.71 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.

(4) Record, report, and quality-assure the data from the monitoring systems under paragraphs (a)(1) and (2) of this section.

(b) *Compliance deadlines*. The owner or operator shall meet the certification and other requirements of paragraphs (a)(1) through (a)(3) 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 paragraphs (a)(1) and (a)(2) of this section on and after the following dates.

(1) For the owner or operator of a $NO_X$ Budget unit for which the owner or operator intends to apply for early reduction credits under §97.43, by May 1, 2001. If the owner or operator of a $NO_X$ Budget unit fails to meet this deadline, he or she is not eligible to apply for early reduction credits and is subject to the deadline under paragraph (b)(2) of this section.

(2) For the owner or operator of a $NO_X$ Budget unit under §97.4(a) that commences operation before January 1, 2003 and that is not subject to or does not meet the deadline under paragraph (b)(1) of this section, by May 1, 2003.

(3) For the owner or operator of a $NO_X$ Budget unit under §97.4(a) that commences operation on or after January 1, 2003 and that reports on an annual basis under §97.74(d) by the following dates:

(i) The earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation; or

(ii) May 1, 2003, if the compliance date under paragraph (b)(3)(i) of this section is before May 1, 2003.

(4) For the owner or operator of a $NO_X$ Budget unit under §97.4(a) that commences operation on or after January 1, 2003 and that reports on a control period basis under §97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which the unit commences commercial operation, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(4)(i) of this section, if such compliance date is not during a control period.

(5) For the owner or operator of a $NO_X$ Budget unit that has a new stack or flue or add-on $NO_X$ emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on an annual basis under §97.74(d), by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emission controls.

(6) For the owner or operator of a $NO_X$ Budget unit that has a new stack or flue or add-on $NO_X$ emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on a control period basis under §97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emission controls, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(6)(i) of this section, if such compliance date is not during a control period.

(7) For the owner or operator of a unit for which an application for a $NO_X$ Budget opt-in permit is submitted and not denied or withdrawn, by the date specified under subpart I of this part.

(c) *Commencement of data reporting*. (1) The owner or operator of $NO_X$ Budget units under paragraph (b)(1) or (b)(2) of this section shall determine, record

and report $NO_X$ mass emissions, heat input rate, and any other values required to determine $NO_X$ mass emissions (*e.g.*, $NO_X$ emission rate and heat input rate, or $NO_X$ concentration and stack flow rate) in accordance with § 75.70(g) of this chapter, beginning on the first hour of the applicable compliance deadline in paragraph (b)(1) or (b)(2) of this section.

(2) The owner or operator of a $NO_X$ Budget unit under paragraph (b)(3) or (b)(4) of this section shall determine, record and report $NO_X$ mass emissions, heat input rate, and any other values required to determine $NO_X$ mass emissions (*e.g.*, $NO_X$ emission rate and heat input rate, or $NO_X$ concentration and stack flow rate) and electric and thermal output in accordance with § 75.70(g) of this chapter, beginning on:

(i) The date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is during a control period; or

(ii) The first hour on May 1 of the first control period after the date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is not during a control period.

(3) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator may begin reporting $NO_X$ mass emission data and heat input data before the date and hour under paragraph (c)(2)(i) or (c)(2)(ii) of this section if the unit reports on an annual basis and if the required monitoring systems are certified before the applicable date and hour under paragraph (c)(1) or (c)(2) of this section.

(d) *Prohibitions.* (1) No owner or operator of a $NO_X$ Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 97.75.

(2) No owner or operator of a $NO_X$ Budget 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, except as provided in § 75.74 of this chapter.

(3) No owner or operator of a $NO_X$ Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $NO_X$ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter or except as provided in § 75.74 of this chapter.

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

(i) During the period that the unit is covered by an exemption under § 97.4(b) or § 97.5 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 $NO_X$ authorized account representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.71(b)(2).

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21647, Apr. 21, 2004]

### § 97.71 Initial certification and recertification procedures.

(a) The owner or operator of a $NO_X$ Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter for $NO_X$-diluent CEMS, flow monitors, $NO_X$ concentration CEMS, or excepted monitoring systems under appendix E of part 75 of this chapter for $NO_X$. under appendix D for heat input,

or under §75.19 for $NO_X$ and heat input, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under §75.17(a) or (b) of this chapter for apportioning the $NO_X$ emission rate measured in a common stack or a petition under §75.66 of this chapter for an alternative to a requirement in §75.17 of this chapter, the $NO_X$ authorized account representative shall resubmit the petition to the Administrator under §97.75(a) to determine if the approval applies under the $NO_X$ Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in §75.72 of this chapter or for any $NO_X$ concentration CEMS used under the provisions of §75.71(a)(2) of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a $NO_X$ Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures. The owner or operator of such 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 following procedures, as modified by paragraph (c) or (d) of this section. The owner or operator of a $NO_X$ Budget unit that is subject to an Acid Rain emissions limitation and that requires additional CEMS under the common stack provisions in §75.72 of this chapter or uses a $NO_X$ concentration CEMS under §75.71(a)(2) of this chapter shall comply with the following procedures.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each emission monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §97.70(b). In addition, whenever the owner or operator installs an emission monitoring system in order to meet the requirements of this part in a location where no such emission 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 a certified emission monitoring system that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the emission 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 the continuous emissions monitoring system in accordance with §75.20(b) of this chapter. Examples of changes 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.

(3) *Certification approval process for initial certification and recertification*—(i) *Notification of certification.* The $NO_X$ authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the permitting authority written notice of the dates of certification in accordance with §97.73.

(ii) *Certification application.* The $NO_X$ authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the permitting authority a certification application for each emission monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.

(iii) Except for units using the low mass emission excepted methodology under §75.19 of this chapter, the provisional certification date for a monitor shall be determined in accordance with

§ 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the $NO_X$ Budget Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Administrator.

(iv) *Certification application formal approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the $NO_X$ Budget Trading Program.

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

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the Administrator. If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the $NO_X$ authorized account representative must submit the additional information required to complete the certification application. If the $NO_X$ authorized account representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section. The 120-day review period shall not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.72(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

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

(*1*) For units that the owner or operator intends to monitor or monitors for $NO_X$ emission rate and heat input rate or intends to determine or determines

$NO_X$ mass emissions using the low mass emission excepted methodology under §75.19 of this chapter, the maximum potential $NO_X$ emission rate and the maximum potential hourly heat input of the unit; and

(*2*) For units that the owner or operator intends to monitor or monitors for $NO_X$ mass emissions using a $NO_X$ pollutant concentration monitor and a flow monitor, the maximum potential concentration of $NO_X$ and the maximum potential flow rate of the unit under section 2 of appendix A of part 75 of this chapter.

(B) The $NO_X$ authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section.

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

(c) *Initial certification and recertification procedures for low mass emission units using the excepted methodologies under §75.19 of this chapter*. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under §75.19 of this chapter and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of §75.10 of this chapter and the applicable requirements of §75.19 of this chapter. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the $NO_X$ Budget Trading Program as of the date on which a complete certification application is received by the Administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the Administrator or, if such notice is not provided, at the end of the Administrator's 120 day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the $NO_X$ Budget Trading Program prior to the applicable commencement date specified in §75.19(a)(1)(ii) of this chapter.

(d) *Certification/recertification procedures for alternative monitoring systems*. The $NO_X$ authorized account representative of each unit not subject to an Acid Rain emissions limitation for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable certification procedures of paragraph (b) of this section before using the system under the $NO_X$ Budget Trading Program. The $NO_X$ authorized account representative shall also comply with the applicable recertification procedures of paragraph (b) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21647, Apr. 21, 2004]

### §97.72 Out of control periods.

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

(b) *Audit decertification*. Whenever both an audit of an emission monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §97.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status

of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system. The owner or operator shall follow the initial certification or recertification procedures in § 97.71 for each disapproved system.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21648, Apr. 21, 2004]

### § 97.73 Notifications.

(a) The $NO_X$ authorized account representative for a $NO_X$ Budget unit shall submit written notice to the Administrator, the appropriate EPA Regional Office, and the permitting authority in accordance with § 75.61 of this chapter.

(b) For any unit that does not have an Acid Rain emissions limitation, the permitting authority may waive the requirement to notify the permitting authority in paragraph (a) of this section.

### § 97.74 Recordkeeping and reporting.

(a) *General provisions.* (1) The $NO_X$ authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the recordkeeping and reporting requirements under § 75.73 of this chapter, and with the requirements of § 97.10(e)(1).

(2) If the $NO_X$ authorized account representative for a $NO_X$ Budget unit subject to an Acid Rain emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, then the submission must also be signed by the designated representative or the alternative designated representative.

(b) *Monitoring plans.* (1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.

(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.

(c) *Certification applications.* The $NO_X$ authorized account representative shall submit an application to the Administrator, the appropriate EPA Regional Office, and the permitting authority within 45 days after completing all initial certification or recertification tests required under § 97.71 including the information required under subpart H of part 75 of this chapter.

(d) *Quarterly reports.* The $NO_X$ authorized account representative shall submit quarterly reports, as follows:

(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the $NO_X$ budget unit chooses to meet the annual reporting requirements of this subpart H, the $NO_X$ authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(ii) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(iii) For a unit that commences operation on or after January 1, 2003:

(A) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. The $NO_X$ mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(B) The calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation, if the unit does not commence operation during a control period. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1 of that control period; or

(iv) A calendar quarter before the quarter specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii)(B) of this section, if the owner or operator elects to begin reporting early under §97.70(c)(3).

(2) If a $NO_X$ budget unit is not subject to an Acid Rain emission limitation, then the $NO_X$ authorized account representative shall either:

(i) Meet all of the requirements of part 75 related to monitoring and reporting $NO_X$ mass emissions during the entire year and meet the deadlines specified in paragraph (d)(1) of this section; or

(ii) Submit quarterly reports, documenting $NO_X$ mass emissions from the unit, only for the period from May 1 through September 30 of each year and including the data described in §75.74(c)(6) of this chapter. The $NO_X$ authorized account representative shall submit such quarterly reports, beginning with:

(A) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under §97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(B) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(2)(ii)(A) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(C) For a unit that commences operation on or after January 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. The $NO_X$ mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(D) For a unit that commences operation on or after January 1, 2003 and not during a control period, the calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation. The $NO_X$ mass emission data shall be recorded and reported from the first hour on May 1 of that control period.

(3) The $NO_X$ authorized account 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 subpart H of part 75 of this chapter and §75.64 of this chapter.

(i) For units subject to an Acid Rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each $NO_X$ Budget unit (or group of units using a common stack) and the data and information required in subpart G of part 75 of this chapter.

(ii) For units not subject to an Acid Rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each $NO_X$ Budget unit (or group of units using a common stack).

(4) *Compliance certification*. The $NO_X$ authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

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

(ii) For a unit with add-on $NO_X$ emission controls and for all hours where data are substituted in accordance with §75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of

part 75 of this chapter and the substitute values do not systematically underestimate $NO_X$ emissions; and

(iii) 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.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21648, Apr. 21, 2004]

### § 97.75 Petitions.

(a) The $NO_X$ authorized account representative of a $NO_X$ Budget unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(b) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator under § 75.66 of this chapter.

### § 97.76 Additional requirements to provide heat input data.

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

## Subpart I—Individual Unit Opt-ins

### § 97.80 Applicability.

A unit that is in a State (as defined in § 97.2), is not a $NO_X$ Budget unit under § 97.4(a), is not a unit exempt under § 97.4(b), vents all of its emissions to a stack, and is operating, may qualify to be a $NO_X$ Budget opt-in unit under this subpart. A unit that is a $NO_X$ Budget unit under § 97.4(a), is covered by an exemption under § 97.4(b) or § 97.5 that is in effect, or is not operating is not eligible to be a $NO_X$ Budget opt-in unit.

### § 97.81 General.

Except otherwise as provided in this part, a $NO_X$ Budget opt-in unit shall be treated as a $NO_X$ Budget unit for purposes of applying subparts A through H of this part.

### § 97.82 $NO_X$ authorized account representative.

A unit for which an application for a $NO_X$ Budget opt-in permit is submitted, or a $NO_X$ Budget opt-in unit, located at the same source as one or more $NO_X$ Budget units, shall have the same $NO_X$ authorized account representative as such $NO_X$ Budget units.

### § 97.83 Applying for $NO_X$ Budget opt-in permit.

(a) *Applying for initial $NO_X$ Budget opt-in permit.* In order to apply for an initial $NO_X$ Budget opt-in permit, the $NO_X$ authorized account representative of a unit qualified under § 97.80 may submit to the Administrator and the permitting authority at any time, except as provided under § 97.86(g):

(1) A complete $NO_X$ Budget permit application under § 97.22;

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under § 97.13, if no $NO_X$ authorized account representative has been previously designated for the unit.

(b) *Duty to reapply.* Unless the $NO_X$ Budget opt-in permit is terminated or revised under § 97.86(e) or § 97.87(b)(1)(i), the $NO_X$ authorized account representative of a $NO_X$ Budget opt-in unit shall submit to the Administrator and permitting authority a complete $NO_X$ Budget permit application under § 97.22 to renew the $NO_X$ Budget opt-in permit in accordance with § 97.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

### § 97.84 Opt-in process.

The permitting authority will issue or deny an initial $NO_X$ Budget opt-in permit for a unit for which an application for a $NO_X$ Budget opt-in permit under § 97.83 is submitted, in accordance with § 97.20 and the following:

(a) *Interim review of monitoring plan.* The Administrator will determine, on

an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a $NO_X$ Budget opt-in permit under §97.83. 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 rate of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the Administrator determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the $NO_X$ emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which percent monitor data availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a ''$NO_X$ Budget unit'' prior to issuance of a $NO_X$ Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the Administrator will calculate the unit's baseline heat input, which will equal the unit's total heat input (in mmBtu) for the control period, and the unit's baseline $NO_X$ emissions rate, which will equal the unit's total $NO_X$ mass emissions (in lb) for the control period divided by the unit's baseline heat input.

(d) *Issuance of draft $NO_X$ Budget opt-in permit for public comment.* The permitting authority will issue a draft $NO_X$ Budget opt-in permit for public comment in accordance with §97.20.

(e) Not withstanding paragraphs (a) through (d) of this section, if at any time before issuance of a draft $NO_X$ Budget opt-in permit for public comment for the unit, the Administrator or the permitting authority determines that the unit does not qualify as a $NO_X$ Budget opt-in unit under §97.80, the permitting authority will issue a draft denial of a $NO_X$ Budget opt-in permit for public comment for the unit in accordance with §97.20.

(f) *Withdrawal of application for $NO_X$ Budget opt-in permit.* A $NO_X$ authorized account representative of a unit may withdraw its application for an initial $NO_X$ Budget opt-in permit under §97.83 at any time prior to the issuance of the initial $NO_X$ Budget opt-in permit. Once the application for a $NO_X$ Budget opt-in permit is withdrawn, a $NO_X$ authorized account representative wanting to reapply must submit a new application for an initial $NO_X$ Budget permit under §97.83.

(g) The unit shall be a $NO_X$ Budget opt-in unit and a $NO_X$ Budget unit starting May 1 of the first control period starting after the issuance of the initial $NO_X$ Budget opt-in permit by the permitting authority.

### §97.85 $NO_X$ Budget opt-in permit contents.

(a) Each $NO_X$ Budget opt-in permit will contain all elements required for a complete $NO_X$ Budget opt-in permit application under §97.22.

(b) Each $NO_X$ Budget opt-in permit is deemed to incorporate automatically the definitions of terms under §97.2 and, upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of $NO_X$ allowances to or from the compliance accounts of each $NO_X$ Budget opt-in unit covered by the $NO_X$ Budget opt-in permit or the overdraft account of the $NO_X$ Budget source where the $NO_X$ Budget opt-in unit is located.

### §97.86 Withdrawal from $NO_X$ Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the $NO_X$ Budget Trading Program, the $NO_X$ authorized account representative of a $NO_X$ Budget opt-in unit shall submit to the Administrator and the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a $NO_X$ Budget opt-in unit covered by a

request under paragraph (a) of this section may withdraw from the $NO_X$ Budget Trading Program and the $NO_X$ Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal is to be effective, the $NO_X$ authorized account representative must submit or must have submitted to the Administrator and the permitting authority an annual compliance certification report in accordance with § 97.30.

(2) If the $NO_X$ Budget opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the $NO_X$ Budget opt-in unit's compliance account, or the overdraft account of the $NO_X$ Budget source where the $NO_X$ Budget opt-in unit is located, the full amount required under § 97.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the $NO_X$ Budget opt-in unit's compliance account, or the overdraft account of the $NO_X$ Budget source where the $NO_X$ Budget opt-in unit is located, $NO_X$ allowances equal in number to and allocated for the same or a prior control period as any $NO_X$ allowances allocated to that source under § 97.88 for any control period for which the withdrawal is to be effective. The Administrator will close the $NO_X$ Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the $NO_X$ Budget opt-in unit.

(c) A $NO_X$ Budget opt-in unit that withdraws from the $NO_X$ Budget Trading Program shall comply with all requirements under the $NO_X$ Budget Trading Program concerning all years for which such $NO_X$ Budget opt-in unit was a $NO_X$ Budget opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of $NO_X$ allowances required), the Administrator will issue a notification to the permitting authority and the $NO_X$ authorized account representative of the $NO_X$ Budget opt-in unit of the acceptance of the withdrawal of the $NO_X$ Budget opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the Administrator will issue a notification to the permitting authority and the $NO_X$ authorized account representative of the $NO_X$ Budget opt-in unit that the request to withdraw is denied. If the $NO_X$ Budget opt-in unit's request to withdraw is denied, the $NO_X$ Budget opt-in unit shall remain subject to the requirements for a $NO_X$ Budget opt-in unit.

(e) *Permit revision.* After the Administrator issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the $NO_X$ Budget permit covering the $NO_X$ Budget opt-in unit to terminate the $NO_X$ Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A $NO_X$ Budget opt-in unit shall continue to be a $NO_X$ Budget opt-in unit until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the Administrator denies the request to withdraw the $NO_X$ Budget opt-in unit, the $NO_X$ authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) *Ability to return to the $NO_X$ Budget Trading Program.* Once a $NO_X$ Budget opt-in unit withdraws from the $NO_X$ Budget Trading Program and its $NO_X$ Budget opt-in permit is terminated under paragraph (e) of this section, the $NO_X$ authorized account representative may not submit another application for a $NO_X$ Budget opt-in permit under § 97.83 for the unit prior to the date that is 4 years after the date on which the terminated $NO_X$ Budget opt-in permit became effective.

**§97.87 Change in regulatory status.**

(a) *Notification.* When a $NO_X$ Budget opt-in unit becomes a $NO_X$ Budget unit under §97.4(a), the $NO_X$ authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the $NO_X$ Budget opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's action.* (1)(i) When the $NO_X$ Budget opt-in unit becomes a $NO_X$ Budget unit under §97.4(a), the permitting authority will revise the $NO_X$ Budget opt-in unit's $NO_X$ Budget opt-in permit to meet the requirements of a $NO_X$ Budget permit under §97.23 as of an effective date that is the date on which such $NO_X$ Budget opt-in unit becomes a $NO_X$ Budget unit under §97.4(a).

(ii)(A) The Administrator will deduct from the compliance account for the $NO_X$ Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the $NO_X$ Budget source where the unit is located, $NO_X$ allowances equal in number to and allocated for the same or a prior control period as:

(*1*) Any $NO_X$ allowances allocated to the $NO_X$ Budget unit (as a $NO_X$ Budget opt-in unit) under §97.88 for any control period after the last control period during which the unit's $NO_X$ Budget opt-in permit was effective; and

(*2*) If the effective date of the $NO_X$ Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the $NO_X$ allowances allocated to the $NO_X$ Budget unit (as a $NO_X$ Budget opt-in unit) under §97.88 for the control period multiplied by the number of days in the control period starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(B) The $NO_X$ authorized account representative shall ensure that the compliance account of the $NO_X$ Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the $NO_X$ Budget source where the unit is located, contains the $NO_X$ allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain the necessary $NO_X$ allowances, the Administrator will deduct the required number of $NO_X$ allowances, regardless of the control period for which they were allocated, whenever $NO_X$ allowances are recorded in either account.

(iii)(A) For every control period during which the $NO_X$ Budget permit revised under paragraph (b)(1)(i) of this section is in effect, the $NO_X$ Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of $NO_X$ allowance allocations under §97.42, as a unit that commenced operation on the effective date of the $NO_X$ Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated $NO_X$ allowances under §97.42. The unit's deadline under §97.84(b) for meeting monitoring requirements in accordance with subpart H of this part shall not be changed by the change in the unit's regulatory status or by the revision of the $NO_X$ Budget permit under paragraph (b)(1)(i) of this section.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the $NO_X$ Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of $NO_X$ allowances will be allocated to the $NO_X$ Budget unit under paragraph (b)(1)(i) of this section under §97.42 for the control period: the number of $NO_X$ allowances otherwise allocated to the $NO_X$ Budget unit under §97.42 for the control period multiplied by the number of days in the control period starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

(2)(i) When the $NO_X$ authorized account representative of a $NO_X$ Budget opt-in unit does not renew its $NO_X$ Budget opt-in permit under §97.83(b), the Administrator will deduct from the $NO_X$ Budget opt-in unit's compliance account, or the overdraft account of the $NO_X$ Budget source where the $NO_X$

Budget opt-in unit is located, $NO_X$ allowances equal in number to and allocated for the same or a prior control period as any $NO_X$ allowances allocated to the $NO_X$ Budget opt-in unit under § 97.88 for any control period after the last control period for which the $NO_X$ Budget opt-in permit is effective. The $NO_X$ authorized account representative shall ensure that the $NO_X$ Budget opt-in unit's compliance account or the overdraft account of the $NO_X$ Budget source where the $NO_X$ Budget opt-in unit is located contains the $NO_X$ allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain the necessary $NO_X$ allowances, the Administrator will deduct the required number of $NO_X$ allowances, regardless of the control period for which they were allocated, whenever $NO_X$ allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the $NO_X$ Budget opt-in unit's compliance account. If any $NO_X$ allowances remain in the compliance account after completion of such deduction and any deduction under § 97.54, the Administrator will close the $NO_X$ Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the $NO_X$ Budget opt-in unit.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21648, Apr. 21, 2004]

### § 97.88 $NO_X$ allowance allocations to opt-in units.

(a) *$NO_X$ allotment allocation.* (1) By April 1 immediately before the first control period for which the $NO_X$ Budget opt-in permit is effective, the Administrator will determine by order the $NO_X$ allowance allocations for the $NO_X$ Budget opt-in unit for the control period in accordance with paragraph (b) of this section.

(2) By no later than April 1, after the first control period for which the $NO_X$ Budget opt-in permit is in effect, and April 1 of each year thereafter, the Administrator will determine by order the $NO_X$ allowance allocations for the $NO_X$ Budget opt-in unit for the next control period, in accordance with paragraph (b) of this section.

(3) The Administrator will make available to the public each determination of $NO_X$ allowance allocations under paragraph (a)(1) or (2) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (b) of this section. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with paragraph (b) of this section.

(b) For each control period for which the $NO_X$ Budget opt-in unit has an approved $NO_X$ Budget opt-in permit, the $NO_X$ Budget opt-in unit will be allocated $NO_X$ allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating $NO_X$ allowance allocations will be the lesser of:

(i) The unit's baseline heat input determined pursuant to § 97.84(c); or

(ii) The unit's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the $NO_X$ allocations are being calculated.

(2) The Administrator will allocate $NO_X$ allowances to the unit in an amount equaling the heat input determined under paragraph (b)(1) of this section multiplied by the lesser of the unit's baseline $NO_X$ emissions rate determined under § 97.84(c) or the most stringent State or federal $NO_X$ emissions limitation applicable to the unit during the control period, divided by 2,000 lb/ton, and rounded to the nearest whole number of $NO_X$ allowances as appropriate.

## Subpart J—Appeal Procedures

### § 97.90 Appeal procedures.

The appeal procedures for the $NO_X$ Budget Trading Program are set forth in part 78 of this chapter.

[69 FR 21648, Apr. 21, 2004]

## Subpart AA—CAIR $NO_X$ Annual Trading Program General Provisions

### § 97.101 Purpose.

This subpart and subparts BB through II set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) $NO_X$ Annual Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

### § 97.102 Definitions.

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

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

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

*Acid Rain Program* means a 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.

*Actual weighted average $NO_X$ emission rate* means, for a $NO_X$ averaging plan under § 76.11 of this chapter and for a year:

(1) The sum of the products of the actual annual average $NO_X$ emission rate and actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the $NO_X$ averaging plan for the year; divided by

(2) The sum of the actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the $NO_X$ averaging plan for the year.

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

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

*Allowance transfer deadline* means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR $NO_X$ allowance transfer must be submitted for recordation in a CAIR $NO_X$ source's compliance account in order to be used to meet the source's CAIR $NO_X$ emissions limitation for such control period in accordance with § 97.154.

*Alternate CAIR designated representative* means, for a CAIR $NO_X$ source and each CAIR $NO_X$ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR $NO_X$ Annual Trading Program. If the CAIR $NO_X$ source is also a CAIR $SO_2$ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR $SO_2$ Trading Program. If the CAIR $NO_X$ source is also a CAIR $NO_X$ Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR $NO_X$ Ozone Season Trading Program. If the CAIR $NO_X$ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR $NO_X$ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate 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 HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors,

diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

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

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

*CAIR authorized account representative* means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB, FF, and II of this part, to transfer and otherwise dispose of CAIR $NO_X$ allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

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

*CAIR $NO_X$ allowance* means a limited authorization issued by a permitting authority or the Administrator under subpart EE of this part or § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR $NO_X$ Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter shall not be a CAIR $NO_X$ allowance.

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

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

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

*CAIR $NO_X$ allowances held* or *hold CAIR $NO_X$ allowances* means the CAIR $NO_X$ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR $NO_X$ Allowance Tracking System account.

*CAIR $NO_X$ Annual Trading Program* means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

*CAIR $NO_X$ emissions limitation* means, for a CAIR $NO_X$ source, the tonnage equivalent, in $NO_X$ emissions in a control period, of the CAIR $NO_X$ allowances available for deduction for the source under § 97.154 (a) and (b) for the control period.

*CAIR $NO_X$ Ozone Season source* means a source that is subject to the CAIR $NO_X$ Ozone Season Trading Program.

*CAIR $NO_X$ Ozone Season Trading Program* means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

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

*CAIR $NO_X$ unit* means a unit that is subject to the CAIR $NO_X$ Annual Trading Program under § 97.104 and, except for purposes of § 97.105 and subpart EE of this part, a CAIR $NO_X$ opt-in unit under subpart II of this part.

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

*CAIR $SO_2$ source* means a source that is subject to the CAIR $SO_2$ Trading Program.

*CAIR $SO_2$ Trading Program* means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

*Certifying official* means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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

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

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

*Coal-fired* means:

(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

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

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

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

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

(i) For a topping-cycle cogeneration unit, (A) Useful thermal energy not less than 5 percent of total energy output; and

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

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

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

*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 § 97.105 and § 97.184(h).

(i) For a unit that is a CAIR $NO_X$ unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the 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 $NO_X$ unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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 § 97.105, for a unit that is not a CAIR $NO_X$ unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR $NO_X$ unit under § 97.104.

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

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 § 97.184(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 § 97.184(h).

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

*Compliance account* means a CAIR $NO_X$ Allowance Tracking System account, established by the Administrator for a CAIR $NO_X$ source under subpart FF or II of this part, in which any CAIR $NO_X$ allowance allocations for the CAIR $NO_X$ units at the source are initially recorded and in which are held any CAIR $NO_X$ allowances available for use for a control period in order to meet the source's CAIR $NO_X$ emissions limitation in accordance with § 97.154.

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

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

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

(3) A nitrogen oxides emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

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

record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period beginning January 1 of a calendar year, except as provided in § 97.106(c)(2), and ending on December 31 of the same year, inclusive.

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

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

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

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

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

*General account* means a CAIR $NO_X$ Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

*Generator* means a device that produces electricity.

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

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

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

*Hg Budget Trading Program* means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance 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 HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

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

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

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

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

*Owner* means any of the following persons:

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

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

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

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

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

*Permitting authority* means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR $NO_X$ Annual Trading Program 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 $NO_X$ allowances, the movement of CAIR $NO_X$ allowances by the Administrator into or between CAIR $NO_X$ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

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

*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.

*Sequential use of energy* means:

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

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

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

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

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

*State* means one of the States or the District of Columbia that is subject to the CAIR $NO_X$ Annual Trading Program pursuant to § 52.35 of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

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

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

*Total energy input* means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

*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.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006; 72 FR 59206, Oct. 19, 2007]

### § 97.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II are defined as follows:

Btu—British thermal unit
$CO_2$—carbon dioxide
$H_2O$—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
$SO_2$—sulfur dioxide
yr—year

### § 97.104 Applicability.

(a) Except as provided in paragraph (b) of this section:

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

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR $NO_X$ 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 $NO_X$ 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 $NO_X$ units:

(1)(i) Any unit that is a CAIR $NO_X$ 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 $NO_X$ 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 $NO_X$ 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 $NO_X$ 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 $NO_X$ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $NO_X$ Annual Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor),

U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response*. The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $NO_X$ Annual Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

**§ 97.105 Retired unit exemption.**

(a)(1) Any CAIR $NO_X$ unit that is permanently retired and is not a CAIR $NO_X$ opt-in unit under subpart II of this part shall be exempt from the CAIR $NO_X$ Annual Trading Program, except for the provisions of this section, §§ 97.102, 97.103, 97.104, 97.106(c)(4) through (7), 97.107, 97.108, and subparts BB and EE through GG of this part.

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

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions*. (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate CAIR $NO_X$ allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.

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

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

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

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

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

**§ 97.106 Standard requirements.**

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR $NO_X$ source required to have a title V operating permit and each CAIR $NO_X$ unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.122 in accordance with the deadlines specified in § 97.121; and

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

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

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

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR $NO_X$ source and each CAIR $NO_X$ unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

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

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR $NO_X$ source and each CAIR $NO_X$ unit at the source shall hold, in the source's compliance account, CAIR $NO_X$ allowances available for compliance deductions for the control period under § 97.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR $NO_X$ units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR $NO_X$ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.170(b)(1), (2), or (5) and for each control period thereafter.

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

(4) CAIR $NO_X$ allowances shall be held in, deducted from, or transferred into or among CAIR $NO_X$ Allowance Tracking System accounts in accordance with subparts EE, FF, GG, and II of this part.

(5) A CAIR $NO_X$ allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR $NO_X$ Annual Trading Program. No provision of the CAIR $NO_X$ Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

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

(7) Upon recordation by the Administrator under subpart EE, FF, GG, or II

of this part, every allocation, transfer, or deduction of a CAIR $NO_X$ allowance to or from a CAIR $NO_X$ source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR $NO_X$ source emits nitrogen oxides during any control period in excess of the CAIR $NO_X$ emissions limitation, then:

(1) The owners and operators of the source and each CAIR $NO_X$ unit at the source shall surrender the CAIR $NO_X$ allowances required for deduction under § 97.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

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

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

(i) The certificate of representation under § 97.113 for the CAIR designated representative for the source and each CAIR $NO_X$ unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR $NO_X$ Annual Trading Program.

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

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

(f) *Liability.* (1) Each CAIR $NO_X$ source and each CAIR $NO_X$ unit shall meet the requirements of the CAIR $NO_X$ Annual Trading Program.

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

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

(g) *Effect on other authorities.* No provision of the CAIR $NO_X$ Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR $NO_X$ source or CAIR $NO_X$ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

### § 97.107 Computation of time.

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

(b) Unless otherwise stated, any time period scheduled, under the CAIR $NO_X$ Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period

ends the day before the act or event occurs.

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

### § 97.108 Appeal procedures.

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

## Subpart BB—CAIR Designated Representative for CAIR $NO_X$ Sources

### § 97.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.111, each CAIR $NO_X$ source, including all CAIR $NO_X$ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR $NO_X$ Annual Trading Program concerning the source or any CAIR $NO_X$ unit at the source.

(b) The CAIR designated representative of the CAIR $NO_X$ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR $NO_X$ units at the source and shall act in accordance with the certification statement in § 97.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR $NO_X$ source represented and each CAIR $NO_X$ unit at the source in all matters pertaining to the CAIR $NO_X$ Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR $NO_X$ Allowance Tracking System account will be established for a CAIR $NO_X$ unit at a source, until the Administrator has received a complete certificate of representation under § 97.113 for a CAIR designated representative of the source and the CAIR $NO_X$ units at the source.

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

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

### § 97.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate

CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under §97.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§97.102, 97.110(a) and (d), 97.112, 97.113, 97.115, 97.151 and 97.182, whenever the term ''CAIR designated representative'' is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

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

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR $NO_X$ source and the CAIR $NO_X$ units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR $NO_X$ source and the CAIR $NO_X$ units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR $NO_X$ source or a CAIR $NO_X$ unit is not included in the list of owners and operators in the certificate of representation under §97.113, such 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 $NO_X$ source or a CAIR $NO_X$ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under §97.113 amending the list of owners and operators to include the change.

**§97.113 Certificate of representation.**

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR $NO_X$ source, and each CAIR $NO_X$ unit at the source, for which the certificate of representation is submitted, 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 $NO_X$ source and of each CAIR $NO_X$ unit at the source.

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

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

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

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

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

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

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

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.113 is received by the Administrator.

(b) Except as provided in § 97.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR $NO_X$ Annual Trading Program.

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

### § 97.115 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 97.115(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 97.115(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 97.115 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 CC—Permits

### § 97.120 General CAIR $NO_X$ Annual Trading Program permit requirements.

(a) For each CAIR $NO_X$ source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.105, this subpart, and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR $NO_X$ source and the CAIR $NO_X$ units at the source

covered by the CAIR permit, all applicable CAIR $NO_X$ Annual Trading Program, CAIR $NO_X$ Ozone Season Trading Program, and CAIR $SO_2$ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

### § 97.121 Submission of CAIR permit applications.

(a) *Duty to apply*. The CAIR designated representative of any CAIR $NO_X$ source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.122 for the source covering each CAIR $NO_X$ unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR $NO_X$ unit commences commercial operation, except as provided in § 97.183(a).

(b) *Duty to reapply*. For a CAIR $NO_X$ source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.122 for the source covering each CAIR $NO_X$ unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.183(b).

### § 97.122 Information requirements for CAIR permit applications.

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

(a) Identification of the CAIR $NO_X$ source;

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

(c) The standard requirements under § 97.106.

### § 97.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart EE, FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR $NO_X$ allowance to or from the compliance account of the CAIR $NO_X$ source covered by the permit.

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

### § 97.124 CAIR permit revisions.

Except as provided in § 97.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

## Subpart DD [Reserved]

## Subpart EE—CAIR $NO_X$ Allowance Allocations

### § 97.140 State trading budgets.

The State trading budgets for annual allocations of CAIR $NO_X$ allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

| State | State trading budget for 2009–2014 (tons) | State trading budget for 2015 and thereafter (tons) |
|---|---|---|
| Alabama | 69,020 | 57,517 |
| Delaware | 4,166 | 3,472 |
| District of Columbia | 144 | 120 |
| Florida | 99,445 | 82,871 |
| Georgia | 66,321 | 55,268 |
| Illinois | 76,230 | 63,525 |
| Indiana | 108,935 | 90,779 |
| Iowa | 32,692 | 27,243 |
| Kentucky | 83,205 | 69,337 |
| Louisiana | 35,512 | 29,593 |
| Maryland | 27,724 | 23,104 |
| Michigan | 65,304 | 54,420 |
| Minnesota | 31,443 | 26,203 |
| Mississippi | 17,807 | 14,839 |
| Missouri | 59,871 | 49,892 |
| New Jersey | 12,670 | 10,558 |

| State | State trading budget for 2009–2014 (tons) | State trading budget for 2015 and thereafter (tons) |
|---|---|---|
| New York | 45,617 | 38,014 |
| North Carolina | 62,183 | 51,819 |
| Ohio | 108,667 | 90,556 |
| Pennsylvania | 99,049 | 82,541 |
| South Carolina | 32,662 | 27,219 |
| Tennessee | 50,973 | 42,478 |
| Texas | 181,014 | 150,845 |
| Virginia | 36,074 | 30,062 |
| West Virginia | 74,220 | 61,850 |
| Wisconsin | 40,759 | 33,966 |
| Total | 1,521,707 | 1,268,091 |

### § 97.141 Timing requirements for CAIR $NO_X$ allowance allocations.

(a) The Administrator will determine by order the CAIR $NO_X$ allowance allocations, in accordance with § 97.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR $NO_X$ allowance allocations, in accordance with § 97.142(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the Administrator will determine by order the CAIR $NO_X$ allowance allocations, in accordance with § 97.142(a),(c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR $NO_X$ allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.142. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.142.

### § 97.142 CAIR $NO_X$ allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR $NO_X$ allowance allocations under paragraph (b) of this section for each CAIR $NO_X$ unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of $NO_X$ emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided

by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR $NO_X$ units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR $NO_X$ allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of $NO_X$ emissions in the applicable State trading budget under § 97.140 (except as provided in paragraphs (d) and (e) of this section).

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

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR $NO_X$ allowances to CAIR $NO_X$ units in a State that are not allocated CAIR $NO_X$ 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 $NO_X$ allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR $NO_X$ allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of $NO_X$ emissions in the applicable State trading budget under § 97.140.

(2) The CAIR designated representative of such a CAIR $NO_X$ unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR $NO_X$ allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR $NO_X$ unit commences commercial operation and until the first control period for which the unit is allocated CAIR $NO_X$ allowances under paragraph (b) of this section. A separate CAIR $NO_X$ allowance allocation request for each control period for which CAIR $NO_X$ allowances are sought must be submitted on or before May 1 of such control period and after the date on which the CAIR $NO_X$ unit commences commercial operation.

(3) In a CAIR $NO_X$ allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR $NO_X$ allowances in an amount not exceeding the CAIR $NO_X$ unit's total tons of $NO_X$ emissions during the calendar year immediately before such control period.

(4) The Administrator will review each CAIR $NO_X$ allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR $NO_X$ allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Administrator will determine the sum of the CAIR $NO_X$ allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR $NO_X$ allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR $NO_X$ allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR $NO_X$ unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR $NO_X$ allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR $NO_X$ unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR $NO_X$ allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR $NO_X$ allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR $NO_X$ allowances (if any) allocated for the control period to the CAIR $NO_X$ unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR $NO_X$ allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR $NO_X$ unit that was allocated CAIR $NO_X$ allowances under paragraph (b) of this section in the State an amount of CAIR $NO_X$ allowances equal to the total amount of such remaining unallocated CAIR $NO_X$ allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of $NO_X$ emissions in the applicable State trading budget under § 97.140, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR $NO_X$ allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR $NO_X$ unit under § 97.104 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR $NO_X$ allowances under § 97.153.

(2) If the Administrator already recorded such CAIR $NO_X$ allowances under § 97.153 and if the Administrator makes such determination before making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will deduct from the account in which such CAIR $NO_X$ allowances were recorded under § 97.153 an amount of CAIR $NO_X$ allowances allocated for

the same or a prior control period equal to the amount of such already recorded CAIR $NO_X$ allowances. The CAIR designated representative shall ensure that there are sufficient CAIR $NO_X$ allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR $NO_X$ allowances under § 97.153 and if the Administrator makes such determination after making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR $NO_X$ allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR $NO_X$ allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

### § 97.143 Compliance supplement pool.

(a) In addition to the CAIR $NO_X$ allowances allocated under § 97.142, the Administrator may allocate for the control period in 2009 up to the following amount of CAIR $NO_X$ allowances to CAIR $NO_X$ units in the respective State:

| State | Compliance supplement pool |
|---|---|
| Alabama | 10,166 |
| Delaware | 843 |
| District of Columbia | 0 |
| Florida | 8,335 |
| Georgia | 12,397 |
| Illinois | 11,299 |
| Indiana | 20,155 |
| Iowa | 6,978 |
| Kentucky | 14,935 |
| Louisiana | 2,251 |
| Maryland | 4,670 |
| Michigan | 8,347 |
| Minnesota | 6,528 |
| Mississippi | 3,066 |
| Missouri | 9,044 |
| New Jersey | 660 |
| New York | 0 |
| North Carolina | 0 |
| Ohio | 25,037 |
| Pennsylvania | 16,009 |
| South Carolina | 2,600 |
| Tennessee | 8,944 |
| Texas | 772 |
| Virginia | 5,134 |
| West Virginia | 16,929 |
| Wisconsin | 4,898 |
| Total | 199,997 |

(b) For any CAIR $NO_X$ unit in a State, if the unit's average annual $NO_X$ emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, where such unit is included in a $NO_X$ averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, the unit's $NO_X$ averaging plan has an actual weighted average $NO_X$ emission rate for such year equal to or less than the actual weighted average $NO_X$ emission rate for the year before such year and if the unit achieves $NO_X$ emission reductions in 2007 and 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR $NO_X$ allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR $NO_X$ unit shall monitor and report the $NO_X$ emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR $NO_X$ unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR $NO_X$ allowances from the compliance supplement pool not exceeding the sum of the unit's heat input for the control period in 2007 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's $NO_X$ emission rate for the control period in 2007 plus the unit's heat input for the control period in 2008 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's $NO_X$ emission rate for the control period in 2008, determined in accordance with subpart HH of this part and with the sum divided by 2,000 lb/ton and rounded to the nearest whole number of tons as appropriate.

(c) For any CAIR $NO_X$ unit in a State whose compliance with the CAIR $NO_X$

emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR $NO_X$ allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR $NO_X$ unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR $NO_X$ allowances from the compliance supplement pool not exceeding the minimum amount of CAIR $NO_X$ allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR $NO_X$ unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR $NO_X$ allowances requested, the unit's compliance with the CAIR $NO_X$ emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR $NO_X$ emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR $NO_X$ allowances to prevent such undue risk.

(d) The Administrator will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR $NO_X$ allowances for the control period in 2009 to CAIR $NO_X$ units in a State and covered by such request as follows:

(1) Upon receipt of each such request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the CAIR $NO_X$ allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR $NO_X$ allowances not less than the total amount of CAIR $NO_X$ allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate to each CAIR $NO_X$ unit covered by such requests the amount of CAIR $NO_X$ allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR $NO_X$ allowances than the total amount of CAIR $NO_X$ allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate CAIR $NO_X$ allowances to each CAIR $NO_X$ unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

''Unit's allocation'' is the amount of CAIR $NO_X$ allowances allocated to the unit from the State's compliance supplement pool.

''Unit's adjusted allocation'' is the amount of CAIR $NO_X$ allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

''State's compliance supplement pool'' is the amount of CAIR $NO_X$ allowances in the State's compliance supplement pool.

''Total adjusted allocations for all units'' is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By July 31, 2009, the Administrator will determine by order the allocations under paragraph (d)(2) or (3) of this section. The Administrator will make available to the public each determination of CAIR $NO_X$ allowances under such paragraph and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance

with paragraph (b) or (c) of this section and paragraph (d)(2) or (3) of this section, as appropriate. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with such paragraphs.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.144 Alternative of allocation of CAIR $NO_X$ allowances and compliance supplement pool by permitting authority.

(a) Notwithstanding §§ 97.141, 97.142, and 97.153 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(1) of this chapter providing for allocation of CAIR $NO_X$ allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.141 and 97.142 for the CAIR $NO_X$ units in the State, and under § 97.153, the Administrator will record the allocations made under such approved State implementation plan revision instead of allocations made under §§ 97.141 and 97.142.

(b) Notwithstanding § 97.143, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(2) of this chapter providing for allocation of the State's compliance supplement pool by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under § 97.143(d)(4) for the CAIR $NO_X$ units in the State, and under § 97.143(d)(5), the Administrator will record the allocations of the State's compliance supplement pool made under such approved State implementation plan revision instead of allocations made under § 97.143(d)(4).

(c)(1) In implementing paragraph (a) of this section and §§ 97.141, 97.142, and 97.153, the Administrator will ensure that the total amount of CAIR $NO_X$ allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(1) of this chapter, for a control period for CAIR $NO_X$ sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

(2) In implementing paragraph (b) of this section and § 97.143, the Administrator will ensure that the total amount of CAIR $NO_X$ allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(2), for CAIR $NO_X$ sources in the State will not exceed the State's compliance supplement pool.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

## APPENDIX A TO SUBPART EE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS

1. The following States have State Implementation Plan revisions under § 51.123(p)(1) of this chapter approved by the Administrator and providing for allocation of CAIR $NO_X$ allowances by the permitting authority under § 97.144(a):

Indiana
Louisiana
Michigan
New Jersey
North Carolina
Ohio
South Carolina
Tennessee
Texas (for control periods 2009–2014)
West Virginia (for control periods 2009–2014)
Wisconsin

2. The following States have State Implementation Plan revisions under § 51.123(p)(2) of this chapter approved by the Administrator and providing for allocation of the Compliance Supplement Pool by the permitting authority under § 97.144(b):

Indiana
Michigan
New Jersey
Ohio
South Carolina

Texas

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 41459, July 30, 2007; 72 FR 46394, Aug. 20, 2007; 72 FR 52293, Sept. 13, 2007; 72 FR 55068, Sept. 28, 2007; 72 FR 55672, Oct. 1, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 58546, Oct. 16, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 71579, Dec. 18, 2007; 72 FR 72262, Dec. 20, 2007; 73 FR 6040, Feb. 1, 2008]

## Subpart FF—CAIR $NO_X$ Allowance Tracking System

### §97.150 [Reserved]

### §97.151 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in §97.184(e), upon receipt of a complete certificate of representation under §97.113, the Administrator will establish a compliance account for the CAIR $NO_X$ source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR $NO_X$ allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

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

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

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

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

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR $NO_X$ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR $NO_X$ Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

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

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

(2) *Authorization of CAIR authorized account representative and 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 $NO_X$ allowances held in the general account in all matters pertaining to the CAIR $NO_X$ Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

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

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

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

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

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

(iii)(A) In the event a person having an ownership interest with respect to CAIR $NO_X$ allowances in the general account is not included in the list of such persons in the application for a general account, such 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 $NO_X$ 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 $NO_X$ allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and 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 $NO_X$ Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR $NO_X$ 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 FF and GG 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 FF and GG 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 97.151(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 97.151(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 97.151(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.

### § 97.152 Responsibilities of CAIR authorized account representative.

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

### § 97.153 Recordation of CAIR $NO_X$ allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR $NO_X$ source's compliance account the CAIR $NO_X$ allowances allocated for the CAIR $NO_X$ units at the source in accordance with § 97.142(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR $NO_X$ source's compliance account the CAIR $NO_X$ allowances allocated for the CAIR $NO_X$ units at the source in accordance with § 97.142(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR $NO_X$ source's compliance account the CAIR $NO_X$ allowances allocated for the CAIR $NO_X$ units at the source in accordance with § 97.142(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR $NO_X$ source's compliance account the CAIR $NO_X$ allowances allocated for the CAIR $NO_X$ units at the source in accordance with § 97.142(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR $NO_X$ source's compliance account the CAIR $NO_X$ allowances allocated for the CAIR $NO_X$ units at the source in accordance with § 97.142(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR $NO_X$ allowances.* When recording the allocation of CAIR $NO_X$ allowances for a CAIR $NO_X$ unit in a compliance account, the Administrator will assign each CAIR $NO_X$ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR $NO_X$ allowance is allocated.

### § 97.154 Compliance with CAIR $NO_X$ emissions limitation.

(a) *Allowance transfer deadline.* The CAIR $NO_X$ allowances are available to be deducted for compliance with a

source's CAIR $NO_X$ emissions limitation for a control period in a given calendar year only if the CAIR $NO_X$ allowances:

(1) Were allocated for the control period in the year or a prior year; 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 $NO_X$ allowance transfer correctly submitted for recordation under §§97.160 and 97.161 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with §97.161, of CAIR $NO_X$ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR $NO_X$ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR $NO_X$ emissions limitation for the control period, as follows:

(1) Until the amount of CAIR $NO_X$ allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR $NO_X$ units at the source for the control period; or

(2) If there are insufficient CAIR $NO_X$ allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR $NO_X$ allowances available under paragraph (a) of this section remain in the compliance account.

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

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

(i) Any CAIR $NO_X$ allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR $NO_X$ allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR $NO_X$ source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR $NO_X$ allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

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

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart II.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR $NO_X$ Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR $NO_X$ allowances from or transfer CAIR $NO_X$ allowances to a source's

compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

### § 97.155 Banking.

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

(b) Any CAIR $NO_X$ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR $NO_X$ allowance is deducted or transferred under § 97.142, § 97.154, § 97.156, or subpart GG or II of this part.

### § 97.156 Account error.

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

### § 97.157 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.160 and 97.161 for any CAIR $NO_X$ allowances in the account to one or more other CAIR $NO_X$ Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR $NO_X$ allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR $NO_X$ allowances into the account under §§ 97.160 and 97.161 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

## Subpart GG—CAIR $NO_X$ Allowance Transfers

### § 97.160 Submission of CAIR $NO_X$ allowance transfers.

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

(a) The account numbers for both the transferor and transferee accounts;

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

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

### § 97.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR $NO_X$ allowance transfer, the Administrator will record a CAIR $NO_X$ allowance transfer by moving each CAIR $NO_X$ allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.160; and

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

(b) A CAIR $NO_X$ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR $NO_X$ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.154 for the control period immediately before such allowance transfer deadline.

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

### §97.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR $NO_X$ allowance transfer under §97.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR $NO_X$ allowance transfer that fails to meet the requirements of §97.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

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

## Subpart HH—Monitoring and Reporting

### §97.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR $NO_X$ unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in §97.102 and in §72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR $NO_X$ unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in §97.102. The owner or operator of a unit that is not a CAIR $NO_X$ unit but that is monitored under §75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR $NO_X$ unit.

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

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with (§§75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under §97.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* 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 $NO_X$ unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR $NO_X$ unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

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

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

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 97.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR $NO_X$ opt-in unit under subpart II of this part, by the date on which the CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program as provided in § 97.184(g).

(c) *Reporting data.* The owner or operator of a CAIR $NO_X$ unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for $NO_X$ concentration, $NO_X$ emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine $NO_X$ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR $NO_X$ unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.175.

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

(3) No owner or operator of a CAIR $NO_X$ unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $NO_X$ mass emissions discharged into the atmosphere 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 $NO_X$ unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.171(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR $NO_X$ unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

### § 97.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR $NO_X$ unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.170(a)(1) if the following conditions are met:

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

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

(b) The recertification provisions of this section shall apply to a monitoring system under §97.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under §75.17(a) or (b) of this chapter for apportioning the $NO_X$ emission rate measured in a common stack or a petition under §75.66 of this chapter for an alternative to a requirement in §75.12 or §75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under §97.175 to determine whether the approval applies under the CAIR $NO_X$ Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR $NO_X$ unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under §97.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under §75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under §97.170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §97.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under §97.170(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under §97.170(a)(1) are subject to the recertification requirements in §75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §97.170(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified'', and follow the procedures in §§75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with §97.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification

application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR $NO_X$ Annual Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR $NO_X$ Annual Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.172(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*,, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

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

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

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

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

**§ 97.172 Out of control periods.**

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

(b) *Audit decertification*. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures

in § 97.171 for each disapproved monitoring system.

### § 97.173 Notifications.

The CAIR designated representative for a CAIR $NO_X$ unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.174 Recordkeeping and reporting.

(a) *General provisions*. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.110(e)(1).

(b) *Monitoring plans*. The owner or operator of a CAIR $NO_X$ unit shall comply with requirements of § 75.73(c) and (e) of this chapter 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 II of this part, §§ 97.183 and 97.184(a).

(c) *Certification applications*. The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports*. The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the $NO_X$ mass emissions data and heat input data for the CAIR $NO_X$ unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 97.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR $NO_X$ opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program as provided in § 97.184(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

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

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

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

(2) For a unit with add-on $NO_X$ emission controls and for all hours where $NO_X$ data are substituted in accordance with § 75.34(a)(1) of this chapter, the

add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate $NO_X$ emissions.

### § 97.175 Petitions.

The CAIR designated representative of a CAIR $NO_X$ unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

## Subpart II—CAIR $NO_X$ Opt-In Units

### § 97.180 Applicability.

A CAIR $NO_X$ opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR $NO_X$ unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

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

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

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

### § 97.181 General.

(a) Except as otherwise provided in §§ 97.101 through 97.104, §§ 97.106 through 97.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR $NO_X$ opt-in unit shall be treated as a CAIR $NO_X$ unit for purposes of applying such sections and subparts of this part.

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

### § 97.182 CAIR designated representative.

Any CAIR $NO_X$ opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR $NO_X$ units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR $NO_X$ units.

### § 97.183 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR $NO_X$ opt-in unit in § 97.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.122;

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

(i) Is not a CAIR $NO_X$ unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

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

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

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.122;

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

(4) A complete certificate of representation under § 97.113 consistent

with § 97.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR $NO_X$ allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.188(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 $NO_X$ opt-in unit shall submit a complete CAIR permit application under § 97.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR $NO_X$ opt-in unit from the CAIR $NO_X$ Annual Trading Program in accordance with § 97.186 or the unit becomes a CAIR $NO_X$ unit under § 97.104, the CAIR $NO_X$ opt-in unit shall remain subject to the requirements for a CAIR $NO_X$ opt-in unit, even if the CAIR designated representative for the CAIR $NO_X$ opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

### § 97.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the $NO_X$ emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator 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 HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR $NO_X$ Annual Trading Program in accordance with § 97.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the $NO_X$ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system

availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

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

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

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

(d) *Baseline $NO_X$ emission rate.* The unit's baseline $NO_X$ emission rate shall equal:

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

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

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

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline $NO_X$ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR $NO_X$ opt-in unit in § 97.180 and meets the elements certified in § 97.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR $NO_X$ opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR $NO_X$ opt-in unit in § 97.180 or meets the elements certified in § 97.183(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR $NO_X$ Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR $NO_X$ opt-in unit, and a CAIR $NO_X$ unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR $NO_X$ opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR $NO_X$ opt-in unit of CAIR $NO_X$ allowances under § 97.188(c) and such unit is repowered after its date of entry into the CAIR $NO_X$ Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR $NO_X$ opt-in unit replacing the original CAIR $NO_X$ opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

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

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.185 CAIR opt-in permit contents.

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

(1) All elements required for a complete CAIR permit application under § 97.122;

(2) The certification in § 97.183(a)(2);

(3) The unit's baseline heat input under § 97.184(c);

(4) The unit's baseline $NO_X$ emission rate under § 97.184(d);

(5) A statement whether the unit is to be allocated CAIR $NO_X$ allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g));

(6) A statement that the unit may withdraw from the CAIR $NO_X$ Annual Trading Program only in accordance with § 97.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR $NO_X$ allowances to or from the compliance account of the source that includes a CAIR $NO_X$ opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR $NO_X$ opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

### § 97.186 Withdrawal from CAIR $NO_X$ Annual Trading Program.

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

(a) *Requesting withdrawal.* In order to withdraw a CAIR $NO_X$ opt-in unit from the CAIR $NO_X$ Annual Trading Program, the CAIR designated representative of the CAIR $NO_X$ opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR $NO_X$ Annual Trading Program under § 97.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

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

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR $NO_X$ opt-in unit must meet the requirement to hold CAIR $NO_X$ allowances under § 97.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR $NO_X$ opt-in unit CAIR $NO_X$ allowances equal in amount to and allocated for the same or a prior control period as any CAIR $NO_X$ allowances allocated to the CAIR $NO_X$ opt-in unit under § 97.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR $NO_X$ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR $NO_X$ opt-

in unit may submit a CAIR $NO_X$ allowance transfer for any remaining CAIR $NO_X$ allowances to another CAIR $NO_X$ Allowance Tracking System in accordance with subpart GG of this part.

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

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

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

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

(f) *Ability to reapply to the CAIR $NO_X$ Annual Trading Program.* Once a CAIR $NO_X$ opt-in unit withdraws from the CAIR $NO_X$ Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.183 for such CAIR $NO_X$ opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.184.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR $NO_X$ opt-in unit shall not be eligible to withdraw from the CAIR $NO_X$ Annual Trading Program if the CAIR designated representative of the CAIR $NO_X$ opt-in unit requests, and the permitting authority issues a CAIR $NO_X$ opt-in permit providing for, allocation to the CAIR $NO_X$ opt-in unit of CAIR $NO_X$ allowances under § 97.188(c).

### § 97.187 Change in regulatory status.

(a) *Notification.* If a CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR $NO_X$ opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104, the permitting authority will revise the CAIR $NO_X$ opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.123, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR $NO_X$ opt-in unit that becomes a CAIR $NO_X$ unit under § 97.104, CAIR $NO_X$ allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR $NO_X$ allowances allocated to the CAIR $NO_X$ opt-in unit under § 97.188 for any control period after the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104; and

(B) If the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104 is not December 31, the CAIR $NO_X$ allowances allocated to the CAIR $NO_X$ opt-in unit under § 97.188 for the control period that includes the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR $NO_X$ opt-in unit that becomes a CAIR $NO_X$ unit under § 97.104 contains the CAIR $NO_X$ allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104, the CAIR $NO_X$ opt-in unit will be allocated CAIR $NO_X$ allowances under § 97.142.

(ii) If the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104 is not December 31, the following amount of CAIR $NO_X$ allowances will be allocated to the CAIR $NO_X$ opt-in unit (as a CAIR $NO_X$ unit) under (97.142 for the control period that includes the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104:

(A) The amount of CAIR $NO_X$ allowances otherwise allocated to the CAIR $NO_X$ opt-in unit (as a CAIR $NO_X$ unit) under § 97.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR $NO_X$ opt-in unit becomes a CAIR $NO_X$ unit under § 97.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

## § 97.188 CAIR $NO_X$ allowance allocations to CAIR $NO_X$ opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.184(e), the permitting authority will allocate CAIR $NO_X$ allowances to the CAIR $NO_X$ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR $NO_X$ allowances to the CAIR $NO_X$ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR $NO_X$ opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR $NO_X$ opt-in unit is to be allocated CAIR $NO_X$ allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

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

(i) The CAIR $NO_X$ opt-in unit's baseline heat input determined under § 97.184(c); or

(ii) The CAIR $NO_X$ opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g).

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

(i) The CAIR $NO_X$ opt-in unit's baseline $NO_X$ emissions rate (in lb/mmBtu)

determined under § 97.184(d) and multiplied by 70 percent; or

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

(3) The permitting authority will allocate CAIR $NO_X$ allowances to the CAIR $NO_X$ opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the $NO_X$ emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.183(a)(5)) providing for, allocation to a CAIR $NO_X$ opt-in unit of CAIR $NO_X$ allowances under this paragraph (subject to the conditions in §§ 97.184(h) and 97.186(g)), the permitting authority will allocate to the CAIR $NO_X$ opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with (51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR $NO_X$ opt-in unit is to be allocated CAIR $NO_X$ allowances,

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

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

(A) The CAIR $NO_X$ opt-in unit's baseline $NO_X$ emissions rate (in lb/mmBtu) determined under § 97.184(d); or

(B) The most stringent State or Federal $NO_X$ emissions limitation applicable to the CAIR $NO_X$ opt-in unit at any time during the control period in which the CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g).

(iii) The permitting authority will allocate CAIR $NO_X$ allowances to the CAIR $NO_X$ opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the $NO_X$ emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

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

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

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

(A) 0.15 lb/mmBtu;

(B) The CAIR $NO_X$ opt-in unit's baseline $NO_X$ emissions rate (in lb/mmBtu) determined under § 97.184(d); or

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

(iii) The permitting authority will allocate CAIR $NO_X$ allowances to the CAIR $NO_X$ opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the $NO_X$ emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation*. If provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

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

(2) By December 1 of the control period in which a CAIR $NO_X$ opt-in unit enters the CAIR $NO_X$ Annual Trading Program under § 97.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance

account of the source that includes the CAIR $NO_X$ opt-in unit, the CAIR $NO_X$ allowances allocated by the permitting authority to the CAIR $NO_X$ opt-in unit under paragraph (a)(2) of this section.

APPENDIX A TO SUBPART II OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR $NO_X$ OPT-IN UNITS

1. The following States have State Implementation Plan revisions under §51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR $NO_X$ opt-in units under subpart II of this part and allocation of CAIR $NO_X$ allowances to such units under §97.188(b):

Indiana
Michigan
North Carolina
Ohio
South Carolina
Tennessee

2. The following States have State Implementation Plan revisions under §51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR $NO_X$ opt-in units under subpart II of this part and allocation of CAIR $NO_X$ allowances to such units under §97.188(c):

Indiana
Michigan
Ohio
North Carolina
South Carolina
Tennessee

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 72262, Dec. 20, 2007; 73 FR 6040, Feb. 1, 2008]

## Subpart AAA—CAIR $SO_2$ Trading Program General Provisions

### §97.201 Purpose.

This subpart and subparts BBB through III set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) $SO_2$ Trading Program, under section 110 of the Clean Air Act and §52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

### §97.202 Definitions.

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

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

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

*Acid Rain Program* means a 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 $SO_2$ allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR $SO_2$ allowances to be initially credited to a CAIR $SO_2$ unit or other entity and, with regard to CAIR $SO_2$ allowances issued under §97.288 or provisions of a State implementation plan that are approved under §51.124(o)(1) or (2) or (r) of this chapter, the determination by a permitting authority of the amount of such CAIR $SO_2$ allowances to be initially credited to a CAIR $SO_2$ unit or other entity.

*Allowance transfer deadline* means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR $SO_2$ allowance transfer must be submitted for recordation in a CAIR $SO_2$ source's compliance account in order to be used to meet the source's CAIR $SO_2$ emissions limitation for such control period in accordance with §97.254.

*Alternate CAIR designated representative* means, for a CAIR $SO_2$ source and each CAIR $SO_2$ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters

pertaining to the CAIR $SO_2$ Trading Program. If the CAIR $SO_2$ source is also a CAIR $NO_X$ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR $NO_X$ Annual Trading Program. If the CAIR $SO_2$ source is also a CAIR $NO_X$ Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR $NO_X$ Ozone Season Trading Program. If the CAIR $SO_2$ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR $SO_2$ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate 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 HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

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

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

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

*CAIR designated representative* means, for a CAIR $SO_2$ source and each CAIR $SO_2$ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR $SO_2$ Trading Program. If the CAIR $SO_2$ source is also a CAIR $NO_X$ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR $NO_X$ Annual Trading Program. If the CAIR $SO_2$ source is also a CAIR $NO_X$ Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR $NO_X$ Ozone Season Trading Program. If the CAIR $SO_2$ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR $SO_2$ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the 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 established by the Administrator in accordance with subparts AA through II of this part and § 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

*CAIR $NO_X$ Ozone Season source* means a source that is subject to the CAIR $NO_X$ Ozone Season Trading Program.

*CAIR $NO_X$ Ozone Season Trading Program* means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

*CAIR $NO_X$ 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 CCC of this part, including any permit revisions, specifying the CAIR $SO_2$ Trading Program requirements applicable to a CAIR $SO_2$ source, to each CAIR $SO_2$ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

*CAIR $SO_2$ allowance* means a limited authorization issued by the Administrator under the Acid Rain Program, by a permitting authority under § 97.288, or by a permitting authority under provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR $SO_2$ Trading Program as follows:

(1) For one CAIR $SO_2$ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 97.254(b);

(2) For one CAIR $SO_2$ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 97.254(b); and

(3) For one CAIR $SO_2$ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 97.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, § 97.288, or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter shall not be a CAIR $SO_2$ allowance.

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

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

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

*CAIR $SO_2$ allowances held* or *hold CAIR $SO_2$ allowances* means the CAIR $SO_2$ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in

a CAIR $SO_2$ Allowance Tracking System account.

*CAIR $SO_2$ emissions limitation* means, for a CAIR $SO_2$ source, the tonnage equivalent, in $SO_2$ emissions in a control period, of the CAIR $SO_2$ allowances available for deduction for the source under § 97.254(a) and (b) for the control period.

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

*CAIR $SO_2$ Trading Program* means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o) (1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

*CAIR $SO_2$ unit* means a unit that is subject to the CAIR $SO_2$ Trading Program under § 97.204 and, except for purposes of § 97.205, a CAIR $SO_2$ opt-in unit under subpart III of this part.

*Certifying official means:*

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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

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

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

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

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

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

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

(i) For a topping-cycle cogeneration unit,

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

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

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

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

*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 § 97.205 and § 97.284(h).

(i) For a unit that is a CAIR $SO_2$ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in

paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the 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 $SO_2$ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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 § 97.205, for a unit that is not a CAIR $SO_2$ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR $SO_2$ unit under § 97.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the 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 § 97.284(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 § 97.284(h).

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

*Compliance account* means a CAIR $SO_2$ Allowance Tracking System account, established by the Administrator for a CAIR $SO_2$ source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR $SO_2$ source under subpart FFF or III of this part, in which any CAIR $SO_2$ allowance allocations for the CAIR $SO_2$ units at the source are initially recorded and in which are held any CAIR $SO_2$ allowances available for use for a control period in order to meet the source's CAIR $SO_2$ emissions limitation in accordance with § 97.254.

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

principal types of continuous emission monitoring systems required under subpart HHH of this part:

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

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

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

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

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

*Control period* means the period beginning January 1 of a calendar year, except as provided in §97.206(c)(2), and ending on December 31 of the same year, inclusive.

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

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

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

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

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

*Generator* means a device that produces electricity.

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

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

*Hg Budget Trading Program* means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance 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 HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Most stringent State or Federal $SO^2$ emissions limitation* means, with regard to a unit, the lowest $SO_2$ emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

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

*Owner* means any of the following persons:

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

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

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

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

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

*Permitting authority* means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR $SO_2$ Trading Program 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 $SO_2$ allowances, the movement of CAIR $SO_2$ allowances by the Administrator into or between CAIR $SO_2$ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

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

*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.

*Sequential use of energy* means:

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

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

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

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

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

*State* means one of the States or the District of Columbia that is subject to the CAIR $SO_2$ Trading Program pursuant to § 52.35 of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

*Ton* means 2,000 pounds. For the purpose of determining compliance with the CAIR $SO_2$ emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction

of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

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

*Total energy input* means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

*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.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006; 72 FR 59207, Oct. 19, 2007]

### § 97.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III are defined as follows:

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

### § 97.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR $SO_2$ units, and any source that includes one or more such units shall be a CAIR $SO_2$ source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR $SO_2$ 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 $SO_2$ 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 $SO_2$ units:

(1)(i) Any unit that is a CAIR $SO_2$ 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 $SO_2$ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR $SO_2$ 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 $SO_2$ 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 $SO_2$ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $SO_2$ Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I

certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission*. The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response*. The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $SO_2$ Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

### § 97.205 Retired unit exemption.

(a)(1) Any CAIR $SO_2$ unit that is permanently retired and is not a CAIR $SO_2$ opt-in unit under subpart III of this part shall be exempt from the CAIR $SO_2$ Trading Program, except for the provisions of this section, §§ 97.202, 97.203, 97.204, 97.206(c)(4) through (7), 97.207, 97.208, and subparts BBB, FFF, and GGG of this part.

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

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

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

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

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

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

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

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

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

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

**§ 97.206 Standard requirements.**

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

(i) Submit to the permitting authority a complete CAIR permit application under § 97.222 in accordance with the deadlines specified in § 97.221; and

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

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

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

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

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

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR $SO_2$ source and each CAIR $SO_2$ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR $SO_2$ allowances available for compliance deductions for the control period, as determined in accordance with § 97.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR $SO_2$ units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR $SO_2$ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit(s monitor certification requirements under § 97.270(b)(1),(2), or (5) and for each control period thereafter.

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

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

(5) A CAIR $SO_2$ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR $SO_2$ Trading

Program. No provision of the CAIR $SO_2$ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.205 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

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

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

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

(1) The owners and operators of the source and each CAIR $SO_2$ unit at the source shall surrender the CAIR $SO_2$ allowances required for deduction under § 97.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

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

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

(i) The certificate of representation under § 97.213 for the CAIR designated representative for the source and each CAIR $SO_2$ unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR $SO_2$ Trading Program.

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

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

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

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

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

(g) *Effect on other authorities.* No provision of the CAIR $SO_2$ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR $SO_2$ source or CAIR $SO_2$ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

### § 97.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR $SO_2$

Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

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

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

### § 97.208 Appeal procedures.

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

## Subpart BBB—CAIR Designated Representative for CAIR $SO_2$ Sources

### § 97.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.211, each CAIR $SO_2$ source, including all CAIR $SO_2$ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR $SO_2$ Trading Program concerning the source or any CAIR $SO_2$ unit at the source.

(b) The CAIR designated representative of the CAIR $SO_2$ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR $SO_2$ units at the source and shall act in accordance with the certification statement in § 97.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR $SO_2$ source represented and each CAIR $SO_2$ unit at the source in all matters pertaining to the CAIR $SO_2$ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR $SO_2$ Allowance Tracking System account will be established for a CAIR $SO_2$ unit at a source, until the Administrator has received a complete certificate of representation under § 97.213 for a CAIR designated representative of the source and the CAIR $SO_2$ units at the source.

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

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

### § 97.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative.

The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.202, 97.210(a) and (d), 97.212, 97.213, 97.215, 97.251 and 97.282, whenever the term ''CAIR designated representative'' is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

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

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR $SO_2$ source and the CAIR $SO_2$ units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR $SO_2$ source and the CAIR $SO_2$ units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR $SO_2$ source or a CAIR $SO_2$ unit is not included in the list of owners and operators in the certificate of representation under § 97.213, such 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 $SO_2$ source or a CAIR $SO_2$ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.213 amending the list of owners and operators to include the change.

### § 97.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR $SO_2$ source, and each CAIR $SO_2$ unit at the source, for which the certificate of representation is submitted, 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 $SO_2$ source and of each CAIR $SO_2$ unit at the source.

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

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

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

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

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

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

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

### § 97.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.213 is received by the Administrator.

(b) Except as provided in § 97.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR $SO_2$ Trading Program.

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

### § 97.215 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 97.215(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 97.215(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 97.215 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 CCC—Permits

### § 97.220 General CAIR $SO_2$ Trading Program permit requirements.

(a) For each CAIR $SO_2$ source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.205, this subpart, and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR $SO_2$ source and the CAIR $SO_2$ units at the source covered by the CAIR permit, all applicable CAIR $SO_2$ Trading Program, CAIR $NO_X$ Annual Trading Program, and CAIR $NO_X$ Ozone Season Trading Program requirements and shall be a complete and

separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

**§ 97.221 Submission of CAIR permit applications.**

(a) *Duty to apply*. The CAIR designated representative of any CAIR $SO_2$ source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.222 for the source covering each CAIR $SO_2$ unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR $SO_2$ unit commences commercial operation, except as provided in § 97.283(a).

(b) *Duty to reapply*. For a CAIR $SO_2$ source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.222 for the source covering each CAIR $SO_2$ unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.283(b).

**§ 97.222 Information requirements for CAIR permit applications.**

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

(a) Identification of the CAIR $SO_2$ source;

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

(c) The standard requirements under § 97.206.

**§ 97.223 CAIR permit contents and term.**

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all lements required for a complete CAIR permit application under § 97.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR $SO_2$ allowance to or from the compliance account of the CAIR $SO_2$ source covered by the permit.

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

**§ 97.224 CAIR permit revisions.**

Except as provided in § 97.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

## Subparts DDD–EEE [Reserved]

## Subpart FFF—CAIR $SO_2$ Allowance Tracking System

**§ 97.250 [Reserved]**

**§ 97.251 Establishment of accounts.**

(a) *Compliance accounts*. Except as provided in § 97.284(e), upon receipt of a complete certificate of representation under § 97.213, the Administrator will establish a compliance account for the CAIR $SO_2$ source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account*. (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR $SO_2$ allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include

a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

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

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

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

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

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

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

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

(2) *Authorization of CAIR authorized account representative and 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 $SO_2$ allowances held in the general account in all matters pertaining to the CAIR $SO_2$ Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

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

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR $SO_2$ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR $SO_2$ *allowances held*

*in the general account.* I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

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

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

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

(iii)(A) In the event a person having an ownership interest with respect to CAIR $SO_2$ allowances in the general account is not included in the list of such persons in the application for a general account, such 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 $SO_2$ 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 $SO_2$ allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and 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 $SO_2$ Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR $SO_2$ 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 FFF and GGG 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 FFF and GGG 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 97.251(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 97.251 (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 97.251 (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.

**§ 97.252 Responsibilities of CAIR authorized account representative.**

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

**§ 97.253 Recordation of CAIR $SO_2$ allowances.**

(a)(1) After a compliance account is established under § 97.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR $SO_2$ allowance allocated to any CAIR $SO_2$ unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR $SO_2$ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the compliance account any CAIR $SO_2$ allowance allocated to any CAIR $SO_2$ unit at the source for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR $SO_2$ allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 97.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR $SO_2$ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the general account any CAIR $SO_2$ allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR $SO_2$ allowances.* When recording the allocation of CAIR $SO_2$ allowances issued by a permitting authority under § 97.288, the Administrator will assign each such CAIR $SO_2$ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR $SO_2$ allowance is allocated.

**§ 97.254 Compliance with CAIR $SO_2$ emissions limitation.**

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

(1) Were allocated for the control period in the year or a prior year; 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 $SO_2$ allowance transfer correctly submitted for recordation under §§ 97.260 and 97.261 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.261, of CAIR $SO_2$ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR $SO_2$ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR $SO_2$ emissions limitation for the control period as follows:

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

(i) Deduct the amount of CAIR $SO_2$ allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR $SO_2$ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR $SO_2$ allowances, not issued by a permitting authority under § 97.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR $SO_2$ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR $SO_2$ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR $SO_2$ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR $SO_2$ emissions limitation for the control period, as follows:

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

(B) If there are insufficient CAIR $SO_2$ allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR $SO_2$ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(2) For a CAIR $SO_2$ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR $SO_2$ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR $SO_2$ emissions limitation for the control period, as follows:

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

(ii) If there are insufficient CAIR $SO_2$ allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR $SO_2$ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

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

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

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

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

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

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

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

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

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR $SO_2$ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR $SO_2$ allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 97.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section 3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR $SO_2$ allowances required to be deducted under paragraph (b)(1)(ii) of this section.

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

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under 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 $SO_2$ Trading Program and make appropriate adjustments of the information in the submissions.

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

### § 97.255 Banking.

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

(b) Any CAIR $SO_2$ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR $SO_2$ allowance is deducted or transferred under § 97.254, § 97.256, or subpart GGG or III of this part.

### § 97.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR $SO_2$ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

### § 97.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.260 and 97.261 for any CAIR $SO_2$ allowances in the account to one or more other CAIR $SO_2$ Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR $SO_2$ allowances, the Administrator may notify

the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR $SO_2$ allowances into the account under §§ 97.260 and 97.261 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

## Subpart GGG—CAIR $SO_2$ Allowance Transfers

### § 97.260 Submission of CAIR $SO_2$ allowance transfers.

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

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

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

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

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

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

### § 97.261 EPA recordation.

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

(1) The transfer is correctly submitted under § 97.260;

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

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

(b) A CAIR $SO_2$ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR $SO_2$ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.254 for the control period immediately before such allowance transfer deadline.

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

### § 97.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR $SO_2$ allowance transfer under § 97.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR $SO_2$ allowance transfer that fails to meet the requirements of § 97.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

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

## Subpart HHH—Monitoring and Reporting

### § 97.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR $SO_2$ unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.202 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR $SO_2$ unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' or (''CEMS'') respectively, as defined in § 97.202. The owner or operator of a unit that is not a CAIR $SO_2$ unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR $SO_2$ unit.

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

(1) Install all monitoring systems required under this subpart for monitoring $SO_2$ mass emissions and individual unit heat input (including all systems required to monitor $SO_2$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* 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 $SO_2$ unit that commences commercial operation before July 1, 2008, by January 1, 2009.

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

(i) January 1, 2009; or

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

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

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 97.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR $SO_2$ opt-in unit under subpart III of this part, by the date on which the CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program as provided in § 97.284(g).

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

(d) *Prohibitions.* (1) No owner or operator of a CAIR $SO_2$ unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.275.

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

(3) No owner or operator of a CAIR $SO_2$ unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $SO_2$ mass emissions discharged into the atmosphere 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 $SO_2$ unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.271(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR $SO_2$ unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

### § 97.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR $SO_2$ unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.270(a)(1) if the following conditions are met:

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

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

(b) The recertification provisions of this section shall apply to a monitoring system under §97.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR $SO_2$ unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under §97.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under §75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under §97.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §97.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under §97.270(a)(1) that may significantly affect the ability of the system to accurately measure or record $SO_2$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under §97.270(a)(1) is subject to the recertification requirements in §75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §97.270(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with §97.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.

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

of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR $SO_2$ Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.272(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

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

(*2*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential $CO_2$ concentration or the minimum potential $O_2$ concentration (as applicable), as defined in sections 2.1.5,

2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

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

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

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

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

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

**§ 97.272 Out of control periods.**

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

(b) *Audit decertification*. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.271 for each disapproved monitoring system.

**§ 97.273 Notifications.**

The CAIR designated representative for a CAIR $SO_2$ unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.274 Recordkeeping and reporting.

(a) *General provisions*. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.210(e)(1).

(b) *Monitoring Plans*. The owner or operator of a CAIR $SO_2$ unit shall comply with requirements of § 75.62 of this chapter 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, §§ 97.283 and 97.284(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

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

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

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 97.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR $SO_2$ opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program as provided in § 97.284(g).

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

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

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

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

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

### § 97.275 Petitions.

The CAIR designated representative of a CAIR $SO_2$ unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

## Subpart III—CAIR $SO_2$ Opt-in Units

### § 97.280 Applicability.

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

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.124(r)(1), (2), or (3) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR $SO_2$ unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

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

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

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

### § 97.281 General.

(a) Except as otherwise provided in §§ 97.201 through 97.204, §§ 97.206 through 97.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR $SO_2$ opt-in unit shall be treated as a CAIR $SO_2$ unit for purposes of applying such sections and subparts of this part.

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

### § 97.282 CAIR designated representative.

Any CAIR $SO_2$ opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR $SO_2$ units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR $SO_2$ units.

### § 97.283 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR $SO_2$ opt-in unit in § 97.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.222;

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

(i) Is not a CAIR $SO_2$ unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

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

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

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

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.222;

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

(4) A complete certificate of representation under § 97.213 consistent with § 97.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR $SO_2$ allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator. If allocation under § 97.288(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 $SO_2$ opt-in unit shall submit a complete CAIR permit application under § 97.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR $SO_2$ opt-in unit from the CAIR $SO_2$ Trading Program in accordance with § 97.286 or the unit becomes a CAIR $SO_2$ unit under § 97.204, the CAIR $SO_2$ opt-in unit shall remain subject to the requirements for a CAIR $SO_2$ opt-in unit, even if the CAIR designated representative for the CAIR $SO_2$ opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the $SO_2$ emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the $SO_2$ emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 97.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR $SO_2$ Trading Program in accordance with § 97.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR $SO_2$ Trading Program under § 97.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the $SO_2$ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR $SO_2$ Trading Program under § 97.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

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

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

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

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

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

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

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

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline $SO_2$ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR $SO_2$ opt-in unit in § 97.280 and meets the elements certified in § 97.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR $SO_2$ opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR $SO_2$ opt-in unit in § 97.280 or meets the elements certified in § 97.283(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

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

(h) *Repowered CAIR $SO_2$ opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR $SO_2$ opt-in unit of CAIR $SO_2$ allowances under § 97.288(c) and such unit is repowered after its date of entry into the CAIR $SO_2$ Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR $SO_2$ opt-in unit replacing the original CAIR $SO_2$ opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

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

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.285 CAIR opt-in permit contents.

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

(1) All elements required for a complete CAIR permit application under § 97.222;

(2) The certification in § 97.283(a)(2);

(3) The unit's baseline heat input under § 97.284(c);

(4) The unit's baseline $SO_2$ emission rate under § 97.284(d);

(5) A statement whether the unit is to be allocated CAIR $SO_2$ allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g));

(6) A statement that the unit may withdraw from the CAIR $SO_2$ Trading Program only in accordance with § 97.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every allocation, transfer, or deduction of CAIR $SO_2$ allowances to or from the compliance account of the source that includes a CAIR $SO_2$ opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR $SO_2$ opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

### § 97.286 Withdrawal from CAIR $SO_2$ Trading Program.

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

(a) *Requesting withdrawal.* In order to withdraw a CAIR $SO_2$ opt-in unit from the CAIR $SO_2$ Trading Program, the CAIR designated representative of the CAIR $SO_2$ opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR $SO_2$ Trading Program under § 97.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

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

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR $SO_2$ opt-in unit must meet the requirement to hold CAIR $SO_2$ allowances under § 97.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR $SO_2$ opt-in unit CAIR $SO_2$ allowances equal in amount to and allocated for the same or a prior control period as any CAIR $SO_2$ allowances allocated to the CAIR $SO_2$ opt-in unit under § 97.288 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR $SO_2$ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR $SO_2$ opt-in unit may submit a CAIR $SO_2$ allowance transfer for any remaining CAIR $SO_2$ allowances to another CAIR $SO_2$ Allowance Tracking System in accordance with subpart GGG of this part.

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

(2) If the requirements for withdrawal under paragraphs (a) and (b) of

this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR $SO_2$ opt-in unit that the CAIR $SO_2$ opt-in unit's request to withdraw is denied. Such CAIR $SO_2$ opt-in unit shall continue to be a CAIR $SO_2$ opt-in unit.

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

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

(f) *Ability to reapply to the CAIR $SO_2$ Trading Program*. Once a CAIR $SO_2$ opt-in unit withdraws from the CAIR $SO_2$ Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.283 for such CAIR $SO_2$ opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.284.

(g) *Inability to withdraw*. Notwithstanding paragraphs (a) through (f) of this section, a CAIR $SO_2$ opt-in unit shall not be eligible to withdraw from the CAIR $SO_2$ Trading Program if the CAIR designated representative of the CAIR $SO_2$ opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR $SO_2$ opt-in unit of CAIR $SO_2$ allowances under § 97.288(c).

**§ 97.287 Change in regulatory status.**

(a) *Notification*. If a CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR $SO_2$ opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions*. (1) If a CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204, the permitting authority will revise the CAIR $SO_2$ opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.223, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR $SO_2$ opt-in unit that becomes a CAIR $SO_2$ unit under § 97.204, CAIR $SO_2$ allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR $SO_2$ allowances allocated to the CAIR $SO_2$ opt-in unit under § 97.288 for any control period after the date on which the CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204; and

(B) If the date on which the CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204 is not December 31, the CAIR $SO_2$ allowances allocated to the CAIR $SO_2$ opt-in unit under § 97.288 for the control period that includes the date on which the CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR $SO_2$ opt-in unit becomes a CAIR $SO_2$ unit under § 97.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR $SO_2$ opt-in unit that becomes a CAIR $SO_2$ unit under § 97.204 contains the CAIR $SO_2$ allowances necessary for

completion of the deduction under paragraph (b)(2)(i) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.288 CAIR $SO_2$ allowance allocations to CAIR $SO_2$ opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.284(e), the permitting authority will allocate CAIR $SO_2$ allowances to the CAIR $SO_2$ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program under § 97.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program under § 97.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR $SO_2$ allowances to the CAIR $SO_2$ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR $SO_2$ opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR $SO_2$ opt-in unit is to be allocated CAIR $SO_2$ allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

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

(i) The CAIR $SO_2$ opt-in unit's baseline heat input determined under § 97.284(c); or

(ii) The CAIR $SO_2$ opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program under § 97.284(g).

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

(i) The CAIR $SO_2$ opt-in unit's baseline $SO_2$ emissions rate (in lb/mmBtu) determined under § 97.284(d) and multiplied by 70 percent; or

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

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

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.283(a)(5)) providing for, allocation to a CAIR $SO_2$ opt-in unit of CAIR $SO_2$ allowances under this paragraph (subject to the conditions in §§ 97.284(h) and 97.286(g)), the permitting authority will allocate to the CAIR $SO_2$ opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

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

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

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

(A) The CAIR $SO_2$ opt-in unit's baseline $SO_2$ emissions rate (in lb/mmBtu) determined under § 97.284(d); or

(B) The most stringent State or Federal $SO_2$ emissions limitation applicable to the CAIR $SO_2$ opt-in unit at any time during the control period in which the CAIR $SO_2$ opt-in unit enters the

CAIR $SO_2$ Trading Program under § 97.284(g).

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

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

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

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

(A) The CAIR $SO_2$ opt-in unit's baseline $SO_2$ emissions rate (in lb/mmBtu) determined under § 97.284(d) multiplied by 10 percent; or

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

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

(d) *Recordation*. If provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

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

(2) By December 1 of the control period in which a CAIR $SO_2$ opt-in unit enters the CAIR $SO_2$ Trading Program under § 97.284(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR $SO_2$ opt-in unit, the CAIR $SO_2$ allowances allocated by the permitting authority to the CAIR $SO_2$ opt-in unit under paragraph (a)(2) of this section.

APPENDIX A TO SUBPART III OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR $SO_2$ OPT-IN UNITS

1. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR $SO_2$ opt-in units under subpart III of this part and allocation of CAIR $SO_2$ allowances to such units under § 97.288(b):

Indiana
North Carolina
Ohio
South Carolina
Tennessee

2. The following States have State Implementation Plan revisions under § 51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR $SO_2$ opt-in units under subpart III of this part and allocation of CAIR $SO_2$ allowances to such units under § 97.288(c):

Indiana
North Carolina
Ohio
South Carolina
Tennessee

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 59487, Oct. 22, 2007; 73 FR 6041, Feb. 1, 2008]

## Subpart AAAA—CAIR $NO_X$ Ozone Season Trading Program General Provisions

### § 97.301 Purpose.

This subpart and subparts BBBB through IIII set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) $NO_X$ Ozone Season Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

**§ 97.302 Definitions.**

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

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

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

*Acid Rain Program* means a 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 § 97.354.

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

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is;

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated,

or painted wood products), and landscape or right-of-way tree trimmings.

*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 $SO_2$ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR $SO_2$ Trading Program. If the CAIR $NO_X$ Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR $NO_X$ Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the 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 established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

*CAIR $NO_X$ Ozone Season allowance* means a limited authorization issued by a permitting authority or the Administrator under subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) 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 subpart EEEE of this part, § 97.388, or provisions of a State implementation plan that are approved under § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) 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 § 97.354(a) and (b) for the control period.

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

*CAIR $NO_X$ Ozone Season Trading Program* means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of part 96 of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

*CAIR $NO_X$ Ozone Season unit* means a unit that is subject to the CAIR $NO_X$ Ozone Season Trading Program under § 97.304 and, except for purposes of § 97.305 and subpart EEEE of this part, a CAIR $NO_X$ Ozone Season opt-in unit under subpart IIII of this part.

*CAIR $NO_X$ source* means a source that 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 $SO_2$ source* means a source that is subject to the CAIR $SO_2$ Trading Program.

*CAIR $SO_2$ Trading Program* means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

*Certifying official* means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

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

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

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

*Coal-fired* means:

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

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

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

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

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

(i) For a topping-cycle cogeneration unit,

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

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

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

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

*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 § 97.305 and § 97.384(h).

(i) For a unit that is a CAIR $NO_X$ Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the 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 $NO_X$ Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), 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), (2), or (3) of this definition as appropriate.

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

(i) For a unit with a date for commencement of commercial operation as

defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the 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), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

*Commence operation* means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.384(h).

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, 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) or (2) of this definition as appropriate, except as provided in § 97.384(h).

(2) Notwithstanding paragraph (1) of this definition and solely for purposes of subpart HHHH of this part, for a unit that is not a CAIR $NO_X$ Ozone Season unit under § 97.304(d) on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition and subsequently becomes such a CAIR $NO_X$ Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304(d).

(i) For a unit with a date for commencement of 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 operation of the unit, which shall continue to be treated as the same unit.

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

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

*Compliance account* means a CAIR $NO_X$ Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR $NO_X$ Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR $NO_X$ Ozone Season allowance allocations for the CAIR $NO_X$ Ozone Season units at the source are initially recorded and in which are held any CAIR $NO_X$ Ozone Season allowances available for use for a control period in order to meet the source's CAIR $NO_X$ Ozone Season emissions limitation in accordance with § 97.354.

*Continuous emission monitoring system* or *CEMS* means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of

nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

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

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

(3) A nitrogen oxides emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

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

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

*Control period* or *ozone season* means the period beginning May 1 of a calendar year, except as provided in §97.306(c)(2) and ending on September 30 of the same year, inclusive.

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

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

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

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

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

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

*Generator* means a device that produces electricity.

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

*Heat input* means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the

heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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

*Hg Budget Trading Program* means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance 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 as 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 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.

*Sequential use of energy* means:

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

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

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

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties

under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

*State* means one of the States or the District of Columbia that is subject to the CAIR $NO_X$ Ozone Season Trading Program pursuant to § 52.35 of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

*Ton* means 2,000 pounds. For the purpose of determining compliance with the CAIR $NO_X$ 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. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of fuel in Btu/lb,
HHV = higher heating value of fuel in Btu/lb,
W = Weight % of moisture in fuel, and
H = Weight % of hydrogen in fuel.

*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.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006; 72 FR 59207, Oct. 19, 2007]

### § 97.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII are defined as follows:

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

### § 97.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

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

(2) If a stationary 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.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $NO_X$ Ozone Season Trading Program to the unit.

(1) *Petition content*. The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Submission*. The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response*. The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR $NO_X$ Ozone Season Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

(d) Notwithstanding paragraphs (a) and (b) of this section, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR $NO_X$ Ozone Season Trading Program of all units that are not otherwise CAIR $NO_X$ Ozone Season units under paragraphs (a) and (b) of this section and that are $NO_X$ Budget units covered by the State's emissions trading program approved under § 51.121(p) of this chapter, such units shall be CAIR $NO_X$ Ozone Season units as of the first date that they are $NO_X$ Budget units under the $NO_X$ Budget Trading Program under § 51.121(p) of this chapter.

### § 97.305 Retired unit exemption.

(a)(1) Any CAIR $NO_X$ Ozone Season unit that is permanently retired and is not a CAIR $NO_X$ Ozone Season opt-in unit 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, §§ 97.302, 97.303, 97.304, 97.306(c)(4) through (7), 97.307, 97.308, 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 Administrator or the permitting authority will allocate CAIR $NO_X$ Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

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

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

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

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

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

### § 97.306 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR $NO_X$ Ozone Season source required to have a title V operating permit and each CAIR $NO_X$ Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.322 in accordance with the deadlines specified in § 97.321; and

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

(2) The owners and operators of each CAIR $NO_X$ Ozone Season source required to have a title V operating permit and each CAIR $NO_X$ Ozone Season

unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided 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 § 97.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR $NO_X$ Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR $NO_X$ Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.370(b)(1), (2), (3), or (7) and for each control period thereafter.

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

(4) CAIR $NO_X$ Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR $NO_X$ Ozone Season Allowance Tracking System accounts in accordance with subparts EEEE, 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 § 97.305 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR $NO_X$ Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR $NO_X$ Ozone Season allowance to or from a CAIR $NO_X$ Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR $NO_X$ Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR $NO_X$ Ozone Season emissions limitation, then:

(1) The owners and operators of the source and each CAIR $NO_X$ Ozone Season unit at the source shall surrender the CAIR $NO_X$ Ozone Season allowances required for deduction under § 97.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of

this subpart, the Clean Air Act, and applicable State law.

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

(i) The certificate of representation under § 97.313 for the CAIR designated representative for the source and each CAIR $NO_X$ Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR $NO_X$ Ozone Season Trading Program.

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

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

(f) *Liability.* (1) Each CAIR $NO_X$ Ozone Season source and each CAIR $NO_X$ Ozone Season unit shall meet the requirements of the CAIR $NO_X$ Ozone Season Trading Program.

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

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

(g) *Effect on other authorities.* No provision of the CAIR $NO_X$ Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR $NO_X$ Ozone Season source or CAIR $NO_X$ Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

### § 97.307 Computation of time.

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

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

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

### § 97.308 Appeal procedures.

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

APPENDIX A TO SUBPART AAAA OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING APPLICABILITY

The following States have State Implementation Plan revisions under §51.123(ee)(1) of this chapter approved by the Administrator and providing for expansion of the applicability provisions to include all non-EGUs subject to the respective State's emission trading program approved under §51.121(p) of this chapter:

Michigan
Tennessee

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 72262, Dec. 20, 2007; 74 FR 61537, Nov. 25, 2009]

## Subpart BBBB—CAIR Designated Representative for CAIR $NO_X$ Ozone Season Sources

### §97.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under §97.311, each CAIR $NO_X$ Ozone Season source, including all CAIR $NO_X$ Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR $NO_X$ Ozone Season Trading Program concerning the source or any CAIR $NO_X$ Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR $NO_X$ Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR $NO_X$ Ozone Season units at the source and shall act in accordance with the certification statement in §97.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under §97.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR $NO_X$ Ozone Season source represented and each CAIR $NO_X$ Ozone Season unit at the source in all matters pertaining to the CAIR $NO_X$ Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR $NO_X$ Ozone Season Allowance Tracking System account will be established for a CAIR $NO_X$ Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under §97.313 for a CAIR designated representative of the source and the CAIR $NO_X$ Ozone Season units at the source.

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

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

### §97.311 Alternate CAIR designated representative.

(a) A certificate of representation under §97.313 may designate one and

only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.302, 97.310(a) and (d), 97.312, 97.313, 97.315, 97.351, and 97.382, 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.

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

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR $NO_X$ Ozone Season source and the CAIR $NO_X$ Ozone Season units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR $NO_X$ Ozone Season source and the CAIR $NO_X$ Ozone Season units at the source.

(c) *Changes in owners and operators.* (1) In the event 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 § 97.313, 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 § 97.313 amending the list of owners and operators to include the change.

### § 97.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR $NO_X$ Ozone Season source, and each CAIR $NO_X$ Ozone Season unit at the source, for which the certificate of representation is submitted, 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.

### § 97.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.313 is received by the Administrator.

(b) Except as provided in § 97.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR $NO_X$ Ozone Season Trading Program.

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

**§ 97.315 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 97.315(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 97.315(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 97.315 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

**§ 97.320 General CAIR $NO_X$ Ozone Season Trading Program permit requirements.**

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

permits as applicable, except as provided otherwise by § 97.305, 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 $SO_2$ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

### § 97.321 Submission of CAIR permit applications.

(a) *Duty to apply*. The CAIR designated representative of any CAIR $NO_X$ Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.322 for the source covering each CAIR $NO_X$ Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR $NO_X$ Ozone Season unit commences commercial operation, except as provided in § 97.383(a).

(b) *Duty to reapply*. For a CAIR $NO_X$ Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.322 for the source covering each CAIR $NO_X$ Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.383(b).

### § 97.322 Information requirements for CAIR permit applications.

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

(a) Identification of the CAIR $NO_X$ Ozone Season source;

(b) Identification of each CAIR $NO_X$ Ozone Season unit at the CAIR $NO_X$ Ozone Season source; and

(c) The standard requirements under § 97.306.

### § 97.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR $NO_X$ Ozone Season allowance to or from the compliance account of the CAIR $NO_X$ Ozone Season source covered by the permit.

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

### § 97.324 CAIR permit revisions.

Except as provided in § 97.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

## Subpart DDDD [Reserved]

## Subpart EEEE—CAIR $NO_X$ Ozone Season Allowance Allocations

### § 97.340 State trading budgets.

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

| State | State trading budget for 2009–2014 (tons) | State trading budget for 2015 and thereafter (tons) |
|---|---|---|
| Alabama | 32,182 | 26,818 |
| Arkansas | 11,515 | 9,597 |
| Connecticut | 2,559 | 2,559 |
| Delaware | 2,226 | 1,855 |
| District of Columbia | 112 | 94 |
| Florida | 47,912 | 39,926 |
| Illinois | 30,701 | 28,981 |
| Indiana | 45,952 | 39,273 |
| Iowa | 14,263 | 11,886 |
| Kentucky | 36,045 | 30,587 |
| Louisiana | 17,085 | 14,238 |
| Maryland | 12,834 | 10,695 |
| Massachusetts | 7,551 | 6,293 |
| Michigan | 28,971 | 24,142 |
| Mississippi | 8,714 | 7,262 |
| Missouri | 26,678 | 22,231 |
| New Jersey | 6,654 | 5,545 |
| New York | 20,632 | 17,193 |
| North Carolina | 28,392 | 23,660 |
| Ohio | 45,664 | 39,945 |
| Pennsylvania | 42,171 | 35,143 |
| South Carolina | 15,249 | 12,707 |
| Tennessee | 22,842 | 19,035 |
| Virginia | 15,994 | 13,328 |
| West Virginia | 26,859 | 26,525 |
| Wisconsin | 17,987 | 14,989 |

(b) Upon approval by the Administrator of a State's State implementation plan revision under § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR $NO_X$ Ozone Season Trading Program of all units that are not otherwise CAIR $NO_X$ Ozone Season units under § 97.304(a) and (b) and that are $NO_X$ Budget units covered by the State's emissions trading program approved under § 51.121(p), the 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(ee)(1)(ii)(A) of this chapter for the year.

### § 97.341 Timing requirements for CAIR $NO_X$ Ozone Season allowance allocations.

(a) The Administrator will determine by order the CAIR $NO_X$ Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR $NO_X$ Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By April 30, 2009 and April 30 of each year thereafter, the Administrator will determine by order the CAIR $NO_X$ Ozone Season allowance allocations, in accordance with § 97.342(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR $NO_X$ Ozone Season allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.342. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.342.

### § 97.342 CAIR $NO_X$ Ozone Season allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR $NO_X$ Ozone Season allowance allocations under paragraph (b) of this section for each CAIR $NO_X$ Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of $NO_X$ emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR $NO_X$ Ozone Season units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR $NO_X$ Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of $NO_X$ emissions in the applicable State trading budget under § 97.340 (except as provided in paragraphs (d) and (e) of this section).

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

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR $NO_X$ Ozone Season allowances to CAIR $NO_X$ Ozone Season units

in a State that 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 Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR $NO_X$ Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of $NO_X$ emissions in the applicable State trading budget under § 97.340.

(2) The CAIR designated representative of such a CAIR $NO_X$ Ozone Season unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR $NO_X$ Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR $NO_X$ Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR $NO_X$ Ozone Season allowances under paragraph (b) of this section. A separate CAIR $NO_X$ Ozone Season allowance allocation request for each control period for which CAIR $NO_X$ Ozone Season allowances are sought must be submitted on or before February 1 before 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 Administrator will review each CAIR $NO_X$ Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR $NO_X$ Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Administrator will determine the sum of the CAIR $NO_X$ Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR $NO_X$ Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR $NO_X$ Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR $NO_X$ Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR $NO_X$ Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR $NO_X$ Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR $NO_X$ Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR $NO_X$ Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR $NO_X$ Ozone Season allowances (if any) allocated for the control period to the CAIR $NO_X$ Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR $NO_X$ Ozone Season allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR $NO_X$ Ozone Season unit that was allocated CAIR $NO_X$ Ozone Season allowances under paragraph (b) of this section in the State 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 applicable State trading budget under § 97.340, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR $NO_X$ Ozone Season allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR $NO_X$ Ozone Season unit under § 97.304 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR $NO_X$ Ozone Season allowances under § 97.353.

(2) If the Administrator already recorded such CAIR $NO_X$ Ozone Season allowances under § 97.353 and if the Administrator makes such determinations before making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will deduct from the account in which such CAIR $NO_X$ Ozone Season allowances were recorded under § 97.353 an amount of CAIR $NO_X$ Ozone Season allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR $NO_X$ Ozone Season allowances. The CAIR designated representative shall ensure that there are sufficient CAIR $NO_X$ Ozone Season allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR $NO_X$ Ozone Season allowances under § 97.353 and if the Administrator makes such determinations after making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR $NO_X$ Ozone Season allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR $NO_X$ Ozone Season allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

### § 97.343 Alternative of allocation of CAIR $NO_X$ Ozone Season allowances by permitting authority.

(a) Notwithstanding §§ 97.341, 97.342, and 97.353 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(2) of this chapter providing for allocation of CAIR $NO_X$ Ozone Season allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.341 and 97.342 for the CAIR $NO_X$ Ozone Season units in the State, and under § 97.353, the Administrator will record allocations made under such approved State implementation plan revision instead of allocations under §§ 97.341 and 97.342.

(b) In implementing paragraph (a) of this section and §§ 97.341, 97.342, and 97.353, the Administrator will ensure that the total amount of CAIR $NO_X$ Ozone Season allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(ee)(2) of this chapter, for a control period for CAIR $NO_X$ Ozone Season sources in the State or for other entities specified by the permitting authority will not exceed the State's State

trading budget for the year of the control period.

APPENDIX A TO SUBPART EEEE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS

The following States have State Implementation Plan revisions under § 51.123(ee)(2) of this chapter approved by the Administrator and providing for allocation of CAIR $NO_X$ Ozone Season allowances by the permitting authority under § 97.343(a):

Indiana
Louisiana
Michigan
New Jersey
North Carolina
Ohio
South Carolina
Tennessee
West Virginia (for control periods 2009–2014)
Wisconsin

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 52293, Sept. 13, 2007; 72 FR 55068, Sept. 28, 2007; 72 FR 55659, 55672, Oct. 1, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 58546, Oct. 16, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 71579, Dec. 18, 2007; 72 FR 72263, Dec. 20, 2007; 73 FR 6041, Feb. 1, 2008]

## Subpart FFFF—CAIR $NO_X$ Ozone Season Allowance Tracking System

### § 97.350 [Reserved]

### § 97.351 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.384(e), upon receipt of a complete certificate of representation under § 97.313, the Administrator will establish a compliance account for the CAIR $NO_X$ Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR $NO_X$ Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

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

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

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

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

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR $NO_X$ Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR $NO_X$ Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

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

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to

the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

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

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by

the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR $NO_X$ Ozone Season allowances in the general account.

(iii)(A) In the event a 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 and 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 97.351(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 97.351(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 97.351(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.

### § 97.352 Responsibilities of CAIR authorized account representative.

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

### § 97.353 Recordation of CAIR $NO_X$ Ozone Season allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR $NO_X$ Ozone Season sources compliance account the CAIR $NO_X$ Ozone Season allowances allocated for the CAIR $NO_X$ Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR $NO_X$ Ozone Season source's compliance account the CAIR $NO_X$ Ozone Season allowances allocated for the CAIR $NO_X$ Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR $NO_X$ Ozone Season source's compliance account the CAIR Ozone Season $NO_X$ allowances allocated for the CAIR $NO_X$ Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR $NO_X$ Ozone Season source's compliance account the CAIR $NO_X$ Ozone Season allowances allocated for the CAIR $NO_X$ Ozone Season units at the source in accordance with § 97.342(a) and (b) for the

control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR $NO_X$ Ozone Season source's compliance account the CAIR $NO_X$ Ozone Season allowances allocated for the CAIR $NO_X$ Ozone Season units at the source in accordance with § 97.342(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR $NO_X$ Ozone Season allowances.* When recording the allocation of CAIR $NO_X$ Ozone Season allowances for a CAIR $NO_X$ Ozone Season unit in a compliance account, the Administrator will assign each CAIR $NO_X$ Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR $NO_X$ Ozone Season allowance is allocated.

### § 97.354 Compliance with CAIR $NO_X$ emissions limitation.

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

(1) Were allocated for the control period in the year or a prior year; 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 §§ 97.360 and 97.361 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.361, of CAIR $NO_X$ Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR $NO_X$ Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR $NO_X$ Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR $NO_X$ Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR $NO_X$ Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR $NO_X$ Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR $NO_X$ Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

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

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

(i) Any CAIR $NO_X$ Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR $NO_X$ Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR $NO_X$ Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR $NO_X$ Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

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

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart IIII.

(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.

### § 97.355 Banking.

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

(b) Any CAIR $NO_X$ Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR $NO_X$ Ozone Season allowance is deducted or transferred under § 97.342, § 97.354, § 97.356, or subpart GGGG or IIII of this part.

### § 97.356 Account error.

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

### § 97.357 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.360 and 97.361 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 §§ 97.360 and 97.361 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.

## Subpart GGGG—CAIR $NO_X$ Ozone Season Allowance Transfers

### § 97.360 Submission of CAIR $NO_X$ Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR $NO_X$ Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR $NO_X$ Ozone Season allowance transfer shall

include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR $NO_X$ Ozone Season allowance that is in the transferor account and is to be transferred; and

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

### § 97.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR $NO_X$ Ozone Season allowance transfer, the Administrator will record a CAIR $NO_X$ Ozone Season allowance transfer by moving each CAIR $NO_X$ Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.360; and

(2) The transferor account includes each CAIR $NO_X$ 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 § 97.354 for the control period immediately before such allowance transfer deadline.

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

### § 97.362 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR $NO_X$ Ozone Season allowance transfer under § 97.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR $NO_X$ Ozone Season allowance transfer that fails to meet the requirements of § 97.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

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

## Subpart HHHH—Monitoring and Reporting

### § 97.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR $NO_X$ Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.302 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CAIR $NO_X$ Ozone Season unit,'' ''CAIR designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 97.302. The owner or operator of a unit that is not a CAIR $NO_X$ Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR $NO_X$ Ozone Season unit.

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

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

rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* 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 § 97.374(d), by the later of the following dates:

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

(ii) May 1, 2008.

(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 § 97.374(d)(2)(ii), by the later of the following dates:

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

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR $NO_X$ Ozone Season unit for which construction of a new stack or flue or installation of add-on $NO_X$ emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 97.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emissions controls.

(5) For the owner or operator of a CAIR $NO_X$ Ozone Season unit for which construction of a new stack or flue or installation of add-on $NO_X$ emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under § 97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on $NO_X$ emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR $NO_X$ Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 97.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR $NO_X$ Ozone Season opt-in unit under subpart IIII of this part, by the date on which the CAIR $NO_X$ Ozone Season opt-in unit enters the CAIR $NO_X$ Ozone Season Trading Program as provided in § 97.384(g).

(c) *Reporting data.* 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 § 97.375.

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

(3) No owner or operator of a CAIR $NO_X$ Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $NO_X$ mass emissions discharged into the atmosphere 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 § 97.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.371(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR $NO_X$ Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

### § 97.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR $NO_X$ Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.370(a)(1) if the following conditions are met:

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

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

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the $NO_X$ emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.375 to determine whether the approval applies under the CAIR $NO_X$ Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR $NO_X$ Ozone Season unit shall comply with the following initial

certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.370(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.370(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under § 97.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.370(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.373.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR $NO_X$ Ozone Season Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided

that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR $NO_X$ Ozone Season Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.372(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in (72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel

flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in (72.2 of this chapter.

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

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

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

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

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.372 Out of control periods.

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

(b) *Audit decertification*. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.371 for each disapproved monitoring system.

### § 97.373 Notifications.

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

### § 97.374 Recordkeeping and reporting.

(a) *General provisions*. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.310(e)(1).

(b) *Monitoring Plans*. The owner or operator of a CAIR $NO_X$ Ozone Season

unit shall comply with requirements of § 75.73 (c) and (e) of this chapter 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 IIII of this part, §§ 97.383 and 97.384(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.371, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR $NO_X$ Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR $NO_X$ emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of $NO_X$ mass emissions) for such unit for the entire year and shall report the $NO_X$ mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that quarter is the third or fourth quarter of 2007 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 § 97.384(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 § 97.384(g).

(2) If the CAIR $NO_X$ Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR $NO_X$ emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of $NO_X$ mass emissions) for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report $NO_X$ mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(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 § 97.384(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 § 97.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

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

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

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

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

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the $NO_X$ emission rate and $NO_X$ concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate $NO_X$ emissions.

### § 97.375 Petitions.

The CAIR designated representative of a CAIR $NO_X$ Ozone Season unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

## Subpart IIII—CAIR $NO_X$ Ozone Season Opt-in Units

### § 97.380 Applicability.

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

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(3) (i), (ii), or (iii) of this chapter establishing procedures concerning CAIR Ozone Season opt-in units;

(b) Is not a CAIR $NO_X$ Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

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

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

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

### § 97.381 General.

(a) Except as otherwise provided in §§ 97.301 through 97.304, §§ 97.306 through 97.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR $NO_X$ Ozone Season opt-in unit shall be treated as a CAIR $NO_X$ Ozone Season unit for purposes of

applying such sections and subparts of this part.

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

### § 97.382 CAIR designated representative.

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

### § 97.383 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR $NO_X$ Ozone Season opt-in unit in § 97.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.322;

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

(i) Is not a CAIR $NO_X$ Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

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

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

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.322;

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

(4) A complete certificate of representation under § 97.313 consistent with § 97.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR $NO_X$ Ozone Season allowances under § 97.380(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.388(c) is requested, this statement shall include a statement that the owners and operators 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 § 97.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR $NO_X$ Ozone Season opt-in unit from the CAIR $NO_X$ Ozone Season Trading Program in accordance with § 97.386 or the unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, the CAIR $NO_X$ Ozone Season opt-in unit shall remain subject to the requirements for a CAIR $NO_X$ Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR $NO_X$ Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

### § 97.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.383 is

submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the $NO_X$ emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart 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 § 97.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR $NO_X$ Ozone Season Trading Program in accordance with § 97.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR $NO_X$ Ozone Season Trading Program under § 97.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the $NO_X$ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart 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 § 97.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

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

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

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

(d) *Baseline $NO_X$ emission rate.* The unit's baseline $NO_X$ emission rate shall equal:

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

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

(3) If the unit's $NO_X$ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs

(b)(1) and (2) of this section, and the unit has add-on $NO_X$ emission controls during any such control periods, the average of the amounts of the unit's $NO_X$ emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on $NO_X$ emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline $NO_X$ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR $NO_X$ Ozone Season opt-in unit in § 97.380 and meets the elements certified in § 97.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR $NO_X$ Ozone Season opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR $NO_X$ Ozone Season opt-in unit in § 97.380 or meets the elements certified in § 97.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR $NO_X$* Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR $NO_X$ Ozone Season opt-in unit, and a CAIR $NO_X$ Ozone Season unit, as of the later of 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 § 97.388(c) and such unit is repowered after its date of entry into the CAIR $NO_X$ Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR $NO_X$ Ozone Season opt-in unit replacing the original CAIR $NO_X$ Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

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

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.385 CAIR opt-in permit contents.

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

(1) All elements required for a complete CAIR permit application under § 97.322;

(2) The certification in § 97.383(a)(2);

(3) The unit's baseline heat input under § 97.384(c);

(4) The unit's baseline $NO_X$ emission rate under § 97.384(d);

(5) A statement whether the unit is to be allocated CAIR $NO_X$ Ozone Season allowances under § 97.388(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g));

(6) A statement that the unit may withdraw from the CAIR $NO_X$ Ozone Season Trading Program only in accordance with § 97.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart FFFF 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.

### § 97.386 Withdrawal from CAIR $NO_X$ Ozone Season Trading Program.

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

(a) *Requesting withdrawal.* In order to withdraw a CAIR $NO_X$ Ozone Season opt-in unit from the CAIR $NO_X$ Ozone Season Trading Program, the CAIR designated representative of the CAIR $NO_X$ Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of 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 § 97.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

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

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR $NO_X$ Ozone Season opt-in unit must meet the requirement to hold CAIR $NO_X$ Ozone Season allowances under § 97.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR $NO_X$ Ozone Season opt-in unit CAIR $NO_X$ Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR $NO_X$ Ozone Season allowances allocated to the CAIR $NO_X$ Ozone Season opt-in unit under § 97.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR $NO_X$ Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR $NO_X$ Ozone Season opt-in unit may submit a CAIR $NO_X$ Ozone Season allowance transfer for any remaining CAIR $NO_X$ Ozone Season allowances to another CAIR $NO_X$ Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR $NO_X$ Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR $NO_X$ Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR $NO_X$ Ozone Season opt-in unit as of midnight on 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 § 97.383 for such CAIR $NO_X$ Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.384.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR $NO_X$ Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR $NO_X$ Ozone Season Trading Program if the CAIR designated representative of the CAIR $NO_X$ Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR $NO_X$ Ozone Season opt-in unit of CAIR $NO_X$ Ozone Season allowances under § 97.388(c).

### § 97.387 Change in regulatory status.

(a) *Notification.* If a CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR $NO_X$ Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, the permitting authority will revise the CAIR $NO_X$ Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.323, 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 § 97.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR $NO_X$ Ozone Season opt-in unit that becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, CAIR $NO_X$ Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR $NO_X$ Ozone Season allowances allocated to the CAIR $NO_X$ Ozone Season opt-in unit under § 97.388 for any control period after the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304; and

(B) If the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304 is not September 30, the CAIR $NO_X$ Ozone Season allowances allocated to the CAIR $NO_X$ Ozone Season opt-in unit under § 97.388 for the control period that includes the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR $NO_X$ Ozone Season opt-in unit that becomes a CAIR $NO_X$ Ozone Season unit under § 97.304 contains the CAIR $NO_X$ Ozone Season allowances

necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, the CAIR $NO_X$ Ozone Season opt-in unit will be allocated CAIR $NO_X$ Ozone Season allowances under § 97.342.

(ii) If the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304 is not September 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 § 97.342 for the control period that includes the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304:

(A) The amount of CAIR $NO_X$ Ozone Season allowances otherwise allocated to the CAIR $NO_X$ Ozone Season opt-in unit (as a CAIR $NO_X$ Ozone Season unit) under § 97.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR $NO_X$ Ozone Season opt-in unit becomes a CAIR $NO_X$ Ozone Season unit under § 97.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

[65 FR 2727, Jan. 18, 2000, as amended at 71 FR 74795, Dec. 13, 2006]

### § 97.388 CAIR $NO_X$ Ozone Season allowance allocations to CAIR $NO_X$ Ozone Season opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.384(e), the permitting authority will allocate CAIR $NO_X$ Ozone Season allowances to the CAIR $NO_X$ Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR $NO_X$ Ozone Season opt-in unit enters the CAIR $NO_X$ Ozone Season Trading Program under § 97.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than 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 § 97.384(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 $NO_X$ Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR $NO_X$ Ozone Season opt-in unit is to be allocated CAIR $NO_X$ Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

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

(i) The CAIR $NO_X$ Ozone Season opt-in unit's baseline heat input determined under § 97.384(c); or

(ii) The CAIR $NO_X$ Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR $NO_X$ Ozone Season opt-in unit enters the CAIR $NO_X$ Ozone Season Trading Program under § 97.384(g).

(2) The $NO_X$ emission rate (in lb/mmBtu) used for calculating CAIR $NO_X$ 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 § 97.384(d) and multiplied by 70 percent; or

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

(3) The permitting authority will allocate CAIR $NO_X$ Ozone Season allowances to the CAIR $NO_X$ Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the $NO_X$ emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.383 (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 §§ 97.384(h) and 97.386(g)), the permitting authority will allocate to the CAIR $NO_X$ Ozone Season opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR $NO_X$ Ozone Season opt-in unit is to be allocated CAIR $NO_X$ Ozone Season allowances,

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

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

(A) The CAIR $NO_X$ Ozone Season opt-in unit's baseline $NO_X$ emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(B) The most stringent State or Federal $NO_X$ emissions limitation applicable to the CAIR $NO_X$ Ozone Season opt-in unit at any time during the control period in which the CAIR $NO_X$ Ozone Season opt-in unit enters the CAIR $NO_X$ Ozone Season Trading Program under § 97.384(g).

(iii) The permitting authority will allocate CAIR $NO_X$ Ozone Season allowances to the CAIR $NO_X$ Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the $NO_X$ emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

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

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

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

(A) 0.15 lb/mmBtu;

(B) The CAIR $NO_X$ Ozone Season opt-in unit's baseline $NO_X$ emissions rate (in lb/mmBtu) determined under § 97.384(d); or

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

(iii) The permitting authority will allocate CAIR $NO_X$ Ozone Season allowances to the CAIR $NO_X$ Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the $NO_X$ emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation*. If provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

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

(2) By 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

§ 97.384(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.

APPENDIX A TO SUBPART IIII OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR $NO_X$ OZONE SEASON OPT-IN UNITS

1. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR $NO_X$ Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR $NO_X$ Ozone Season allowances to such units under § 97.388(b):

Indiana
Michigan
North Carolina
Ohio
South Carolina
Tennessee

2. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR $NO_X$ Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR $NO_X$ Ozone Season allowances to such units under § 97.388(c):

Indiana
Michigan
North Carolina
Ohio
South Carolina
Tennessee

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 72263, Dec. 20, 2007; 73 FR 6041, Feb. 1, 2008]

## Subpart AAAAA—CSAPR $NO_X$ Annual Trading Program

SOURCE: 76 FR 48379, Aug. 8, 2011, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 81 FR 74604, Oct. 26, 2016.

### § 97.401 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $NO_X$ Annual Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.402 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $NO_X$ Annual allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State and approved by the Administrator under § 52.38(a)(3), (4), or (5) of this chapter, of the amount of such CSAPR $NO_X$ Annual allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Annual unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Annual unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Annual allowances, the CSAPR $NO_X$ Annual unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $NO_X$ Annual allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Annual allowances under the CSAPR $NO_X$ Annual Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Annual allowances.

*Allowance transfer deadline* means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Annual allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Annual source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Annual emissions limitation for such control period in accordance with §§ 97.406 and 97.424.

*Alternate designated representative* means, for a CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual 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 this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Annual Trading Program. If the CSAPR $NO_X$ Annual source is also subject to the Acid Rain Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, CSAPR $NO_X$ Ozone Season Group 3 Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.425(b)(3) for certain owners and operators of a group of one or more CSAPR $NO_X$ Annual sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Annual allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Annual assurance provisions in accordance with §§ 97.406 and 97.425.

*Auction* means, with regard to CSAPR $NO_X$ Annual allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, of such CSAPR $NO_X$ Annual allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Annual allowances held in the general account and, for a CSAPR $NO_X$ Annual source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 § 97.405.

(i) For a unit that is a CSAPR $NO_X$ Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $NO_X$ Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 § 97.405, for a unit that is not a CSAPR $NO_X$ Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $NO_X$ Annual unit under § 97.404.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.413(a) and 97.415(a) as the designated representative for a group of one or more CSAPR $NO_X$ Annual sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.406(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Annual allowances allocated for such control period to the group of one or more CSAPR $NO_X$ Annual units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Annual allowances purchased by an owner or operator of such

CSAPR $NO_X$ Annual units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $NO_X$ Annual units in accordance with the CSAPR $NO_X$ Annual allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, multiplied by the sum of the State $NO_X$ Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b) for such control period, and divided by such State $NO_X$ Annual trading budget.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all CSAPR $NO_X$ Annual units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more CSAPR $NO_X$ Annual units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $NO_X$ Annual source under this subpart, in which any CSAPR $NO_X$ Annual allowance allocations to the CSAPR $NO_X$ Annual units at the source are recorded and in which are held any CSAPR $NO_X$ Annual allowances available for use for a control period in a given year in complying with the source's CSAPR $NO_X$ Annual emissions limitation in accordance with §§ 97.406 and 97.424.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $NO_X$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.430 through 97.435. The following systems are the principal types of continuous emission monitoring systems:

(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 $NO_X$ 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 $NO_X$ emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

(5) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting January 1 of a calendar year, except as provided in § 97.406(c)(3), and ending on December 31 of the same year, inclusive.

*CSAPR $NO_X$ Annual allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(a)(3), (4), or (5) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Annual Trading Program.

*CSAPR $NO_X$ Annual allowance deduction* or *deduct CSAPR $NO_X$ Annual allowances* means the permanent withdrawal of CSAPR $NO_X$ Annual allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $NO_X$ Annual emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.406 and 97.425).

*CSAPR $NO_X$ Annual allowances held* or *hold CSAPR $NO_X$ Annual allowances* means the CSAPR $NO_X$ Annual allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Annual allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Annual allowance transfer in accordance with this subpart.

*CSAPR $NO_X$ Annual emissions limitation* means, for a CSAPR $NO_X$ Annual source, the tonnage of $NO_X$ emissions authorized in a control period in a given year by the CSAPR $NO_X$ Annual allowances available for deduction for the source under § 97.424(a) for such control period.

*CSAPR $NO_X$ Annual source* means a source that includes one or more CSAPR $NO_X$ Annual units.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with this subpart and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Annual unit* means a unit that is subject to the CSAPR $NO_X$ Annual Trading Program.

*CSAPR $NO_X$ Ozone Season Group 1 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $SO_2$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_2$ Group 2 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*Designated representative* means, for a CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $NO_X$ Annual Trading Program. If the CSAPR $NO_X$ Annual source is also subject to the Acid Rain Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, CSAPR $NO_X$ Ozone Season Group 3 Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $NO_X$ Annual units at a CSAPR $NO_X$ Annual source during a control period in a given year that exceeds the CSAPR $NO_X$ Annual emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.404(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $NO_X$ Annual unit* means a unit that was not a CSAPR $NO_X$ Annual unit when it began operating but that thereafter becomes a CSAPR $NO_X$ Annual unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $NO_X$ Annual source or a CSAPR $NO_X$ Annual unit at a source respectively, any person who operates, controls, or supervises a CSAPR $NO_X$ Annual unit at the source or the CSAPR $NO_X$ Annual unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $NO_X$ Annual source or a CSAPR $NO_X$ Annual unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $NO_X$ Annual unit at the source or the CSAPR $NO_X$ Annual unit;

(2) Any holder of a leasehold interest in a CSAPR $NO_X$ Annual unit at the source or the CSAPR $NO_X$ Annual unit, 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 CSAPR $NO_X$ Annual unit; and

(3) Any purchaser of power from a CSAPR $NO_X$ Annual unit at the source or the CSAPR $NO_X$ Annual unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $NO_X$ Annual allowances, the moving of CSAPR $NO_X$ Annual allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $NO_X$ Annual allowance, the unique identification number assigned to each CSAPR $NO_X$ Annual allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $NO_X$ Annual Trading Program pursuant to § 52.38(a) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

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

device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour or hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in 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.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021]

### § 97.403 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016]

### § 97.404 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $NO_X$ Annual units, and any source that includes one or more such units shall be a CSAPR $NO_X$ Annual source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $NO_X$ Annual 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 CSAPR $NO_X$ Annual 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $NO_X$ Annual unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $NO_X$ Annual unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical

output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $NO_X$ Annual unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $NO_X$ Annual 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. The unit shall thereafter continue to be a CSAPR $NO_X$ Annual unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $NO_X$ Annual unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $NO_X$ Annual 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 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $NO_X$ Annual unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, of the CSAPR $NO_X$ Annual Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $NO_X$ Annual Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021]

**§ 97.405 Retired unit exemption.**

(a)(1) Any CSAPR $NO_X$ Annual unit that is permanently retired shall be exempt from § 97.406(b) and (c)(1), § 97.424, and §§ 97.430 through 97.435.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $NO_X$ Annual unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

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

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

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

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021]

**§ 97.406 Standard requirements.**

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.413 through 97.418.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.430 through 97.435.

(2) The emissions data determined in accordance with §§ 97.430 through 97.435 shall be used to calculate allocations of CSAPR $NO_X$ Annual allowances under §§ 97.411(a)(2) and (b) and 97.412 and to determine compliance with the CSAPR $NO_X$ Annual emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.430 through 97.435 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$NO_X$ emissions requirements*—(1) *CSAPR $NO_X$ Annual emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual unit at the source shall hold, in the source's compliance account, CSAPR $NO_X$ Annual allowances available for deduction for such control period under § 97.424(a) in an amount not less than the tons of total $NO_X$ emissions for such control period from all CSAPR $NO_X$ Annual units at the source.

(ii) If total $NO_X$ emissions during a control period in a given year from the CSAPR $NO_X$ Annual units at a CSAPR $NO_X$ Annual source are in excess of the CSAPR $NO_X$ Annual emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $NO_X$ Annual unit at the source shall hold the CSAPR $NO_X$ Annual allowances required for deduction under § 97.424(d); and

(B) The owners and operators of the source and each CSAPR $NO_X$ Annual unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $NO_X$ Annual assurance provisions.* (i) If total $NO_X$ emissions during a control period in a given year from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $NO_X$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $NO_X$ Annual allowances available for deduction for such control period under § 97.425(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.425(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $NO_X$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $NO_X$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $NO_X$ Annual allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $NO_X$ emissions exceed the sum, for such control period, of the State $NO_X$ Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $NO_X$ emissions from the CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $NO_X$ Annual allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $NO_X$ Annual allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i)

through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $NO_X$ Annual unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2015 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(ii) A CSAPR $NO_X$ Annual unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(4) *Vintage of CSAPR $NO_X$ Annual allowances held for compliance.* (i) A CSAPR $NO_X$ Annual allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $NO_X$ Annual allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $NO_X$ Annual allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $NO_X$ Annual allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $NO_X$ Annual allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $NO_X$ Annual allowance is a limited authorization to emit one ton of $NO_X$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $NO_X$ Annual Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $NO_X$ Annual allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $NO_X$ Annual allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $NO_X$ emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.430 through 97.435 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.416 for the designated representative for the source and each

CSAPR $NO_X$ Annual 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 certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.416 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $NO_X$ Annual Trading Program.

(2) The designated representative of a CSAPR $NO_X$ Annual source and each CSAPR $NO_X$ Annual unit at the source shall make all submissions required under the CSAPR $NO_X$ Annual Trading Program, except as provided in § 97.418. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability*. (1) Any provision of the CSAPR $NO_X$ Annual Trading Program that applies to a CSAPR $NO_X$ Annual source or the designated representative of a CSAPR $NO_X$ Annual source shall also apply to the owners and operators of such source and of the CSAPR $NO_X$ Annual units at the source.

(2) Any provision of the CSAPR $NO_X$ Annual Trading Program that applies to a CSAPR $NO_X$ Annual unit or the designated representative of a CSAPR $NO_X$ Annual unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities*. No provision of the CSAPR $NO_X$ Annual Trading Program or exemption under § 97.405 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $NO_X$ Annual source or CSAPR $NO_X$ Annual unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48379, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021]

### § 97.407 Computation of time.

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

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

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR $NO_X$ Annual Trading Program, is not a business day, the time period shall be extended to the next business day.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.408 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $NO_X$ Annual Trading Program are set forth in part 78 of this chapter.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.409 [Reserved]

### § 97.410 State $NO_X$ Annual trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $NO_X$ Annual trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $NO_X$ Annual allowances for the control periods in the years indicated are as follows:

(1) *Alabama*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 72,691 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,454 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 71,962 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,441 tons.

(vi) [Reserved]

(2) *Georgia*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 62,010 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,240 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 53,738 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,074 tons.

(vi) [Reserved]

(3) *Illinois*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 47,872 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,830 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 47,872 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,831 tons.

(vi) [Reserved]

(4) *Indiana*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 109,726 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,292 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 108,424 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,256 tons.

(vi) [Reserved]

(5) *Iowa*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 38,335 tons.

(ii) The new unit set-aside for 2015 and 2016 is 729 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 38 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 37,498 tons.

(v) The new unit set-aside for 2017 and thereafter is 715 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 38 tons.

(6) *Kansas*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 31,354 tons.

(ii) The new unit set-aside for 2015 and 2016 is 596 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 31 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 31,354 tons.

(v) The new unit set-aside for 2017 and thereafter is 596 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 31 tons.

(7) *Kentucky*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 85,086 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,403 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 77,238 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,090 tons.

(vi) [Reserved]

(8) *Maryland*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 16,633 tons.

(ii) The new unit set-aside for 2015 and 2016 is 333 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 16,574 tons.

(v) The new unit set-aside for 2017 and thereafter is 333 tons.

(vi) [Reserved]

(9) *Michigan*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 65,421 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,243 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 65 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 63,040 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,201 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 63 tons.

(10) *Minnesota*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 29,572 tons.

(ii) The new unit set-aside for 2015 and 2016 is 561 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 30 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 29,572 tons.

(v) The new unit set-aside for 2017 and thereafter is 565 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 30 tons.

(11) *Missouri*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 52,400 tons.

(ii) The new unit set-aside for 2015 is 1,572 tons and for 2016 is 3,144 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 48,743 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,929 tons.

(vi) [Reserved]

(12) *Nebraska*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 30,039 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,772 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 30 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 30,039 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,771 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 30 tons.

(13) *New Jersey*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 8,218 tons.

(ii) The new unit set-aside for 2015 and 2016 is 164 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 7,945 tons.

(v) The new unit set-aside for 2017 and thereafter is 155 tons.

(vi) [Reserved]

(14) *New York*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 21,722 tons.

(ii) The new unit set-aside for 2015 and 2016 is 412 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 22 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 21,722 tons.

(v) The new unit set-aside for 2017 and thereafter is 410 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 22 tons.

(15) *North Carolina*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 50,587 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,984 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 51 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 41,553 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,451 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 42 tons.

(16) *Ohio*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 95,468 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,909 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 90,258 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,805 tons.

(vi) [Reserved]

(17) *Pennsylvania*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 119,986 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,400 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 119,194 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,383 tons.

(vi) [Reserved]

(18) *South Carolina*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 32,498 tons.

(ii) The new unit set-aside for 2015 and 2016 is 617 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 33 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 32,498 tons.

(v) The new unit set-aside for 2017 and thereafter is 620 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 33 tons.

(19) *Tennessee*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 35,703 tons.

(ii) The new unit set-aside for 2015 and 2016 is 714 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 19,337 tons.

(v) The new unit set-aside for 2017 and thereafter is 381 tons.

(vi) [Reserved]

(20) *Texas*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 137,701 tons.

(ii) The new unit set-aside for 2015 and 2016 is 5,370 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 138 tons.

(iv)–(vi) [Reserved]

(21) *Virginia*. (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 33,242 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,662 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 33,242 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,663 tons.

(vi) [Reserved]

(22) *West Virginia.* (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 59,472 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,974 tons.

(iii) [Reserved]

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 54,582 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,730 tons.

(vi) [Reserved]

(23) *Wisconsin.* (i) The $NO_X$ Annual trading budget for 2015 and 2016 is 34,101 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,012 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 34 tons.

(iv) The $NO_X$ Annual trading budget for 2017 and thereafter is 32,871 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,939 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 33 tons.

(b) The States' variability limits for the State $NO_X$ Annual trading budgets for the control periods in 2017 and thereafter are as follows:

(1) The variability limit for Alabama is 12,953 tons.

(2) The variability limit for Georgia is 9,673 tons.

(3) The variability limit for Illinois is 8,617 tons.

(4) The variability limit for Indiana is 19,516 tons.

(5) The variability limit for Iowa is 6,750 tons.

(6) The variability limit for Kansas is 5,644 tons.

(7) The variability limit for Kentucky is 13,903 tons.

(8) The variability limit for Maryland is 2,983 tons.

(9) The variability limit for Michigan is 11,347 tons.

(10) The variability limit for Minnesota is 5,323 tons.

(11) The variability limit for Missouri is 8,774 tons.

(12) The variability limit for Nebraska is 5,407 tons.

(13) The variability limit for New Jersey is 1,430 tons.

(14) The variability limit for New York is 3,910 tons.

(15) The variability limit for North Carolina is 7,480 tons.

(16) The variability limit for Ohio is 16,246 tons.

(17) The variability limit for Pennsylvania is 21,455 tons.

(18) The variability limit for South Carolina is 5,850 tons.

(19) The variability limit for Tennessee is 3,481 tons.

(20) [Reserved]

(21) The variability limit for Virginia is 5,984 tons.

(22) The variability limit for West Virginia is 9,825 tons.

(23) The variability limit for Wisconsin is 5,917 tons.

(c) Each State $NO_X$ Annual trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[77 FR 10334, Feb. 21, 2012, as amended at 77 FR 10347, Feb. 21, 2012; 77 FR 34844, June 12, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021]

### §97.411 Timing requirements for CSAPR $NO_X$ Annual allowance allocations.

(a) *Existing units.* (1) CSAPR $NO_X$ Annual allowances are allocated, for the control periods in 2015 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $NO_X$ Annual unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR $NO_X$ Annual unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2014, during the control period in two consecutive years, such unit will not be allocated the CSAPR $NO_X$ Annual allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $NO_X$ Annual allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit

resumes operation, the Administrator will allocate CSAPR $NO_X$ Annual allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in a State, in accordance with § 97.412(a)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in a State, in accordance with § 97.412(a)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Annual units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.

(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)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2021 contains any CSAPR $NO_X$ Annual allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Annual units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Annual units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Annual units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in accordance with § 97.412(a)(9), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Annual

units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Annual allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Annual allowances in accordance with § 97.412(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in Indian country within the borders of a State, in accordance with § 97.412(b)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in Indian country within the borders of a State, in accordance with § 97.412(b)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Annual units) are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.

(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)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2021 contains any CSAPR $NO_X$ Annual allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Annual units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Annual units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Annual units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $NO_X$ Annual allowance allocation to each CSAPR $NO_X$ Annual unit in accordance with § 97.412(b)(9), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Annual units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Annual allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Annual allowances in accordance with § 97.412(b)(10).

(c) *Units incorrectly allocated CSAPR $NO_X$ Annual allowances.* (1) For each control period in 2015 and thereafter, if the Administrator determines that CSAPR $NO_X$ Annual allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.412(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $NO_X$ Annual unit under § 97.404 as of January 1, 2015 and is allocated CSAPR $NO_X$ Annual allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, the recipient is not actually a CSAPR $NO_X$ Annual unit as of January 1, 2015 and is allocated CSAPR $NO_X$ Annual allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Annual units as of January 1, 2015; or

(B) The recipient is not located as of January 1 of the control period in the State from whose $NO_X$ Annual trading budget the CSAPR $NO_X$ Annual allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $NO_X$ Annual unit under § 97.404 as of January 1 of such control period and is allocated CSAPR $NO_X$ Annual allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, the recipient is not actually a CSAPR $NO_X$ Annual unit as of January 1 of such control period and is allocated CSAPR $NO_X$ Annual allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Annual units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $NO_X$ Annual allowances under § 97.421.

(3) If the Administrator already recorded such CSAPR $NO_X$ Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.424(b)

for such control period, then the Administrator will deduct from the account in which such CSAPR $NO_X$ Annual allowances were recorded an amount of CSAPR $NO_X$ Annual allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $NO_X$ Annual allowances. The authorized account representative shall ensure that there are sufficient CSAPR $NO_X$ Annual allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $NO_X$ Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.424(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $NO_X$ Annual allowances.

(5)(i) With regard to the CSAPR $NO_X$ Annual allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Annual allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $NO_X$ Annual trading budget the CSAPR $NO_X$ Annual allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such CSAPR $NO_X$ Annual allowances in the portion of the State $NO_X$ Annual trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $NO_X$ Annual allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Annual allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such CSAPR $NO_X$ Annual allowances in the portion of the State $NO_X$ Annual trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $NO_X$ Annual allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $NO_X$ Annual allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021]

### § 97.412 CSAPR $NO_X$ Annual allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $NO_X$ Annual units in each State, the Administrator will allocate CSAPR $NO_X$ Annual allowances to the CSAPR $NO_X$ Annual units as follows:

(1) The CSAPR $NO_X$ Annual allowances will be allocated to the following CSAPR $NO_X$ Annual units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $NO_X$ Annual units that are not allocated an amount of CSAPR $NO_X$ Annual allowances in the notice of data availability issued under § 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period;

(ii) CSAPR $NO_X$ Annual units whose allocation of an amount of CSAPR $NO_X$ Annual allowances for such control period in the notice of data availability issued under § 97.411(a)(1) is covered by § 97.411(c)(2) or (3);

(iii) CSAPR $NO_X$ Annual units that are allocated an amount of CSAPR $NO_X$ Annual allowances for such control period in the notice of data availability issued under § 97.411(a)(1), which allocation is terminated for such control period pursuant to § 97.411(a)(2), and that operate during the control period immediately preceding such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $NO_X$ Annual units under § 97.411(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Annual allowances for such control period in the notice of data availability issued under § 97.411(b)(1)(ii)(B) is covered by § 97.411(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $NO_X$ Annual allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.410(a) and will be allocated additional CSAPR $NO_X$ Annual allowances (if any) in accordance with § 97.411(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $NO_X$ Annual unit described in paragraph (a)(1) of this section, an allocation of CSAPR $NO_X$ Annual allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2015;

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $NO_X$ Annual unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $NO_X$ Annual allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Annual unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Annual allowances determined for all such CSAPR $NO_X$ Annual units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $NO_X$ Annual allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Annual allowances determined for each such CSAPR $NO_X$ Annual unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Annual allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Annual unit the amount of the CSAPR $NO_X$ Annual allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Annual allowances in the new unit

set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i) and (ii), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Annual allowances referenced in the notice of data availability required under § 97.411(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Annual allowances determined for each such CSAPR $NO_X$ Annual unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Annual unit the amount of the CSAPR $NO_X$ Annual allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $NO_X$ Annual unit that is in the State, is allocated an amount of CSAPR $NO_X$ Annual allowances in the notice of data availability issued under § 97.411(a)(1), and continues to be allocated CSAPR $NO_X$ Annual allowances for such control period in accordance with § 97.411(a)(2), an amount of CSAPR $NO_X$ Annual allowances equal to the following: The total amount of such remaining unallocated CSAPR $NO_X$ Annual allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.411(a) for such control period, divided by the remainder of the amount of tons in the applicable State $NO_X$ Annual trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability

described in § 97.411(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Annual units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $NO_X$ Annual units in Indian country within the borders of each State, the Administrator will allocate CSAPR $NO_X$ Annual allowances to the CSAPR $NO_X$ Annual units as follows:

(1) The CSAPR $NO_X$ Annual allowances will be allocated to the following CSAPR $NO_X$ Annual units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $NO_X$ Annual units that are not allocated an amount of CSAPR $NO_X$ Annual allowances in the notice of data availability issued under § 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $NO_X$ Annual units under § 97.411(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Annual allowances for such control period in the notice of data availability issued under § 97.411(b)(2)(ii)(B) is covered by § 97.411(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $NO_X$ Annual allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.410(a) and will be allocated additional CSAPR $NO_X$ Annual allowances (if any) in accordance with § 97.411(c)(5).

(3) The Administrator will determine, for each CSAPR $NO_X$ Annual unit described in paragraph (b)(1) of this section, an allocation of CSAPR $NO_X$ Annual allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2015; and

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Annual unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph

(b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Annual allowances determined for all such CSAPR $NO_X$ Annual units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $NO_X$ Annual allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Annual allowances determined for each such CSAPR $NO_X$ Annual unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Annual allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Annual unit the amount of the CSAPR $NO_X$ Annual allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Annual allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i) and (ii), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Annual allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Annual allowances referenced in the notice of data availability required under § 97.411(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Annual allowances determined for each such CSAPR $NO_X$ Annual unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Annual unit the amount of the CSAPR $NO_X$ Annual allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Annual allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Annual allowances remain in the Indian country new unit set-aside for the State for

such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $NO_X$ Annual allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such unallocated CSAPR $NO_X$ Annual allowances in the portion of the State $NO_X$ Annual trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Annual allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Annual units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23183, Apr. 30, 2021]

### § 97.413 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.415, each CSAPR $NO_X$ Annual source, including all CSAPR $NO_X$ Annual units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $NO_X$ Annual Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Annual units at the source and shall act in accordance with the certification statement in § 97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.416:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $NO_X$ Annual unit at the source in all matters pertaining to the CSAPR $NO_X$ Annual Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $NO_X$ Annual unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.415, each CSAPR $NO_X$ Annual source may

have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Annual units at the source and shall act in accordance with the certification statement in § 97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.416,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $NO_X$ Annual unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.402, and §§ 97.414 through 97.418, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.414 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.418 concerning delegation of authority to make submissions, each submission under the CSAPR $NO_X$ Annual Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $NO_X$ Annual source and CSAPR $NO_X$ Annual unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $NO_X$ Annual source or a CSAPR $NO_X$ Annual unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.418.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.415 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.416. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $NO_X$ Annual source and the CSAPR $NO_X$ Annual units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any

time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.416. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $NO_X$ Annual source and the CSAPR $NO_X$ Annual units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $NO_X$ Annual source or a CSAPR $NO_X$ Annual unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.416, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $NO_X$ Annual source or a CSAPR $NO_X$ Annual unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.416 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $NO_X$ Annual source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.416 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.416 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $NO_X$ Annual source, and each CSAPR $NO_X$ Annual unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

(3) A list of the owners and operators of the CSAPR $NO_X$ Annual source and of each CSAPR $NO_X$ Annual unit at the source.

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

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $NO_X$ Annual unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Annual Trading Program on behalf of the owners and operators of the source and of each CSAPR $NO_X$ Annual unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $NO_X$ Annual unit, or where a utility or industrial customer purchases power from a CSAPR $NO_X$ Annual 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $NO_X$ Annual unit at the source; and CSAPR $NO_X$ Annual allowances and proceeds of transactions involving CSAPR $NO_X$ Annual 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 CSAPR $NO_X$ Annual allowances by contract, CSAPR $NO_X$ Annual allowances and proceeds of transactions involving CSAPR $NO_X$ Annual allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74606, Oct. 26, 2016]

### §97.417 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under §97.416 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under §97.416 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Annual Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Annual allowance transfers.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

### § 97.418 Delegation by designated representative and alternate designated representative.

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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 designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.418(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 97.418(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 97.418 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

### § 97.419 [Reserved]

### § 97.420 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.416, the Administrator will establish a compliance account for the CSAPR $NO_X$ Annual source for which the certificate of representation was submitted, unless the source already has a compliance account. The

designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.425(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $NO_X$ Annual allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $NO_X$ Annual allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account 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 authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

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

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $NO_X$ Annual allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $NO_X$ Annual allowances held in the general account in all matters pertaining to the CSAPR $NO_X$ Annual Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $NO_X$ Annual allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $NO_X$ Annual allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $NO_X$ Annual 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) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $NO_X$ Annual allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $NO_X$ Annual allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $NO_X$ Annual 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $NO_X$ Annual allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $NO_X$ Annual allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Annual allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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 authorized account representative or alternate 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 in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.420(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.420(c)(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 97.420(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $NO_X$ Annual allowance transfer under § 97.422 for any CSAPR $NO_X$ Annual allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $NO_X$ Annual allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $NO_X$ Annual allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $NO_X$ Annual allowance transfer under § 97.422 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $NO_X$ Annual allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.414(a) and 97.418 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74606, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

### § 97.421 Recordation of CSAPR $NO_X$ Annual allowance allocations and auction results.

(a) By November 7, 2011, the Administrator will record in each CSAPR $NO_X$

Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.411(a) for the control period in 2015.

(b) By November 7, 2011, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.411(a) for the control period in 2016, unless the State in which the source is located notifies the Administrator in writing by October 17, 2011 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2015 meeting the requirements of § 52.38(a)(3)(i) through (iv) of this chapter.

(1) If, by April 1, 2015, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2015 in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.411(a) for the control period in 2016.

(2) If the State submits to the Administrator by April 1, 2015, and the Administrator approves by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source as provided in such approved, complete SIP revision for the control period in 2016.

(3) If the State submits to the Administrator by April 1, 2015, and the Administrator does not approve by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.411(a) for the control period in 2016.

(c) By July 1, 2016, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2017 and 2018.

(d) By July 1, 2017, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2019 and 2020.

(e) By July 1, 2018, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2021 and 2022.

(f)(1) By July 1, 2019 and July 1, 2020, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph.

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual

units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.412(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Annual allowances auctioned to CSAPR $NO_X$ Annual units, in accordance with § 97.412(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.412(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.412(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.412(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $NO_X$ Annual source's compliance account the CSAPR $NO_X$ Annual allowances allocated to the CSAPR $NO_X$ Annual units at the source in accordance with § 97.412(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $NO_X$ Annual allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.411 or § 97.412 or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $NO_X$ Annual allowances to a CSAPR $NO_X$ Annual unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $NO_X$ Annual allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $NO_X$ Annual allowance is allocated or auctioned.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

### § 97.422 Submission of CSAPR $NO_X$ Annual allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $NO_X$ Annual allowance transfer shall

submit the transfer to the Administrator.

(b) A CSAPR $NO_X$ Annual allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $NO_X$ Annual allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $NO_X$ Annual allowance identified by serial number in the transfer.

### § 97.423 Recordation of CSAPR $NO_X$ Annual allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $NO_X$ Annual allowance transfer that is correctly submitted under § 97.422, the Administrator will record a CSAPR $NO_X$ Annual allowance transfer by moving each CSAPR $NO_X$ Annual allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $NO_X$ Annual allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $NO_X$ Annual allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.424 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $NO_X$ Annual allowance transfer is not correctly submitted under § 97.422, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $NO_X$ Annual allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $NO_X$ Annual allowance transfer that is not correctly submitted under § 97.422, the Administrator will notify the 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.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

### § 97.424 Compliance with CSAPR $NO_X$ Annual emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $NO_X$ Annual allowances are available to be deducted for compliance with a source's CSAPR $NO_X$ Annual emissions limitation for a control period in a given year only if the CSAPR $NO_X$ Annual allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.423, of CSAPR $NO_X$ Annual allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $NO_X$ Annual allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $NO_X$ Annual emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $NO_X$ Annual allowances deducted equals the number of tons of total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at the source for such control period; or

(2) If there are insufficient CSAPR $NO_X$ Annual allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $NO_X$ Annual allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $NO_X$ Annual allowances for deduction*—(1) *Identification*

*by serial number*. The designated representative for a source may request that specific CSAPR $NO_X$ Annual allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Annual source and the appropriate serial numbers.

(2) *First-in, first-out*. The Administrator will deduct CSAPR $NO_X$ Annual allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $NO_X$ Annual allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $NO_X$ Annual allowances that were recorded in the compliance account pursuant to § 97.421 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $NO_X$ Annual allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions*. After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $NO_X$ Annual source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $NO_X$ Annual allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

### § 97.425 Compliance with CSAPR $NO_X$ Annual assurance provisions.

(a) *Availability for deduction*. CSAPR $NO_X$ Annual allowances are available to be deducted for compliance with the CSAPR $NO_X$ Annual assurance provisions for a control period in a given year by the owners and operators of a group of one or more CSAPR $NO_X$ Annual sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $NO_X$ Annual 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 $NO_X$ Annual 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 $NO_X$ Annual allowances available under paragraph (a) of this section for compliance with the CSAPR $NO_X$ Annual assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual 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 $NO_X$ emissions exceed the State assurance level as described in § 97.406(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such

States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $NO_X$ emissions exceed the respective State assurance levels for such control period—

(A) 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 $NO_X$ Annual sources and units in such State (and such Indian country), the common designated representative's share of the total $NO_X$ emissions from all CSAPR $NO_X$ Annual units at CSAPR $NO_X$ Annual sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $NO_X$ emissions from each CSAPR $NO_X$ Annual source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.406(c)(2)(iii), §§ 97.406(b) and 97.430 through 97.435, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.402, and the calculation formula in § 97.406(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having CSAPR $NO_X$ Annual units with total $NO_X$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of CSAPR $NO_X$ Annual 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 $NO_X$ Annual allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) 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 $NO_X$ Annual sources, CSAPR $NO_X$ Annual units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR $NO_X$ Annual 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)(ii) of this section and after the recordation, in accordance with § 97.423, of CSAPR $NO_X$ Annual 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 $NO_X$ Annual sources, CSAPR $NO_X$ Annual units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR $NO_X$ Annual 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)(ii) 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)(ii) 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 $NO_X$ Annual allowances that the owners and operators are required to hold in accordance with § 97.406(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)(ii) 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 $NO_X$ Annual allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.406(c)(2)(i) for such control period with regard to the CSAPR $NO_X$ Annual sources, CSAPR $NO_X$ Annual 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR $NO_X$ Annual allowances that the owners and operators are required to hold for such control period with regard to the CSAPR $NO_X$ Annual sources, CSAPR $NO_X$ Annual units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $NO_X$ Annual 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 $NO_X$ Annual allowances in the assurance account established by the Administrator for the appropriate CSAPR $NO_X$ Annual sources, CSAPR $NO_X$ Annual 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $NO_X$ Annual 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 $NO_X$ Annual 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 $NO_X$ Annual allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate CSAPR $NO_X$ Annual sources, CSAPR $NO_X$ Annual 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 $NO_X$ Annual allowances held in such assurance account equal to the amount of the decrease. If CSAPR $NO_X$ Annual allowances were transferred to such assurance account from more than one account, the amount of CSAPR $NO_X$ Annual allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $NO_X$ Annual allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $NO_X$ Annual allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $NO_X$ Annual assurance provisions for such control period must be a CSAPR $NO_X$ Annual 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 48379, Aug. 8, 2011, as amended at 77 FR 10336, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

### § 97.426 Banking.

(a) A CSAPR $NO_X$ Annual 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 $NO_X$ Annual allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $NO_X$ Annual allowance is deducted or transferred under § 97.411(c), § 97.423, § 97.424, § 97.425, § 97.427, or § 97.428 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $NO_X$ Annual trading budget is set forth in § 97.410(a) for a given State, the Administrator may record a transfer of any CSAPR $NO_X$ Annual allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

### § 97.427 Account error.

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

### § 97.428 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $NO_X$ Annual Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $NO_X$ Annual allowances from or transfer CSAPR $NO_X$ Annual allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

**§ 97.429 [Reserved]**

**§ 97.430 General monitoring, recordkeeping, and reporting requirements.**

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $NO_X$ Annual unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.402 and in § 72.2 of this chapter shall apply, 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 ''CSAPR $NO_X$ Annual unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.402, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $NO_X$ Annual unit''. The owner or operator of a unit that is not a CSAPR $NO_X$ Annual 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 CSAPR $NO_X$ Annual unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $NO_X$ Annual unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.431 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 of a CSAPR $NO_X$ Annual unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

(3) The owner or operator of a CSAPR $NO_X$ Annual unit for which construction of a new stack or flue or installation of add-on $NO_X$ emission controls is completed after the applicable deadline under paragraph (b)(1) or (2) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.430 through § 97.435, rather than the monitoring systems required under part 75 of this chapter;

(ii) $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.435, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $NO_X$ Annual 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 CSAPR $NO_X$ Annual unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.435.

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

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

(i) During the period that the unit is covered by an exemption under § 97.405 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.431(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $NO_X$ Annual unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016]

### § 97.431 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $NO_X$ Annual unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.430(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 appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.430(a)(1) that is 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 designated representative shall resubmit the petition to the Administrator under § 97.435 to determine whether the approval applies under the CSAPR $NO_X$ Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $NO_X$ Annual unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.430(a)(1). The owner or operator of a

unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.430(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.430(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.430(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under § 97.430(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.430(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.433.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $NO_X$ Annual Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of

the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $NO_X$ Annual Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.432(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with

paragraphs (d)(3)(i) and (ii) of this section.

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

### § 97.432 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.431 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.431 for each disapproved monitoring system.

### § 97.433 Notifications concerning monitoring.

The designated representative of a CSAPR $NO_X$ Annual unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.434 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.414(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $NO_X$ Annual unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.431, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the $NO_X$ mass emissions data and heat input data for a CSAPR $NO_X$ Annual unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.430(b).

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CSAPR $NO_X$ Annual units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, CSAPR $NO_X$ Ozone Season Group 3 Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $NO_X$ mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

### § 97.435 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $NO_X$ Annual unit may submit a petition under § 75.66 of this chapter to

the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.430 through 97.434.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

## Subpart BBBBB—CSAPR $NO_X$ Ozone Season Group 1 Trading Program

SOURCE: 76 FR 48406, Aug. 8, 2011, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 81 FR 74608, Oct. 26, 2016.

### § 97.501 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $NO_X$ Ozone Season Group 1 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74608, Oct. 26, 2016]

### § 97.502 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $NO_X$ Ozone Season Group 1 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(3), (4), or (5) of this chapter, of the amount of such CSAPR $NO_X$ Ozone Season Group 1 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Ozone Season Group 1 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Ozone Season Group 1 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Ozone Season Group 1 allowances, the CSAPR $NO_X$ Ozone Season Group 1 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $NO_X$ Ozone Season Group 1 allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Ozone Season Group 1 allowances under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Ozone Season Group 1 allowances.

*Allowance transfer deadline* means, for a control period in 2015 or 2016, midnight of December 1 immediately after such control period or, for a control period in a year from 2017 through 2020, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such December 1, March 1, or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 1 emissions limitation for such control period in accordance with §§ 97.506 and 97.524.

*Alternate designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 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 this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 1 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.525(b)(3) for certain owners and operators of a group of one or more CSAPR $NO_X$ Ozone Season Group 1 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Ozone Season Group 1 allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Ozone Season Group 1 assurance provisions in accordance with §§ 97.506 and 97.525.

*Auction* means, with regard to CSAPR $NO_X$ Ozone Season Group 1 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, of such CSAPR $NO_X$ Ozone Season Group 1 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account and, for a CSAPR $NO_X$ Ozone Season Group 1 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 § 97.505.

(i) For a unit that is a CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 § 97.505, for a unit that is not a CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.513(a) and 97.515(a) as the designated representative for a group of one or more CSAPR $NO_X$ Ozone Season Group 1 sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.506(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated for such control period to the group of one or more CSAPR $NO_X$ Ozone Season Group 1 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances purchased by an owner or operator of such CSAPR $NO_X$ Ozone Season Group 1 units in an auction for such control period and submitted by the State or the

permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $NO_X$ Ozone Season Group 1 units in accordance with the CSAPR $NO_X$ Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 1 trading budget under § 97.510(a) and the State's variability limit under § 97.510(b) for such control period, and divided by such State $NO_X$ Ozone Season Group 1 trading budget.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more CSAPR $NO_X$ Ozone Season Group 1 units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $NO_X$ Ozone Season Group 1 source under this subpart, in which any CSAPR $NO_X$ Ozone Season Group 1 allowance allocations to the CSAPR $NO_X$ Ozone Season Group 1 units at the source are recorded and in which are held any CSAPR $NO_X$ Ozone Season Group 1 allowances available for use for a control period in a given year in complying with the source's CSAPR $NO_X$ Ozone Season Group 1 emissions limitation in accordance with §§ 97.506 and 97.524.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $NO_X$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.530 through 97.535. The following systems are the principal types of continuous emission monitoring systems:

(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 $NO_X$ 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 $NO_X$ emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

(5) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting May 1 of a calendar year, except as provided in § 97.506(c)(3), and ending on September 30 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 1 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(3), (4), or (5) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 1 allowance deduction or deduct CSAPR $NO_X$ Ozone Season Group 1 allowances* means the permanent withdrawal of CSAPR $NO_X$ Ozone Season Group 1 allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $NO_X$ Ozone Season Group 1 emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.506 and 97.525).

*CSAPR $NO_X$ Ozone Season Group 1 allowances held or hold CSAPR $NO_X$ Ozone Season Group 1 allowances* means the CSAPR $NO_X$ Ozone Season Group 1 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 1 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 1 allowance transfer in accordance with this subpart.

*CSAPR $NO_X$ Ozone Season Group 1 emissions limitation* means, for a CSAPR $NO_X$ Ozone Season Group 1 source, the tonnage of $NO_X$ emissions authorized in a control period in a given year by the CSAPR $NO_X$ Ozone Season Group 1 allowances available for deduction for the source under § 97.524(a) for such control period.

*CSAPR $NO_X$ Ozone Season Group 1 source* means a source that includes one or more CSAPR $NO_X$ Ozone Season Group 1 units.

*CSAPR $NO_X$ Ozone Season Group 1 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 1 unit* means a unit that is subject to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or § 97.526(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under

§ 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(d), or § 97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $SO_2$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_2$ Group 2 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*Designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 1 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $NO_X$ Ozone Season Group 1 units at a CSAPR $NO_X$ Ozone Season Group 1 source during a control period in a given year that exceeds the CSAPR $NO_X$ Ozone Season Group 1 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.504(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of

solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $NO_X$ Ozone Season Group 1 unit* means a unit that was not a CSAPR $NO_X$ Ozone Season Group 1 unit when it began operating but that thereafter becomes a CSAPR $NO_X$ Ozone Season Group 1 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $NO_X$ Ozone Season Group 1 source or a CSAPR $NO_X$ Ozone Season Group 1 unit at a source respectively, any person

who operates, controls, or supervises a CSAPR $NO_X$ Ozone Season Group 1 unit at the source or the CSAPR $NO_X$ Ozone Season Group 1 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $NO_X$ Ozone Season Group 1 source or a CSAPR $NO_X$ Ozone Season Group 1 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $NO_X$ Ozone Season Group 1 unit at the source or the CSAPR $NO_X$ Ozone Season Group 1 unit;

(2) Any holder of a leasehold interest in a CSAPR $NO_X$ Ozone Season Group 1 unit at the source or the CSAPR $NO_X$ Ozone Season Group 1 unit, 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 CSAPR $NO_X$ Ozone Season Group 1 unit; and

(3) Any purchaser of power from a CSAPR $NO_X$ Ozone Season Group 1 unit at the source or the CSAPR $NO_X$ Ozone Season Group 1 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $NO_X$ Ozone Season Group 1 allowances, the moving of CSAPR $NO_X$ Ozone Season Group 1 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $NO_X$ Ozone Season Group 1 allowance, the unique identification number assigned to each CSAPR $NO_X$ Ozone Season Group 1 allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program pursuant to § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (13) through (15) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55\ (W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour* or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in 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.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74608, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

### § 97.503 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74609, Oct. 26, 2016]

**§ 97.504 Applicability.**

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $NO_X$ Ozone Season Group 1 units, and any source that includes one or more such units shall be a CSAPR $NO_X$ Ozone Season Group 1 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $NO_X$ Ozone Season Group 1 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $NO_X$ Ozone Season Group 1 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 1 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 1 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. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 1 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 1 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 1 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 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 1 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, of the

CSAPR $NO_X$ Ozone Season Group 1 Trading Program to the unit or other equipment.

(1) *Petition content*. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response*. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $NO_X$ Ozone Season Group 1 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74609, Oct. 26, 2016; 86 FR 23186, Apr. 30, 2021]

### § 97.505 Retired unit exemption.

(a)(1) Any CSAPR $NO_X$ Ozone Season Group 1 unit that is permanently retired shall be exempt from § 97.506(b) and (c)(1), § 97.524, and §§ 97.530 through 97.535.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $NO_X$ Ozone Season Group 1 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

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

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

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR $NO_X$ Ozone Season Group 1 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[76 FR 48406, Aug. 8, 2011, as amended at 86 FR 23186, Apr. 30, 2021]

### § 97.506 Standard requirements.

(a) *Designated representative requirements*. The owners and operators shall comply with the requirement to have a

designated representative, and may have an alternate designated representative, in accordance with §§ 97.513 through 97.518.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.530 through 97.535.

(2) The emissions data determined in accordance with §§ 97.530 through 97.535 shall be used to calculate allocations of CSAPR $NO_X$ Ozone Season Group 1 allowances under §§ 97.511(a)(2) and (b) and 97.512 and to determine compliance with the CSAPR $NO_X$ Ozone Season Group 1 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.530 through 97.535 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$NO_X$ emissions requirements*—(1) *CSAPR $NO_X$ Ozone Season Group 1 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall hold, in the source's compliance account, CSAPR $NO_X$ Ozone Season Group 1 allowances available for deduction for such control period under § 97.524(a) in an amount not less than the tons of total $NO_X$ emissions for such control period from all CSAPR $NO_X$ Ozone Season Group 1 units at the source.

(ii) If total $NO_X$ emissions during a control period in a given year from the CSAPR $NO_X$ Ozone Season Group 1 units at a CSAPR $NO_X$ Ozone Season Group 1 source are in excess of the CSAPR $NO_X$ Ozone Season Group 1 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall hold the CSAPR $NO_X$ Ozone Season Group 1 allowances required for deduction under § 97.524(d); and

(B) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $NO_X$ Ozone Season Group 1 assurance provisions.* (i) If total $NO_X$ emissions during a control period in a given year from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $NO_X$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $NO_X$ Ozone Season Group 1 allowances available for deduction for such control period under § 97.525(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.525(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $NO_X$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $NO_X$ emissions exceeds

the respective common designated representative's assurance level; and

(B) The amount by which total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $NO_X$ Ozone Season Group 1 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $NO_X$ emissions exceed the sum, for such control period, of the State $NO_X$ Ozone Season Group 1 trading budget under § 97.510(a) and the State's variability limit under § 97.510(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $NO_X$ emissions from the CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $NO_X$ Ozone Season Group 1 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $NO_X$ Ozone Season Group 1 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $NO_X$ Ozone Season Group 1 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, 2015 or the deadline for meeting the unit's monitor certification requirements under § 97.530(b) and for each control period thereafter.

(ii) A CSAPR $NO_X$ Ozone Season Group 1 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.530(b) and for each control period thereafter.

(4) *Vintage of CSAPR $NO_X$ Ozone Season Group 1 allowances held for compliance.* (i) A CSAPR $NO_X$ Ozone Season Group 1 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 1 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $NO_X$ Ozone Season Group 1 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 1 allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $NO_X$ Ozone Season Group 1 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $NO_X$ Ozone Season Group 1 allowance is a limited authorization to emit one ton of $NO_X$ during the control period in one

year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $NO_X$ Ozone Season Group 1 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $NO_X$ Ozone Season Group 1 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $NO_X$ Ozone Season Group 1 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $NO_X$ emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.530 through 97.535 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.516 for the designated representative for the source and each CSAPR $NO_X$ Ozone Season Group 1 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 certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.516 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

(2) The designated representative of a CSAPR $NO_X$ Ozone Season Group 1 source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall make all submissions required under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program, except as provided in § 97.518. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR $NO_X$ Ozone Season Group 1 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 1 source or the designated representative of a CSAPR $NO_X$ Ozone Season Group 1 source shall also apply to the owners and operators of such source and of the CSAPR $NO_X$ Ozone Season Group 1 units at the source.

(2) Any provision of the CSAPR $NO_X$ Ozone Season Group 1 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 1 unit or the designated representative of a CSAPR $NO_X$ Ozone Season Group 1 unit shall also

apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR $NO_X$ Ozone Season Group 1 Trading Program or exemption under § 97.505 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $NO_X$ Ozone Season Group 1 source or CSAPR $NO_X$ Ozone Season Group 1 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48406, Aug. 8, 2011, as amended at 77 FR 10336, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74609, Oct. 26, 2016; 86 FR 23186, Apr. 30, 2021]

### § 97.507 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 Trading Program, is not a business day, the time period shall be extended to the next business day.

### § 97.508 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program are set forth in part 78 of this chapter.

### § 97.509 [Reserved]

### § 97.510 State $NO_X$ Ozone Season Group 1 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $NO_X$ Ozone Season Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $NO_X$ Ozone Season Group 1 allowances for the control periods in the years indicated are as follows:

(1) *Alabama.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 31,746 tons.

(ii) The new unit set-aside for 2015 and 2016 is 635 tons.

(iii)–(vi) [Reserved]

(2) *Arkansas.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 15,110 tons.

(ii) The new unit set-aside for 2015 and 2016 is 756 tons.

(iii)–(vi) [Reserved]

(3) *Florida.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 28,644 tons.

(ii) The new unit set-aside for 2015 and 2016 is 544 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 29 tons.

(iv)–(vi) [Reserved]

(4) *Georgia.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 27,944 tons.

(ii) The new unit set-aside for 2015 and 2016 is 559 tons.

(iii) [Reserved]

(iv) The $NO_X$ Ozone Season Group 1 trading budget for 2017 and thereafter is 24,041 tons.

(v) The new unit set-aside for 2017 and thereafter is 485 tons.

(vi) [Reserved]

(5) *Illinois.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 21,208 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,697 tons.

(iii)–(vi) [Reserved]

(6) *Indiana.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 46,876 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,406 tons.

(iii)–(vi) [Reserved]

(7) *Iowa.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 16,532 tons.

(ii) The new unit set-aside for 2015 and 2016 is 314 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 17 tons.

(iv)–(vi) [Reserved]

(8) *Kentucky.* (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 36,167 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,447 tons.

(iii)–(vi) [Reserved]

(9) *Louisiana*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 18,115 tons.

(ii) The new unit set-aside for 2015 and 2016 is 344 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 18 tons.

(iv)–(vi) [Reserved]

(10) *Maryland*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 7,179 tons.

(ii) The new unit set-aside for 2015 and 2016 is 144 tons.

(iii)–(vi) [Reserved]

(11) *Michigan*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 28,041 tons.

(ii) The new unit set-aside for 2015 and 2016 is 533 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 28 tons.

(iv)–(vi) [Reserved]

(12) *Mississippi*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 12,429 tons.

(ii) The new unit set-aside for 2015 and 2016 is 237 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 12 tons.

(iv)–(vi) [Reserved]

(13) *Missouri*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 22,788 tons.

(ii) The new unit set-aside for 2015 is 684 tons and for 2016 is 1,367 tons.

(iii)–(vi) [Reserved]

(14) *New Jersey*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 4,128 tons.

(ii) The new unit set-aside for 2015 and 2016 is 83 tons.

(iii)–(vi) [Reserved]

(15) *New York*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 10,369 tons.

(ii) The new unit set-aside for 2015 and 2016 is 197 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 10 tons.

(iv)–(vi) [Reserved]

(16) *North Carolina*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 22,168 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,308 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 22 tons.

(iv)–(vi) [Reserved]

(17) *Ohio*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 41,284 tons.

(ii) The new unit set-aside for 2015 and 2016 is 826 tons.

(iii)–(vi) [Reserved]

(18) *Oklahoma*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 is 36,567 tons and for 2016 is 22,694 tons.

(ii) The new unit set-aside for 2015 is 731 tons and for 2016 is 454 tons.

(iii)–(vi) [Reserved]

(19) *Pennsylvania*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 52,201 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,044 tons.

(iii)–(vi) [Reserved]

(20) *South Carolina*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 13,909 tons.

(ii) The new unit set-aside for 2015 and 2016 is 264 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 14 tons.

(iv)–(vi) [Reserved]

(21) *Tennessee*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 14,908 tons.

(ii) The new unit set-aside for 2015 and 2016 is 298 tons.

(iii)–(vi) [Reserved]

(22) *Texas*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 65,560 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,556 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 66 tons.

(iv)–(vi) [Reserved]

(23) *Virginia*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 14,452 tons.

(ii) The new unit set-aside for 2015 and 2016 is 723 tons.

(iii)–(vi) [Reserved]

(24) *West Virginia*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 25,283 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,264 tons.

(iii)–(vi) [Reserved]

(25) *Wisconsin*. (i) The $NO_X$ Ozone Season Group 1 trading budget for 2015 and 2016 is 14,784 tons.

(ii) The new unit set-aside for 2015 and 2016 is 872 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 15 tons.

(iv)–(vi) [Reserved]

(b) The States' variability limits for the State $NO_X$ Ozone Season Group 1 trading budgets for the control periods in 2017 and thereafter are as follows:

(1)–(3) [Reserved]

(4) The variability limit for Georgia is 5,049 tons.

(5)–(25) [Reserved]

(c) Each State $NO_X$ Ozone Season Group 1 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[77 FR 10336, Feb. 21, 2012, as amended at 77 FR 10348, Feb. 21, 2012; 77 FR 34845, June 12, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74609, Oct. 26, 2016; 86 FR 23186, Apr. 30, 2021]

### § 97.511 Timing requirements for CSAPR $NO_X$ Ozone Season Group 1 allowance allocations.

(a) *Existing units.* (1) CSAPR $NO_X$ Ozone Season Group 1 allowances are allocated, for the control periods in 2015 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $NO_X$ Ozone Season Group 1 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR $NO_X$ Ozone Season Group 1 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2014, during the control period in two consecutive years, such unit will not be allocated the CSAPR $NO_X$ Ozone Season Group 1 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $NO_X$ Ozone Season Group 1 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 1 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in a State, in accordance with § 97.512(a)(2) through (7) and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in a State, in accordance with § 97.512(a)(2) through (7), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 1 units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.

(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)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by

May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii)(A) If the new unit set-aside for the control period in 2015 or 2016 contains any CSAPR $NO_X$ Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 1 units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period.

(B) If the new unit set-aside for the control period in a year from 2017 through 2020 contains any CSAPR $NO_X$ Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 1 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 1 units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 1 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in accordance with § 97.512(a)(9), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535. By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii)(A) of this section, or by February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii)(B) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 1 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 1 allowances in accordance with § 97.512(a)(10).

(2) *Indian country new unit set-asides.* (i) (A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in Indian country within the borders of a State, in accordance with § 97.512(b)(2) through (7) and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year of the

applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit in Indian country within the borders of a State, in accordance with § 97.512(b)(2) through (7), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 1 units) are in accordance with § the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.

(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)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii)(A) If the Indian country new unit set-aside for the control period in 2015 or 2016 contains any CSAPR $NO_X$ Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 1 units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period.

(B) If the Indian country new unit set-aside for the control period in a year from 2017 through 2020 contains any CSAPR $NO_X$ Ozone Season Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 1 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 1 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 1 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 1 allowance allocation to each CSAPR $NO_X$

Ozone Season Group 1 unit in accordance with § 97.512(b)(9), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535. By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(A) of this section, or by February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 1 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 1 allowances in accordance with § 97.512(b)(10).

(c) *Units incorrectly allocated CSAPR $NO_X$ Ozone Season Group 1 allowances.* (1) For each control period in 2015 and thereafter, if the Administrator determines that CSAPR $NO_X$ Ozone Season Group 1 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(3), (4), or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.512(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504 as of May 1, 2015 and is allocated CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(3), (4), or (5) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 1 unit as of May 1, 2015 and is allocated CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 1 units as of May 1, 2015; or

(B) The recipient is not located as of May 1 of the control period in the State from whose $NO_X$ Ozone Season Group 1 trading budget the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(3), (4), or (5) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 1 unit under § 97.504 as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 1 unit as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 1 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 1 allowances under § 97.521.

(3) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 1 allowances under § 97.521 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for

the source that includes such recipient under § 97.524(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $NO_X$ Ozone Season Group 1 allowances were recorded an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $NO_X$ Ozone Season Group 1 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $NO_X$ Ozone Season Group 1 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 1 allowances under § 97.521 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.524(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $NO_X$ Ozone Season Group 1 allowances.

(5)(i) With regard to the CSAPR $NO_X$ Ozone Season Group 1 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 1 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $NO_X$ Ozone Season Group 1 trading budget the CSAPR $NO_X$ Ozone Season Group 1 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(4) or (5) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 1 allowances in the portion of the State $NO_X$ Ozone Season Group 1 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $NO_X$ Ozone Season Group 1 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 1 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(b)(4) or (5) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 1 allowances in the portion of the State $NO_X$ Ozone Season Group 1 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $NO_X$ Ozone Season Group 1 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $NO_X$ Ozone Season Group 1 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74609, Oct. 26, 2016; 86 FR 23186, Apr. 30, 2021]

### § 97.512 CSAPR $NO_X$ Ozone Season Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 1 units in each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 1 allowances to the CSAPR $NO_X$ Ozone Season Group 1 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 1 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 1 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 1 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the notice of data availability issued under § 97.511(a)(1) and

that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period;

(ii) CSAPR $NO_X$ Ozone Season Group 1 units whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period in the notice of data availability issued under § 97.511(a)(1) is covered by § 97.511(c)(2) or (3);

(iii) CSAPR $NO_X$ Ozone Season Group 1 units that are allocated an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period in the notice of data availability issued under § 97.511(a)(1), which allocation is terminated for such control period pursuant to § 97.511(a)(2), and that operate during the control period immediately preceding such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $NO_X$ Ozone Season Group 1 units under § 97.511(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period in the notice of data availability issued under § 97.511(b)(1)(ii)(B) is covered by § 97.511(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 1 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.510(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 1 allowances (if any) in accordance with § 97.511(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 1 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 1 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2015;

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Ozone Season Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $NO_X$ Ozone Season Group 1 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $NO_X$ Ozone Season Group 1 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 1 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator

will allocate the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 1 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 1 unit the amount of the CSAPR $NO_X$ Ozone Season Group 1 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 1 allowances as follows—

(i)(A) For the control period in 2015 or 2016, the Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(1)(ii) for the unit for such control period;

(B) For the control period in 2017, 2018, 2019, or 2020, the Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 1 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 1 unit the amount of the CSAPR $NO_X$ Ozone Season Group 1 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Ozone

Season Group 1 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $NO_X$ Ozone Season Group 1 unit that is in the State, is allocated an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the notice of data availability issued under § 97.511(a)(1), and continues to be allocated CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period in accordance with § 97.511(a)(2), an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances equal to the following: The total amount of such remaining unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.511(a) for such control period, divided by the remainder of the amount of tons in the applicable State $NO_X$ Ozone Season Group 1 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 1 units in Indian country within the borders of each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 1 allowances to the CSAPR $NO_X$ Ozone Season Group 1 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 1 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 1 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 1 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the notice of data availability issued under § 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $NO_X$ Ozone Season Group 1 units under § 97.511(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances for such control period in the notice of data availability issued under

§97.511(b)(2)(ii)(B) is covered by §97.511(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 1 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in §97.510(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 1 allowances (if any) in accordance with §97.511(c)(5).

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 1 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 1 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2015; and

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Ozone Season Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 1 unit's monitoring systems under §97.530(b), for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 1 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 1 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 1 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 1 unit the amount of the CSAPR $NO_X$ Ozone Season Group 1 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in §97.511(b)(2)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 1 allowances as follows—

(i)(A) For the control period in 2015 or 2016, the Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(2)(ii) for the unit for such control period;

(B) For the control period in 2017, 2018, 2019, or 2020, the Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances referenced in the notice of data availability required under § 97.511(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 1 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 1 unit the amount of the CSAPR $NO_X$ Ozone Season Group 1 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(4) or (5) of this chapter covering such control period, include such unallocated CSAPR $NO_X$ Ozone Season Group 1 allowances in the portion of the State $NO_X$ Ozone Season Group 1 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(2)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74610, Oct. 26, 2016; 86 FR 23187, Apr. 30, 2021]

### § 97.513 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.515, each CSAPR $NO_X$ Ozone Season Group 1 source, including all CSAPR $NO_X$ Ozone Season Group 1 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 1 units at the source and shall act in accordance with the certification statement in § 97.516(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.516:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.515, each CSAPR $NO_X$ Ozone Season Group 1 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 1 units at the source and shall act in accordance with the certification statement in § 97.516(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.516,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source shall be bound by any decision or order

issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.502, and §§ 97.514 through 97.518, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

**§ 97.514 Responsibilities of designated representative and alternate designated representative.**

(a) Except as provided under § 97.518 concerning delegation of authority to make submissions, each submission under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $NO_X$ Ozone Season Group 1 source and CSAPR $NO_X$ Ozone Season Group 1 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $NO_X$ Ozone Season Group 1 source or a CSAPR $NO_X$ Ozone Season Group 1 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.518.

**§ 97.515 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.**

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.516. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 1 source and the CSAPR $NO_X$ Ozone Season Group 1 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.516. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 1 source and the CSAPR $NO_X$ Ozone Season Group 1 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 source or a CSAPR $NO_X$ Ozone Season Group 1 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.516, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the

owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $NO_X$ Ozone Season Group 1 source or a CSAPR $NO_X$ Ozone Season Group 1 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.516 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $NO_X$ Ozone Season Group 1 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.516 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

### § 97.516 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $NO_X$ Ozone Season Group 1 source, and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

(3) A list of the owners and operators of the CSAPR $NO_X$ Ozone Season Group 1 source and of each CSAPR $NO_X$ Ozone Season Group 1 unit at the source.

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

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 1 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program on behalf of the owners and operators of the source and of each CSAPR $NO_X$ Ozone Season Group 1 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a

leasehold interest in, a CSAPR $NO_X$ Ozone Season Group 1 unit, or where a utility or industrial customer purchases power from a CSAPR $NO_X$ Ozone Season Group 1 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $NO_X$ Ozone Season Group 1 unit at the source; and CSAPR $NO_X$ Ozone Season Group 1 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 allowances by contract, CSAPR $NO_X$ Ozone Season Group 1 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 1 allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 1'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 1'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74611, Oct. 26, 2016]

### § 97.517 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.516 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.516 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers.

### § 97.518 Delegation by designated representative and alternate designated representative.

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic

submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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 designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.518(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 97.518(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 97.518 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

**§ 97.519 [Reserved]**

**§ 97.520 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.516, the Administrator will establish a compliance account for the CSAPR $NO_X$ Ozone Season Group 1 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.525(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $NO_X$ Ozone Season Group 1 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the

persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account 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 authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 1 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 decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the phrase ''TR $NO_X$ Ozone Season'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 1'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 1'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 1 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 1 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) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR $NO_X$ Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 1'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 1 allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 1 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of

the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 1 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $NO_X$ Ozone Season Group 1 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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 authorized account representative or alternate 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 in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.520(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.520(c)(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 97.520(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $NO_X$ Ozone Season Group 1 allowance transfer under § 97.522 for any CSAPR $NO_X$ Ozone Season Group 1 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $NO_X$ Ozone Season Group 1 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $NO_X$ Ozone Season Group 1 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $NO_X$ Ozone Season Group 1 allowance transfer under § 97.522 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $NO_X$ Ozone Season Group 1 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.514(a) and 97.518 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74611, Oct. 26, 2016; 86 FR 23188, Apr. 30, 2021]

### § 97.521 Recordation of CSAPR $NO_X$ Ozone Season Group 1 allowance allocations and auction results.

(a) By November 7, 2011 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 26, 2015, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.511(a) for the control period in 2015.

(b) By November 7, 2011 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 26, 2015, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account

the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.511(a) for the control period in 2016, unless the State in which the source is located notifies the Administrator in writing by October 17, 2011 or, with regard to CSAPR $NO_X$ Ozone Season Group 1 units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, March 6, 2015 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015 meeting the requirements of § 52.38(b)(3)(i) through (iv) of this chapter.

(1) If, by April 1, 2015 or, with regard to CSAPR $NO_X$ Ozone Season Group 1 units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, by October 1, 2015, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 15, 2015 in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.511(a) for the control period in 2016.

(2) If the State submits to the Administrator by April 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015, and the Administrator approves by October 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2016, such complete SIP revision, the Administrator will record by October 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2016 in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source as provided in such approved, complete SIP revision for the control period in 2016.

(3) If the State submits to the Administrator by April 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, October 1, 2015, and the Administrator does not approve by October 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2016, such complete SIP revision, the Administrator will record by October 1, 2015 or, with regard to units in Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, April 1, 2016 in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.511(a) for the control period in 2016.

(c) By January 9, 2017, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control periods in 2017 and 2018.

(d) By July 1, 2017, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control periods in 2019 and 2020.

(e) By July 1, 2018, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or

with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control periods in 2021 and 2022.

(f) (1) By July 1, 2019 and July 1, 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph.

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.512(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 1 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 1 units, in accordance with § 97.512(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i)(1) By November 15, 2015 and November 15, 2016, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(a)(9) through (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By February 15 of each year from 2018 through 2021, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season

Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j)(1) By November 15, 2015 and November 15, 2016, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(b)(9) through (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By February 15 of each year from 2018 through 2021, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 1 source's compliance account the CSAPR $NO_X$ Ozone Season Group 1 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 1 units at the source in accordance with § 97.512(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $NO_X$ Ozone Season Group 1 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.511 or § 97.512 or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $NO_X$ Ozone Season Group 1 allowances to a CSAPR $NO_X$ Ozone Season Group 1 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $NO_X$ Ozone Season Group 1 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $NO_X$ Ozone Season Group 1 allowance is allocated or auctioned.

[76 FR 48406, Aug. 8, 2011, as amended at 76 FR 80777, Dec. 27, 2011; 79 FR 71672, Dec. 3, 2014; 81 FR 74611, Oct. 26, 2016; 86 FR 23188, Apr. 30, 2021]

### § 97.522 Submission of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $NO_X$ Ozone Season Group 1 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $NO_X$ Ozone Season Group 1 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $NO_X$ Ozone Season Group 1 allowance identified by serial number in the transfer.

### § 97.523 Recordation of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer that is correctly submitted under § 97.522, the Administrator will record a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer by moving each CSAPR $NO_X$ Ozone Season Group 1 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $NO_X$ Ozone Season Group 1 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $NO_X$

Ozone Season Group 1 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.524 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer is not correctly submitted under § 97.522, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $NO_X$ Ozone Season Group 1 allowance transfer that is not correctly submitted under § 97.522, the Administrator will notify the 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.

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

### § 97.524 Compliance with CSAPR $NO_X$ Ozone Season Group 1 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $NO_X$ Ozone Season Group 1 allowances are available to be deducted for compliance with a source's CSAPR $NO_X$ Ozone Season Group 1 emissions limitation for a control period in a given year only if the CSAPR $NO_X$ Ozone Season Group 1 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.523, of CSAPR $NO_X$ Ozone Season Group 1 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $NO_X$ Ozone Season Group 1 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $NO_X$ Ozone Season Group 1 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances deducted equals the number of tons of total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at the source for such control period; or

(2) If there are insufficient CSAPR $NO_X$ Ozone Season Group 1 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $NO_X$ Ozone Season Group 1 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 1 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 1 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $NO_X$ Ozone Season Group 1 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $NO_X$ Ozone Season Group 1 allowances that were recorded in the compliance account pursuant to

§ 97.521 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $NO_X$ Ozone Season Group 1 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $NO_X$ Ozone Season Group 1 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $NO_X$ Ozone Season Group 1 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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; 86 FR 23189, Apr. 30, 2021]

### § 97.525 Compliance with CSAPR $NO_X$ Ozone Season Group 1 assurance provisions.

(a) *Availability for deduction.* CSAPR $NO_X$ Ozone Season Group 1 allowances are available to be deducted for compliance with the CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $NO_X$ 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 $NO_X$ 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 $NO_X$ Ozone Season Group 1 allowances available under paragraph (a) of this section for compliance with the CSAPR $NO_X$ 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 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ 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 $NO_X$ emissions exceed the State assurance level as described in § 97.506(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $NO_X$ emissions exceed the respective State assurance levels for such control period—

(A) 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 $NO_X$ Ozone Season Group 1 sources and units in such State (and such Indian country), the common designated representative's share of the total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 1 units at CSAPR $NO_X$ Ozone Season Group 1 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ 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

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $NO_X$ emissions from each CSAPR $NO_X$ Ozone Season Group 1 source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice 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).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having CSAPR $NO_X$ Ozone Season Group 1 units with total $NO_X$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of CSAPR $NO_X$ 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 $NO_X$ 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)(ii) 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 $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ 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 $NO_X$ 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)(ii) of this section and after the recordation, in accordance with § 97.523, of CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ 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 $NO_X$ 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)(ii) 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)(ii) 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 $NO_X$ 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)(ii) 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 $NO_X$ 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 $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances that the owners and operators are required to hold for such control period with regard to the CSAPR $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ Ozone Season Group 1 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1 allowances in the assurance account established by the Administrator for the appropriate CSAPR $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $NO_X$ 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 $NO_X$ 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 $NO_X$ 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 $NO_X$ Ozone Season Group 1 sources, CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1

allowances held in such assurance account equal to the amount of the decrease. If CSAPR $NO_X$ Ozone Season Group 1 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $NO_X$ Ozone Season Group 1 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $NO_X$ Ozone Season Group 1 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1 assurance provisions for such control period must be a CSAPR $NO_X$ 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; 86 FR 23189, Apr. 30, 2021]

### § 97.526 Banking and conversion.

(a) A CSAPR $NO_X$ 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 $NO_X$ 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 $NO_X$ 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 paragraph (c) or (d) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $NO_X$ Ozone Season Group 1 trading budget is set forth in § 97.510(a) for a given State and after completion of the procedures under paragraph (d)(1) of this section, the Administrator may record a transfer of any CSAPR $NO_X$ Ozone Season Group 1 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

(d) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter:

(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 $NO_X$ Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the actions in paragraphs (d)(1)(i) through (iii) of this section with regard to every general account and every compliance account except a compliance account for a CSAPR $NO_X$ Ozone Season Group 1 source 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 deduct all CSAPR $NO_X$ 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 $NO_X$ Ozone Season Group 1 allowances deducted from all such accounts under paragraph (d)(1)(i) of this section divided by the product of 1.5 multiplied by the sum of the variability limits for the control period in 2017 set forth in § 97.810(b) for all States except a State listed in § 52.38(b)(2)(i) of this chapter.

(iii) The Administrator will allocate and record in each such account an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in 2017 computed as the quotient, rounded up to the nearest allowance, of

the number of CSAPR $NO_X$ Ozone Season Group 1 allowances deducted from such account under paragraph (d)(1)(i) of this section divided by the conversion factor determined under paragraph (d)(1)(ii) of this section, except as provided in paragraph (d)(1)(iv) of this section.

(iv) Where, pursuant to paragraph (d)(1)(i) of this section, the Administrator deducts CSAPR $NO_X$ Ozone Season Group 1 allowances from the compliance account for a source in a State not listed in § 52.38(b)(2)(iii) or (iv) of this chapter (or Indian country within the borders of such a State), the Administrator will not record CSAPR $NO_X$ Ozone Season Group 2 allowances in that compliance account but instead will allocate and record the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in 2017 computed for such source in accordance with paragraph (d)(1)(iii) of this section in a general account identified by the designated representative for such source, provided that if the designated representative fails to identify such a general account in a submission to the Administrator by July 14, 2021, the Administrator may record such CSAPR $NO_X$ Ozone Season Group 2 allowances in a general account identified or established by the Administrator with the designated representative as the authorized account representative and with the owners and operators of such source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative.

(2)(i) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR $NO_X$ Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in 2017 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

(ii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(d)(1), upon any determination that would otherwise result in the initial recordation of a given number of CSAPR $NO_X$ Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

(e) Notwithstanding any other provision of this subpart or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter, CSAPR $NO_X$ Ozone Season Group 2 allowances or CSAPR $NO_X$ Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 1 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(ii) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account

established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in 2017 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

(2) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(d)(1), the owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74612, Oct. 26, 2016; 86 FR 23189, Apr. 30, 2021]

### § 97.527 Account error.

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

### § 97.528 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $NO_X$ Ozone Season Group 1 allowances from or transfer CSAPR $NO_X$ Ozone Season Group 1 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

[76 FR 48406, Aug. 11, 2011, as amended at 81 FR 74614, Oct. 26, 2016]

### § 97.529 [Reserved]

### § 97.530 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $NO_X$ Ozone Season Group 1 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.502 and in § 72.2 of this chapter shall apply, 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 ''CSAPR $NO_X$ Ozone Season Group 1 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.502, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $NO_X$ Ozone Season Group 1 unit''. The owner or operator of a unit that is not a CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $NO_X$ Ozone Season Group 1 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all

systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.531 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 of a CSAPR $NO_X$ Ozone Season Group 1 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2015;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.534(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 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), or (3) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.530 through § 97.535, rather than the monitoring systems required under part 75 of this chapter;

(ii) $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.535, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 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 CSAPR $NO_X$ Ozone Season Group 1 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.535.

(2) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit shall operate the unit so as to discharge, or allow to be discharged, $NO_X$ to the atmosphere without accounting for all such $NO_X$ in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 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 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 CSAPR $NO_X$ Ozone Season Group 1 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.505 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.531(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74614, Oct. 26, 2016]

### § 97.531 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.530(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 appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.530(a)(1) that is 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 designated representative shall resubmit the petition to the Administrator under § 97.535 to determine whether the approval applies under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.530(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.530(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.530(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.530(a)(1)

that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under § 97.530(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.530(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.533.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.532(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

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

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

(e) 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) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of

this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

[76 FR 48406, Aug. 11, 2011, as amended at 81 FR 74614, Oct. 26, 2016; 86 FR 23190, Apr. 30, 2021]

### § 97.532 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.531 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.531 for each disapproved monitoring system.

### § 97.533 Notifications concerning monitoring.

The designated representative of a CSAPR $NO_X$ Ozone Season Group 1 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.534 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.514(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 1 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.531, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR $NO_X$ Ozone Season Group 1 unit is subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the 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 report the $NO_X$ mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR $NO_X$ Ozone Season Group 1 unit is not subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the $NO_X$ 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.

(2) The designated representative shall report the $NO_X$ mass emissions data and heat input data for a CSAPR $NO_X$ Ozone Season Group 1 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2015 through June 30, 2015;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.530(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after 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 CSAPR $NO_X$ Ozone Season Group 1 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $NO_X$ mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification*. The 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)(1)(ii)(B) 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.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74614, Oct. 26, 2016]

### § 97.535 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $NO_X$ Ozone Season Group 1 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.530 through 97.534.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis*; and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

[76 FR 48406, Aug. 8, 2011, as amended at 81 FR 74614, Oct. 26, 2016]

## Subpart CCCCC—CSAPR $SO_2$ Group 1 Trading Program

SOURCE: 76 FR 48432, Aug. 8, 2011, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 81 FR 74614, Oct. 26, 2016.

### § 97.601 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $SO_2$ Group 1 Trading Program, under section 110 of the Clean Air Act and § 52.39 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74614, Oct. 26, 2016]

### § 97.602 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $SO_2$ Group 1 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State and approved by the Administrator under § 52.39(d), (e), or (f) of this chapter, of the amount of such CSAPR $SO_2$ Group 1 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $SO_2$ Group 1 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $SO_2$ Group 1 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $SO_2$ Group 1 allowances, the CSAPR $SO_2$ Group 1 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $SO_2$ Group 1 allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $SO_2$ Group 1 allowances under the CSAPR $SO_2$ Group 1 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $SO_2$ Group 1 allowances.

*Allowance transfer deadline* means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $SO_2$ Group 1 allowance transfer must be submitted for recordation in a CSAPR $SO_2$ Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR $SO_2$ Group 1 emissions limitation for such control period in accordance with §§ 97.606 and 97.624.

*Alternate designated representative* means, for a CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 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 this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $SO_2$ Group 1 Trading Program. If the CSAPR $SO_2$ Group 1 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.625(b)(3) for certain owners and operators of a group of one or more CSAPR $SO_2$ Group 1 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $SO_2$ Group 1 allowances available for use for a control period in a given year in complying with the CSAPR $SO_2$ Group 1 assurance provisions in accordance with §§ 97.606 and 97.625.

*Auction* means, with regard to CSAPR $SO_2$ Group 1 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.39(e) or (f) of this chapter, of such CSAPR $SO_2$ Group 1 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $SO_2$ Group 1 allowances held in the general account and, for a CSAPR $SO_2$ Group 1 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel,

except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 § 97.605.

(i) For a unit that is a CSAPR $SO_2$ Group 1 unit under § 97.604 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $SO_2$ Group 1 unit under § 97.604 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 § 97.605, for a unit that is not a CSAPR $SO_2$ Group 1 unit under § 97.604 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $SO_2$ Group 1 unit under § 97.604.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.613(a) and 97.615(a) as the designated representative for a group of one or more CSAPR $SO_2$ Group 1 sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and

control period in a given year for which the State assurance level is exceeded as described in § 97.606(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $SO_2$ Group 1 allowances allocated for such control period to the group of one or more CSAPR $SO_2$ Group 1 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $SO_2$ Group 1 allowances purchased by an owner or operator of such CSAPR $SO_2$ Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $SO_2$ Group 1 units in accordance with the CSAPR $SO_2$ Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(e) or (f) of this chapter, multiplied by the sum of the State $SO_2$ Group 1 trading budget under § 97.610(a) and the State's variability limit under § 97.610(b) for such control period, and divided by such State $SO_2$ Group 1 trading budget.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $SO_2$ emissions during such control period from the group of one or more CSAPR $SO_2$ Group 1 units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $SO_2$ Group 1 source under this subpart, in which any CSAPR $SO_2$ Group 1 allowance allocations to the CSAPR $SO_2$ Group 1 units at the source are recorded and in which are held any CSAPR $SO_2$ Group 1 allowances available for use for a control period in a given year in complying with the source's CSAPR $SO_2$ Group 1 emissions limitation in accordance with §§ 97.606 and 97.624.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $SO_2$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.630 through 97.635. The following systems are the principal types of continuous emission monitoring systems:

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

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

(4) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting January 1 of a calendar year, except as provided in § 97.606(c)(3), and ending on December 31 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 1 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $SO_2$ Group 1 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.39(d), (e), or (f) of this chapter, to emit one ton of $SO_2$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $SO_2$ Group 1 Trading Program.

*CSAPR $SO_2$ Group 1 allowance deduction* or *deduct CSAPR $SO_2$ Group 1 allowances* means the permanent withdrawal of CSAPR $SO_2$ Group 1 allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $SO_2$ Group 1 emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.606 and 97.625).

*CSAPR $SO_2$ Group 1 allowances held* or *hold CSAPR $SO_2$ Group 1 allowances* means the CSAPR $SO_2$ Group 1 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $SO_2$ Group 1 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $SO_2$ Group 1 allowance transfer in accordance with this subpart.

*CSAPR $SO_2$ Group 1 emissions limitation* means, for a CSAPR $SO_2$ Group 1 source, the tonnage of $SO_2$ emissions authorized in a control period by the CSAPR $SO_2$ Group 1 allowances available for deduction for the source under § 97.624(a) for such control period.

*CSAPR $SO_2$ Group 1 source* means a source that includes one or more CSAPR $SO_2$ Group 1 units.

*CSAPR $SO_2$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with

this subpart and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_2$ Group 1 unit* means a unit that is subject to the CSAPR $SO_2$ Group 1 Trading Program under § 97.604.

*Designated representative* means, for a CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $SO_2$ Group 1 Trading Program. If the CSAPR $SO_2$ Group 1 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $SO_2$ Group 1 units at a CSAPR $SO_2$ Group 1 source during a control period in a given year that exceeds the CSAPR $SO_2$ Group 1 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.604(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $SO_2$ Group 1 unit* means a unit that was not a CSAPR $SO_2$ Group 1 unit when it began operating but that thereafter becomes a CSAPR $SO_2$ Group 1 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $SO_2$ Group 1 source or a CSAPR $SO_2$ Group 1 unit at a source respectively, any person who operates, controls, or supervises a CSAPR $SO_2$ Group 1 unit at the source or the CSAPR $SO_2$ Group 1 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $SO_2$ Group 1 source or a CSAPR $SO_2$ Group 1 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $SO_2$ Group 1 unit at the source or the CSAPR $SO_2$ Group 1 unit;

(2) Any holder of a leasehold interest in a CSAPR $SO_2$ Group 1 unit at the source or the CSAPR $SO_2$ Group 1 unit, 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 CSAPR $SO_2$ Group 1 unit; and

(3) Any purchaser of power from a CSAPR $SO_2$ Group 1 unit at the source or the CSAPR $SO_2$ Group 1 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $SO_2$ Group 1 allowances, the moving of CSAPR $SO_2$ Group 1 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $SO_2$ Group 1 allowance, the unique identification number assigned to each CSAPR $SO_2$ Group 1 allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $SO_2$ Group 1 Trading Program pursuant to § 52.39(a), (b), (d) through (f), and (j) through (l) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour or hour of unit operation* means, with regard to a unit, an

hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in 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.

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74614, Oct. 26, 2016; 86 FR 23190, Apr. 30, 2021]

### § 97.603 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_x$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74616, Oct. 26, 2016]

### § 97.604 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $SO_2$ Group 1 units, and any source that includes one or more such units shall be a CSAPR $SO_2$ Group 1 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $SO_2$ Group 1 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 CSAPR $SO_2$ Group 1 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $SO_2$ Group 1 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $SO_2$ Group 1 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $SO_2$ Group 1 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $SO_2$ Group 1 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. The unit shall thereafter continue to be a CSAPR $SO_2$ Group 1 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $SO_2$ Group 1 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $SO_2$ Group 1 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 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $SO_2$ Group 1 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.39(e) or (f) of this chapter, of the CSAPR $SO_2$ Group 1 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $SO_2$ Group 1 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74616, Oct. 26, 2016; 86 FR 23191, Apr. 30, 2021]

### § 97.605 Retired unit exemption.

(a)(1) Any CSAPR $SO_2$ Group 1 unit that is permanently retired shall be exempt from § 97.606(b) and (c)(1), § 97.624, and §§ 97.630 through 97.635.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $SO_2$ Group 1 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and

will comply with the requirements of paragraph (b) of this section.

(b) (1) A unit exempt under paragraph (a) of this section shall not emit any $SO_2$, starting on the date that the exemption takes effect.

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

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR $SO_2$ Group 1 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[76 FR 48432, Aug. 8, 2011, as amended at 86 FR 23191, Apr. 30, 2021]

### § 97.606 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.613 through 97.618.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.630 through 97.635.

(2) The emissions data determined in accordance with §§ 97.630 through 97.635 shall be used to calculate allocations of CSAPR $SO_2$ Group 1 allowances under §§ 97.611(a)(2) and (b) and 97.612 and to determine compliance with the CSAPR $SO_2$ Group 1 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.630 through 97.635 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$SO_2$ emissions requirements*—(1) *CSAPR $SO_2$ Group 1 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 unit at the source shall hold, in the source's compliance account, CSAPR $SO_2$ Group 1 allowances available for deduction for such control period under § 97.624(a) in an amount not less than the tons of total $SO_2$ emissions for such control period from all CSAPR $SO_2$ Group 1 units at the source.

(ii) If total $SO_2$ emissions during a control period in a given year from the CSAPR $SO_2$ Group 1 units at a CSAPR $SO_2$ Group 1 source are in excess of the CSAPR $SO_2$ Group 1 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $SO_2$ Group 1 unit at the source shall hold the CSAPR $SO_2$ Group 1 allowances required for deduction under § 97.624(d); and

(B) The owners and operators of the source and each CSAPR $SO_2$ Group 1 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air

Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $SO_2$ Group 1 assurance provisions.* (i) If total $SO_2$ emissions during a control period in a given year from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $SO_2$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $SO_2$ Group 1 allowances available for deduction for such control period under § 97.625(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.625(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $SO_2$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $SO_2$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $SO_2$ Group 1 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $SO_2$ emissions exceed the sum, for such control period, of the State $SO_2$ Group 1 trading budget under § 97.610(a) and the State's variability limit under § 97.610(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $SO_2$ emissions from the CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $SO_2$ Group 1 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $SO_2$ Group 1 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $SO_2$ Group 1 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2015 or the deadline for meeting the unit's monitor certification requirements under § 97.630(b) and for each control period thereafter.

(ii) A CSAPR $SO_2$ Group 1 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.630(b) and for each control period thereafter.

(4) *Vintage of CSAPR $SO_2$ Group 1 allowances held for compliance.* (i) A CSAPR $SO_2$ Group 1 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $SO_2$ Group 1 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $SO_2$ Group 1 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $SO_2$ Group 1 allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $SO_2$ Group 1 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $SO_2$ Group 1 allowance is a limited authorization to emit one ton of $SO_2$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $SO_2$ Group 1 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $SO_2$ Group 1 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $SO_2$ Group 1 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $SO_2$ emissions using a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.630 through 97.635 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.616 for the designated representative for the source and each CSAPR $SO_2$ Group 1 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 certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.616 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $SO_2$ Group 1 Trading Program.

(2) The designated representative of a CSAPR $SO_2$ Group 1 source and each CSAPR $SO_2$ Group 1 unit at the source shall make all submissions required under the CSAPR $SO_2$ Group 1 Trading Program, except as provided in § 97.618. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability*. (1) Any provision of the CSAPR $SO_2$ Group 1 Trading Program that applies to a CSAPR $SO_2$ Group 1 source or the designated representative of a CSAPR $SO_2$ Group 1 source shall also apply to the owners and operators of such source and of the CSAPR $SO_2$ Group 1 units at the source.

(2) Any provision of the CSAPR $SO_2$ Group 1 Trading Program that applies to a CSAPR $SO_2$ Group 1 unit or the designated representative of a CSAPR $SO_2$ Group 1 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities*. No provision of the CSAPR $SO_2$ Group 1 Trading Program or exemption under § 97.605 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $SO_2$ Group 1 source or CSAPR $SO_2$ Group 1 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48432, Aug. 8, 2011, as amended at 77 FR 10338, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74616, Aug. 8, 2011; 86 FR 23191, Apr. 30, 2021]

### § 97.607 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $SO_2$ Group 1 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 CSAPR $SO_2$ Group 1 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 CSAPR $SO_2$ Group 1 Trading Program, is not a business day, the time period shall be extended to the next business day.

### § 97.608 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $SO_2$ Group 1 Trading Program are set forth in part 78 of this chapter.

### § 97.609 [Reserved]

### § 97.610 State $SO_2$ Group 1 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $SO_2$ Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $SO_2$ Group 1 allowances for the control periods in the years indicated are as follows:

(1) *Illinois*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 234,889 tons.

(ii) The new unit set-aside for 2015 and 2016 is 11,744 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 124,123 tons.

(v) The new unit set-aside for 2017 and thereafter is 6,223 tons.

(vi) [Reserved]

(2) *Indiana*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 290,762 tons.

(ii) The new unit set-aside for 2015 and 2016 is 8,723 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 166,449 tons.

(v) The new unit set-aside for 2017 and thereafter is 4,993 tons.

(vi) [Reserved]

(3) *Iowa*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 107,085 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,035 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 107 tons.

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 75,184 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,426 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 75 tons.

(4) *Kentucky*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 232,662 tons.

(ii) The new unit set-aside for 2015 and 2016 is 13,960 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 106,284 tons.

(v) The new unit set-aside for 2017 and thereafter is 6,381 tons.

(vi) [Reserved]

(5) *Maryland*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 30,120 tons.

(ii) The new unit set-aside for 2015 and 2016 is 602 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 28,203 tons.

(v) The new unit set-aside for 2017 and thereafter is 568 tons.

(vi) [Reserved]

(6) *Michigan*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 229,303 tons.

(ii) The new unit set-aside for 2015 and 2016 is 4,357 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 229 tons.

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 143,995 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,743 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 144 tons.

(7) *Missouri*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 207,466 tons.

(ii) The new unit set-aside for 2015 is 4,149 tons and for 2016 is 6,224 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 165,941 tons.

(v) The new unit set-aside for 2017 and thereafter is 4,982 tons.

(vi) [Reserved]

(8) *New Jersey*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 7,670 tons.

(ii) The new unit set-aside for 2015 and 2016 is 153 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 5,574 tons.

(v) The new unit set-aside for 2017 and thereafter is 110 tons.

(vi) [Reserved]

(9) *New York*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 36,296 tons.

(ii) The new unit set-aside for 2015 and 2016 is 690 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 36 tons.

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 27,556 tons.

(v) The new unit set-aside for 2017 and thereafter is 535 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 28 tons.

(10) *North Carolina*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 136,881 tons.

(ii) The new unit set-aside for 2015 and 2016 is 10,813 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 137 tons.

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 57,620 tons.

(v) The new unit set-aside for 2017 and thereafter is 4,559 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 58 tons.

(11) *Ohio*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 315,393 tons.

(ii) The new unit set-aside for 2015 and 2016 is 6,308 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 142,240 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,850 tons.

(vi) [Reserved]

(12) *Pennsylvania*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 278,651 tons.

(ii) The new unit set-aside for 2015 and 2016 is 5,573 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 112,021 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,242 tons.

(vi) [Reserved]

(13) *Tennessee*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 148,150 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,963 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 58,833 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,181 tons.

(vi) [Reserved]

(14) *Virginia*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 70,820 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,833 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 35,057 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,401 tons.

(vi) [Reserved]

(15) *West Virginia*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 146,174 tons.

(ii) The new unit set-aside for 2015 and 2016 is 10,232 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 75,668 tons.

(v) The new unit set-aside for 2017 and thereafter is 5,299 tons.

(vi) [Reserved]

(16) *Wisconsin*. (i) The $SO_2$ Group 1 trading budget for 2015 and 2016 is 79,480 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,099 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 80 tons.

(iv) The $SO_2$ Group 1 trading budget for 2017 and thereafter is 47,883 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,870 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 48 tons.

(b) The States' variability limits for the State $SO_2$ Group 1 trading budgets for the control periods in 2017 and thereafter are as follows:

(1) The variability limit for Illinois is 22,342 tons.

(2) The variability limit for Indiana is 29,961 tons.

(3) The variability limit for Iowa is 13,533 tons.

(4) The variability limit for Kentucky is 19,131 tons.

(5) The variability limit for Maryland is 5,077 tons.

(6) The variability limit for Michigan is 25,919 tons.

(7) The variability limit for Missouri is 29,869 tons.

(8) The variability limit for New Jersey is 1,003 tons.

(9) The variability limit for New York is 4,960 tons.

(10) The variability limit for North Carolina is 10,372 tons.

(11) The variability limit for Ohio is 25,603 tons.

(12) The variability limit for Pennsylvania is 20,164 tons.

(13) The variability limit for Tennessee is 10,590 tons.

(14) The variability limit for Virginia is 6,310 tons.

(15) The variability limit for West Virginia is 13,620 tons.

(16) The variability limit for Wisconsin is 8,619 tons.

(c) Each State $SO_2$ Group 1 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[77 FR 10339, Feb. 21, 2012, as amended at 77 FR 10348, Feb. 21, 2012; 77 FR 34846, June 12, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74616, Oct. 26, 2016; 86 FR 23191, Apr. 30, 2021]

### § 97.611 Timing requirements for CSAPR $SO_2$ Group 1 allowance allocations.

(a) *Existing units*. (1) CSAPR $SO_2$ Group 1 allowances are allocated, for the control periods in 2015 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $SO_2$ Group 1 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR $SO_2$ Group 1 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2014, during the control period in two consecutive years, such unit will not be allocated the CSAPR $SO_2$ Group 1 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $SO_2$ Group 1 allowances that would otherwise have been allocated to such unit will be allocated to

the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $SO_2$ Group 1 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in a State, in accordance with § 97.612(a)(2) through (7) and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in a State, in accordance with § 97.612(a)(2) through (7), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $SO_2$ Group 1 units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. .

(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)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2021 contains any CSAPR $SO_2$ Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $SO_2$ Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $SO_2$ Group 1 annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $SO_2$ Group 1 annual units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $SO_2$ Group 1 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in accordance with § 97.612(a)(9), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635. By February 15 immediately after the promulgation of each notice of data availability required in paragraph

(b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $SO_2$ Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $SO_2$ Group 1 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $SO_2$ Group 1 allowances in accordance with § 97.612(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7) and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $SO_2$ Group 1 units) are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable..

(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)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2021 contains any CSAPR $SO_2$ Group 1 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $SO_2$ Group 1 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $SO_2$ Group 1 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be

limited to addressing whether the identification of CSAPR $SO_2$ Group 1 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $SO_2$ Group 1 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $SO_2$ Group 1 allowance allocation to each CSAPR $SO_2$ Group 1 unit in accordance with §97.612(b)(9), (10), and (12) and §§97.606(b)(2) and 97.630 through 97.635. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $SO_2$ Group 1 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $SO_2$ Group 1 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $SO_2$ Group 1 allowances in accordance with §97.612(b)(10).

(c) *Units incorrectly allocated CSAPR $SO_2$ Group 1 allowances.* (1) For each control period in 2015 and thereafter, if the Administrator determines that CSAPR $SO_2$ Group 1 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under §97.612(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under §52.39(e) or (f) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $SO_2$ Group 1 unit under §97.604 as of January 1, 2015 and is allocated CSAPR $SO_2$ Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, the recipient is not actually a CSAPR $SO_2$ Group 1 unit as of January 1, 2015 and is allocated CSAPR $SO_2$ Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $SO_2$ Group 1 units as of January 1, 2015; or

(B) The recipient is not located as of January 1 of the control period in the State from whose $SO_2$ Group 1 trading budget the CSAPR $SO_2$ Group 1 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under §52.39(d), (e), or (f) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $SO_2$ Group 1 unit under §97.604 as of January 1 of such control period and is allocated CSAPR $SO_2$ Group 1 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.39(e) or (f) of this chapter, the recipient is not actually a CSAPR $SO_2$ Group 1 unit as of January 1 of such control period and is allocated CSAPR $SO_2$ Group 1 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $SO_2$ Group 1 units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $SO_2$ Group 1 allowances under §97.621.

(3) If the Administrator already recorded such CSAPR $SO_2$ Group 1 allowances under §97.621 and if the Administrator makes the determination under paragraph (c)(1) of this section before

making deductions for the source that includes such recipient under § 97.624(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $SO_2$ Group 1 allowances were recorded an amount of CSAPR $SO_2$ Group 1 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $SO_2$ Group 1 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $SO_2$ Group 1 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $SO_2$ Group 1 allowances under § 97.621 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.624(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $SO_2$ Group 1 allowances.

(5)(i) With regard to the CSAPR $SO_2$ Group 1 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $SO_2$ Group 1 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $SO_2$ Group 1 trading budget the CSAPR $SO_2$ Group 1 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.39(e) or (f) of this chapter covering such control period, include such CSAPR $SO_2$ Group 1 allowances in the portion of the State $SO_2$ Group 1 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $SO_2$ Group 1 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $SO_2$ Group 1 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.39(e) or (f) of this chapter covering such control period, include such CSAPR $SO_2$ Group 1 allowances in the portion of the State $SO_2$ Group 1 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $SO_2$ Group 1 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $SO_2$ Group 1 allowances to the Indian country new unit set-aside for such control period or a subsequent control period).

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74616, Oct. 26, 2016; 86 FR 23191, Apr. 30, 2021]

### § 97.612 CSAPR $SO_2$ Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $SO_2$ Group 1 units in each State, the Administrator will allocate CSAPR $SO_2$ Group 1 allowances to the CSAPR $SO_2$ Group 1 units as follows:

(1) The CSAPR $SO_2$ Group 1 allowances will be allocated to the following CSAPR $SO_2$ Group 1 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $SO_2$ Group 1 units that are not allocated an amount of CSAPR $SO_2$ Group 1 allowances in the notice of data availability issued under § 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period;

(ii) CSAPR $SO_2$ Group 1 units whose allocation of an amount of CSAPR $SO_2$ Group 1 allowances for such control period in the notice of data availability

issued under § 97.611(a)(1) is covered by § 97.611(c)(2) or (3);

(iii) CSAPR $SO_2$ Group 1 units that are allocated an amount of CSAPR $SO_2$ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(a)(1), which allocation is terminated for such control period pursuant to § 97.611(a)(2), and that operate during the control period immediately preceding such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $SO_2$ Group 1 units under § 97.611(c)(1)(ii) whose allocation of an amount of CSAPR $SO_2$ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(b)(1)(ii)(B) is covered by § 97.611(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $SO_2$ Group 1 allowances in an amount equal to the applicable amount of tons of $SO_2$ emissions as set forth in § 97.610(a) and will be allocated additional CSAPR $SO_2$ Group 1 allowances (if any) in accordance with § 97.611(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $SO_2$ Group 1 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $SO_2$ Group 1 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2015;

(ii)(A) The first control period after the control period in which the CSAPR $SO_2$ Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $SO_2$ Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $SO_2$ Group 1 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $SO_2$ Group 1 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 1 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $SO_2$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $SO_2$ Group 1 allowances determined for all such CSAPR $SO_2$ Group 1 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $SO_2$ Group 1 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 1 allowances determined for each such CSAPR $SO_2$ Group 1 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $SO_2$ Group 1 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 1 unit the amount of the CSAPR $SO_2$ Group 1 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $SO_2$ Group 1 allowances in the new unit

set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(i) and (ii), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $SO_2$ Group 1 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $SO_2$ Group 1 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $SO_2$ Group 1 allowances referenced in the notice of data availability required under § 97.611(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 1 allowances determined for each such CSAPR $SO_2$ Group 1 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 1 unit the amount of the CSAPR $SO_2$ Group 1 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $SO_2$ Group 1 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $SO_2$ Group 1 unit that is in the State, is allocated an amount of CSAPR $SO_2$ Group 1 allowances in the notice of data availability issued under § 97.611(a)(1), and continues to be allocated CSAPR $SO_2$ Group 1 allowances for such control period in accordance with § 97.611(a)(2), an amount of CSAPR $SO_2$ Group 1 allowances equal to the following: The total amount of such remaining unallocated CSAPR $SO_2$ Group 1 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.611(a) for such control period, divided by the remainder of the amount of tons in the applicable State $SO_2$ Group 1 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(iii), (iv), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $SO_2$ Group 1 units in Indian country within the borders of each State, the Administrator will allocate CSAPR $SO_2$ Group 1 allowances to the CSAPR $SO_2$ Group 1 units as follows:

(1) The CSAPR $SO_2$ Group 1 allowances will be allocated to the following CSAPR $SO_2$ Group 1 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $SO_2$ Group 1 units that are not allocated an amount of CSAPR $SO_2$ Group 1 allowances in the notice of data availability issued under § 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $SO_2$ Group 1 units under § 97.611(c)(1)(ii) whose allocation of an amount of CSAPR $SO_2$ Group 1 allowances for such control period in the notice of data availability issued under § 97.611(b)(2)(ii)(B) is covered by § 97.611(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $SO_2$ Group 1 allowances in an amount equal to the applicable amount of tons of $SO_2$ emissions as set forth in § 97.610(a) and will be allocated additional CSAPR $SO_2$ Group 1 allowances (if any) in accordance with § 97.611(c)(5).

(3) The Administrator will determine, for each CSAPR $SO_2$ Group 1 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $SO_2$ Group 1 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2015; and

(ii)(A) The first control period after the control period in which the CSAPR $SO_2$ Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $SO_2$ Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 1 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $SO_2$ emissions during the control period, for

allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $SO_2$ Group 1 allowances determined for all such CSAPR $SO_2$ Group 1 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $SO_2$ Group 1 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 1 allowances determined for each such CSAPR $SO_2$ Group 1 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $SO_2$ Group 1 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 1 unit the amount of the CSAPR $SO_2$ Group 1 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $SO_2$ Group 1 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(i) and (ii), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $SO_2$ Group 1 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $SO_2$ Group 1 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $SO_2$ Group 1 allowances referenced in the notice of data availability required under § 97.611(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 1 allowances determined for each such CSAPR $SO_2$ Group 1 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 1 unit the amount of the CSAPR $SO_2$ Group 1 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $SO_2$ Group 1 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $SO_2$ Group 1

allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $SO_2$ Group 1 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.39(e) or (f) of this chapter covering such control period, include such unallocated CSAPR $SO_2$ Group 1 allowances in the portion of the State $SO_2$ Group 1 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(iii), (iv), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74616, Oct. 26, 2016; 86 FR 23192, Apr. 30, 2021]

### § 97.613 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.615, each CSAPR $SO_2$ Group 1 source, including all CSAPR $SO_2$ Group 1 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $SO_2$ Group 1 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $SO_2$ Group 1 units at the source and shall act in accordance with the certification statement in § 97.616(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.616:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $SO_2$ Group 1 unit at the source in all matters pertaining to the CSAPR $SO_2$ Group 1 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $SO_2$ Group 1 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.615, each CSAPR $SO_2$ Group 1 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $SO_2$ Group 1 units at the source and shall act in accordance with the certification statement in § 97.616(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.616,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $SO_2$ Group 1 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.602, and §§ 97.614 through 97.618, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

### § 97.614 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.618 concerning delegation of authority to make submissions, each submission under the CSAPR $SO_2$ Group 1 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $SO_2$ Group 1 source and CSAPR $SO_2$ Group 1 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $SO_2$ Group 1 source or a CSAPR $SO_2$ Group 1 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.618.

### § 97.615 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.616. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $SO_2$ Group 1 source and the CSAPR $SO_2$ Group 1 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.616.

Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $SO_2$ Group 1 source and the CSAPR $SO_2$ Group 1 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $SO_2$ Group 1 source or a CSAPR $SO_2$ Group 1 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.616, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $SO_2$ Group 1 source or a CSAPR $SO_2$ Group 1 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.616 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $SO_2$ Group 1 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.616 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

### § 97.616 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $SO_2$ Group 1 source, and each CSAPR $SO_2$ Group 1 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

(3) A list of the owners and operators of the CSAPR $SO_2$ Group 1 source and of each CSAPR $SO_2$ Group 1 unit at the source.

(4) The following certification statements by the designated representative

and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $SO_2$ Group 1 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $SO_2$ Group 1 Trading Program on behalf of the owners and operators of the source and of each CSAPR $SO_2$ Group 1 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $SO_2$ Group 1 unit, or where a utility or industrial customer purchases power from a CSAPR $SO_2$ Group 1 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $SO_2$ Group 1 unit at the source; and CSAPR $SO_2$ Group 1 allowances and proceeds of transactions involving CSAPR $SO_2$ Group 1 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 CSAPR $SO_2$ Group 1 allowances by contract, CSAPR $SO_2$ Group 1 allowances and proceeds of transactions involving CSAPR $SO_2$ Group 1 allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74616, Oct. 26, 2016]

### § 97.617 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.616 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.616 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $SO_2$ Group 1 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $SO_2$ Group 1 allowance transfers.

**§ 97.618 Delegation by designated representative and alternate designated representative.**

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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 designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.618(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 97.618(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 97.618 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

**§ 97.619 [Reserved]**

**§ 97.620 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.616, the Administrator will establish a compliance account for the CSAPR $SO_2$ Group 1 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.625(b)(3).

(c) *General accounts*—(1) *Application for general account*. (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $SO_2$ Group 1 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account 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 authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $SO_2$ Group 1 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $SO_2$ Group 1 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 decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) *Authorization of authorized account representative and alternate authorized account representative*. (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances held in the general account in all matters pertaining to the CSAPR $SO_2$ Group 1 Trading

Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $SO_2$ Group 1 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) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $SO_2$ Group 1 allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $SO_2$ Group 1 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $SO_2$ Group 1 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $SO_2$ Group 1 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $SO_2$ Group 1 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $SO_2$ Group 1 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $SO_2$ Group 1 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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 authorized account representative or alternate 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 in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is

superseded by another notice of delegation under 40 CFR 97.620(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.620(c)(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 97.620(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $SO_2$ Group 1 allowance transfer under § 97.622 for any CSAPR $SO_2$ Group 1 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $SO_2$ Group 1 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $SO_2$ Group 1 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $SO_2$ Group 1 allowance transfer under § 97.622 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $SO_2$ Group 1 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.614(a) and 97.618 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74617, Oct. 26, 2016; 86 FR 23193, Apr. 30, 2021]

### § 97.621 Recordation of CSAPR $SO_2$ Group 1 allowance allocations and auction results.

(a) By November 7, 2011, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.611(a) for the control period in 2015.

(b) By November 7, 2011, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.611(a) for the control period in 2016, unless the State in which the source is

located notifies the Administrator in writing by October 17, 2011 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2015 meeting the requirements of § 52.39(d)(1) through (4) of this chapter.

(1) If, by April 1, 2015, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2015 in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.611(a) for the control period in 2016.

(2) If the State submits to the Administrator by April 1, 2015, and the Administrator approves by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source as provided in such approved, complete SIP revision for the control period in 2016.

(3) If the State submits to the Administrator by April 1, 2015, and the Administrator does not approve by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.611(a) for the control period in 2016.

(c) By July 1, 2016, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control periods in 2017 and 2018.

(d) By July 1, 2017, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control periods in 2019 and 2020.

(e) By July 1, 2018, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control periods in 2021 and 2022.

(f)(1)By July 1, 2019 and July 1, 2020, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph.

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate

Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.612(a)(2) through (8) and (12), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 1 allowances auctioned to CSAPR $SO_2$ Group 1 units, in accordance with § 97.612(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.612(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.612(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.612(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $SO_2$ Group 1 source's compliance account the CSAPR $SO_2$ Group 1 allowances allocated to the CSAPR $SO_2$ Group 1 units at the source in accordance with § 97.612(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $SO_2$ Group 1 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.611 or § 97.612 or with a SIP revision approved under § 52.39(e) or (f) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $SO_2$ Group 1 allowances to a CSAPR $SO_2$ Group 1 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $SO_2$ Group 1 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $SO_2$ Group 1 allowance is allocated or auctioned.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74617, Oct. 26, 2016; 86 FR 23194, Apr. 30, 2021]

### § 97.622 Submission of CSAPR $SO_2$ Group 1 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $SO_2$ Group 1 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $SO_2$ Group 1 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $SO_2$ Group 1 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $SO_2$ Group 1 allowance identified by serial number in the transfer.

### § 97.623 Recordation of CSAPR $SO_2$ Group 1 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $SO_2$ Group 1 allowance transfer that is correctly submitted under § 97.622, the Administrator will record a CSAPR $SO_2$ Group 1 allowance transfer by moving each CSAPR $SO_2$ Group 1 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $SO_2$ Group 1 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $SO_2$ Group 1 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.624 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $SO_2$ Group 1 allowance transfer is not correctly submitted under § 97.622, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $SO_2$ Group 1 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $SO_2$ Group 1 allowance transfer that is not correctly submitted under § 97.622, the Administrator will notify the 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.

### § 97.624 Compliance with CSAPR $SO_2$ Group 1 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $SO_2$ Group 1 allowances are available to be deducted for compliance with a source's CSAPR $SO_2$ Group 1 emissions limitation for a control period in a given year only if the CSAPR $SO_2$ Group 1 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.623, of CSAPR $SO_2$ Group 1 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $SO_2$ Group 1 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $SO_2$ Group 1 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $SO_2$ Group 1 allowances deducted equals the number of tons of total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at the source for such control period; or

(2) If there are insufficient CSAPR $SO_2$ Group 1 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $SO_2$ Group 1 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $SO_2$ Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $SO_2$ Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $SO_2$ Group 1 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR $SO_2$ Group 1 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $SO_2$ Group 1 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $SO_2$ Group 1 allowances that were recorded in the compliance account pursuant to § 97.621 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $SO_2$ Group 1 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $SO_2$ Group 1 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $SO_2$ Group 1 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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 48432, Aug. 8, 2011, as amended at 86 FR 23194, Apr. 30, 2021]

### § 97.625 Compliance with CSAPR $SO_2$ Group 1 assurance provisions.

(a) *Availability for deduction.* CSAPR $SO_2$ Group 1 allowances are available to be deducted for compliance with the CSAPR $SO_2$ 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 $SO_2$ Group 1 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $SO_2$ 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 $SO_2$ 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 $SO_2$ Group 1 allowances available under paragraph (a) of this section for compliance with the CSAPR $SO_2$ 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 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ 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 $SO_2$ emissions exceed the State assurance level as described in § 97.606(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $SO_2$ emissions exceed the respective State assurance levels for such control period—

(A) 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 $SO_2$ Group 1 sources and units in such State (and such Indian country), the common designated representative's share of the total $SO_2$ emissions from all CSAPR $SO_2$ Group 1 units at CSAPR $SO_2$ Group 1 sources in such State (and such Indian country), the common designated representative's assurance

level, and the amount (if any) of CSAPR $SO_2$ Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.606(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $SO_2$ emissions from each CSAPR $SO_2$ Group 1 source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.606(c)(2)(iii), §§ 97.606(b) and 97.630 through 97.635, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.602, and the calculation formula in § 97.606(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having CSAPR $SO_2$ Group 1 units with total $SO_2$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of CSAPR $SO_2$ 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 $SO_2$ 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)(ii) 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 $SO_2$ Group 1 sources, CSAPR $SO_2$ 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 $SO_2$ 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)(ii) of this section and after the recordation, in accordance with § 97.623, of CSAPR $SO_2$ 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 $SO_2$ Group 1 sources, CSAPR $SO_2$ 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 $SO_2$ 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)(ii) 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)(ii) 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 $SO_2$ Group 1 allowances that the owners and operators are required to hold in accordance with § 97.606(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)(ii) 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 $SO_2$ Group 1 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.606(c)(2)(i) for such control period with regard to the CSAPR $SO_2$ Group 1 sources, CSAPR $SO_2$ 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR $SO_2$ Group 1 allowances that the owners and operators are required to hold for such control period with regard to the CSAPR $SO_2$ Group 1 sources, CSAPR $SO_2$ Group 1 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $SO_2$ 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 $SO_2$ Group 1 allowances in the assurance account established by the Administrator for the appropriate CSAPR $SO_2$ Group 1 sources, CSAPR $SO_2$ 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $SO_2$ 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 $SO_2$ 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 $SO_2$ 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 $SO_2$ Group 1 sources, CSAPR $SO_2$ 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 $SO_2$ Group 1 allowances held in such assurance account equal to the amount of the decrease. If CSAPR $SO_2$ Group 1 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $SO_2$

Group 1 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $SO_2$ Group 1 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $SO_2$ Group 1 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $SO_2$ Group 1 assurance provisions for such control period must be a CSAPR $SO_2$ 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 48432, Aug. 8, 2011, as amended at 77 FR 10340, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74617, Oct. 26, 2016; 86 FR 23194, Apr. 30, 2021]

### § 97.626 Banking.

(a) A CSAPR $SO_2$ 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 $SO_2$ Group 1 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $SO_2$ Group 1 allowance is deducted or transferred under § 97.611(c), § 97.623, § 97.624, § 97.625, § 97.627, or § 97.628 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $SO_2$ Group 1 trading budget is set forth in § 97.610(a) for a given State, the Administrator may record a transfer of any CSAPR $SO_2$ Group 1 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

[76 FR 48432, Aug. 8, 2011, as amended at 86 FR 23194, Apr. 30, 2021]

### § 97.627 Account error.

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

### § 97.628 Administrator's action on submissions.

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

(b) The Administrator may deduct CSAPR $SO_2$ Group 1 allowances from or transfer CSAPR $SO_2$ Group 1 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

### § 97.629 [Reserved]

### § 97.630 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $SO_2$ Group 1 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.602 and in § 72.2 of this chapter shall apply, 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 ''CSAPR $SO_2$ Group 1 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.602, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $SO_2$ Group 1 unit''. The

owner or operator of a unit that is not a CSAPR $SO_2$ Group 1 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR $SO_2$ Group 1 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $SO_2$ Group 1 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $SO_2$ mass emissions and individual unit heat input (including all systems required to monitor $SO_2$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.631 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 of a CSAPR $SO_2$ Group 1 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

(3) The owner or operator of a CSAPR $SO_2$ Group 1 unit for which construction of a new stack or flue or installation of add-on $SO_2$ emission controls is completed after the applicable deadline under paragraph (b)(1) or (2) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.630 through § 97.635, rather than the monitoring systems required under part 75 of this chapter;

(ii) $SO_2$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.635, rather than § 75.66 of this chapter.

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

(d) *Prohibitions.* (1) No owner or operator of a CSAPR $SO_2$ Group 1 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.635.

(2) No owner or operator of a CSAPR $SO_2$ Group 1 unit shall operate the unit so as to discharge, or allow to be discharged, $SO_2$ to the atmosphere without accounting for all such $SO_2$ in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR $SO_2$ Group 1 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $SO_2$ mass 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 CSAPR $SO_2$ Group 1 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.605 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.631(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $SO_2$ Group 1 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74617, Oct. 26, 2016]

### § 97.631 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $SO_2$ Group 1 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.630(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 appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.630(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $SO_2$ Group 1 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.630(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.630(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.630(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.630(a)(1) that may significantly affect the ability of the system to accurately measure or record $SO_2$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change

to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.630(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.630(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.633.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $SO_2$ Group 1 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $SO_2$ Group 1 Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the

performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.632(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

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

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

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

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

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

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

[76 FR 48432, Aug. 8, 2011, as amended at 81 FR 74618, Oct. 26, 2016]

### § 97.632 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.631 or the applicable provisions of part 75 of this chapter,

both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.631 for each disapproved monitoring system.

[76 FR 48432, Aug. 8, 2011, as amended at 86 FR 23194, Apr. 30, 2021]

### § 97.633 Notifications concerning monitoring.

The designated representative of a CSAPR $SO_2$ Group 1 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.634 Recordkeeping and reporting.

(a) *General provisions*. The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.614(a).

(b) *Monitoring plans*. The owner or operator of a CSAPR $SO_2$ Group 1 unit shall comply with the requirements of § 75.62 of this chapter.

(c) *Certification applications*. The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.631, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports*. The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the $SO_2$ mass emissions data and heat input data for a CSAPR $SO_2$ Group 1 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.630(b).

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

(3) For CSAPR $SO_2$ Group 1 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, CSAPR $NO_X$ Ozone Season Group 2 Trading Program, or CSAPR $NO_X$ Ozone Season Group 3 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $SO_2$ mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative

must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74618, Oct. 26, 2016; 86 FR 23195, Apr. 30, 2021]

### § 97.635 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $SO_2$ Group 1 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.630 through 97.634.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

[78 FR 48432, Aug. 8, 2011, as amended at 81 FR 74618, Oct. 26, 2016]

## Subpart DDDDD—CSAPR $SO_2$ Group 2 Trading Program

SOURCE: 76 FR 48458, Aug. 8, 2011, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 81 FR 74618, Oct. 26, 2016.

### § 97.701 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $SO_2$ Group 2 Trading Program, under section 110 of the Clean Air Act and § 52.39 of this chapter, as a

means of mitigating interstate transport of fine particulates and sulfur dioxide.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74618, Oct. 26, 2016]

**§ 97.702 Definitions.**

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $SO_2$ Group 2 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State and approved by the Administrator under § 52.39(g), (h), or (i) of this chapter, of the amount of such CSAPR $SO_2$ Group 2 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $SO_2$ Group 2 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $SO_2$ Group 2 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $SO_2$ Group 2 allowances, the CSAPR $SO_2$ Group 2 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $SO_2$ Group 2 allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $SO_2$ Group 2 allowances under the CSAPR $SO_2$ Group 2 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $SO_2$ Group 2 allowances.

*Allowance transfer deadline* means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $SO_2$ Group 2 allowance transfer must be submitted for recordation in a CSAPR $SO_2$ Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR $SO_2$ Group 2 emissions limitation for such control period in accordance with §§ 97.706 and 97.724.

*Alternate designated representative* means, for a CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $SO_2$ Group 2 Trading Program. If the CSAPR $SO_2$ Group 2 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.725(b)(3) for certain owners and operators of a group of one or more CSAPR $SO_2$ Group 2 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $SO_2$ Group 2 allowances available for use for a control period in a given year in complying with the CSAPR $SO_2$ Group 2 assurance provisions in accordance with §§ 97.706 and 97.725.

*Auction* means, with regard to CSAPR $SO_2$ Group 2 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.39(h) or (i) of this chapter, of such CSAPR $SO_2$ Group 2 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $SO_2$ Group 2 allowances held in the general account and, for a CSAPR $SO_2$ Group 2 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

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

that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 § 97.705.

(i) For a unit that is a CSAPR $SO_2$ Group 2 unit under § 97.704 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $SO_2$ Group 2 unit under § 97.704 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 § 97.705, for a unit that is not a CSAPR $SO_2$ Group 2 unit under § 97.704 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $SO_2$ Group 2 unit under § 97.704.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.713(a) and 97.715(a) as the designated representative for a group of one or more CSAPR $SO_2$ Group 2 sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.706(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $SO_2$ Group 2 allowances allocated for such control period to the group of one or more CSAPR $SO_2$ Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $SO_2$ Group 2 allowances purchased by an owner or operator of such CSAPR $SO_2$ Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR $SO_2$ Group 2 units in accordance with the CSAPR $SO_2$ Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(h) or (i) of this chapter, multiplied by the sum of the State $SO_2$ Group 2 trading budget under § 97.710(a) and the State's variability limit under § 97.710(b) for such control period, and divided by such State $SO_2$ Group 2 trading budget.

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $SO_2$ emissions during such control period from the group of one or more CSAPR $SO_2$ Group 2 units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $SO_2$ Group 2 source under this subpart, in which any CSAPR $SO_2$ Group 2 allowance allocations to the CSAPR $SO_2$ Group 2 units at the source are recorded and in which are held any CSAPR $SO_2$ Group 2 allowances available for use for a control period in a given year in complying with the source's CSAPR $SO_2$ Group 2 emissions limitation in accordance with §§ 97.706 and 97.724.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $SO_2$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.730 through 97.735. The following systems are the principal types of continuous emission monitoring systems:

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

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

(4) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting January 1 of a calendar year, except as provided in § 97.706(c)(3), and ending on December 31 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 1 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i) and (ii), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $SO_2$ Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.39(g), (h), or (i) of this chapter, to emit one ton of $SO_2$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $SO_2$ Group 2 Trading Program.

*CSAPR $SO_2$ Group 2 allowance deduction or deduct CSAPR $SO_2$ Group 2 allowances* means the permanent withdrawal of CSAPR $SO_2$ Group 2 allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $SO_2$ Group 2 emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.706 and 97.725).

*CSAPR $SO_2$ Group 2 allowances held or hold CSAPR $SO_2$ Group 2 allowances* means the CSAPR $SO_2$ Group 2 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $SO_2$ Group 2 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $SO_2$ Group 2 allowance transfer in accordance with this subpart.

*CSAPR $SO_2$ Group 2 emissions limitation* means, for a CSAPR $SO_2$ Group 2 source, the tonnage of $SO_2$ emissions authorized in a control period by the CSAPR $SO_2$ Group 2 allowances available for deduction for the source under § 97.724(a) for such control period.

*CSAPR $SO_2$ Group 2 source* means a source that includes one or more CSAPR $SO_2$ Group 2 units.

*CSAPR $SO_2$ Group 2 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with this subpart and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_2$ Group 2 unit* means a unit that is subject to the CSAPR $SO_2$ Group 2 Trading Program under § 97.704.

*Designated representative* means, for a CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $SO_2$ Group 2 Trading Program. If the CSAPR $SO_2$ Group 2 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $SO_2$ Group 2 units at a CSAPR $SO_2$ Group 2 source during a control period in a given year that exceeds the CSAPR $SO_2$ Group 2 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.704(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $SO_2$ Group 2 unit* means a unit that was not a CSAPR $SO_2$ Group 2 unit when it began operating but that thereafter becomes a CSAPR $SO_2$ Group 2 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $SO_2$ Group 2 source or a CSAPR $SO_2$ Group 2 unit at a source respectively, any person who operates, controls, or supervises a CSAPR $SO_2$ Group 2 unit at the source or the CSAPR $SO_2$ Group 2 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $SO_2$ Group 2 source or a CSAPR $SO_2$ Group 2 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $SO_2$ Group 2 unit at the source or the CSAPR $SO_2$ Group 2 unit;

(2) Any holder of a leasehold interest in a CSAPR $SO_2$ Group 2 unit at the source or the CSAPR $SO_2$ Group 2 unit, 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 CSAPR $SO_2$ Group 2 unit; and

(3) Any purchaser of power from a CSAPR $SO_2$ Group 2 unit at the source or the CSAPR $SO_2$ Group 2 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $SO_2$ Group 2 allowances, the moving of CSAPR $SO_2$ Group 2 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $SO_2$ Group 2 allowance, the unique identification number assigned to each CSAPR $SO_2$ Group 2 allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $SO_2$ Group 2 Trading Program pursuant to § 52.39(a), (c), (g) through (k), and (m) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired

combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour or hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in 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.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74618, Oct. 26, 2016; 86 FR 23195, Apr. 30, 2021]

### § 97.703 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74619, Oct. 26, 2016]

### § 97.704 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $SO_2$ Group 2 units, and any source that includes one or more such units shall be a CSAPR $SO_2$ Group 2 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $SO_2$ Group 2 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 CSAPR $SO_2$ Group 2 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $SO_2$ Group 2 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $SO_2$ Group 2 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $SO_2$ Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $SO_2$ Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR $SO_2$ Group 2 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $SO_2$ Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $SO_2$ Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $SO_2$ Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.39(h) or (i) of this chapter, of the CSAPR $SO_2$ Group 2 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $SO_2$ Group 2 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information

provided in connection with the petition contained significant, relevant errors or omissions.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74619, Oct. 26, 2016; 86 FR 23195, Apr. 30, 2021]

### § 97.705 Retired unit exemption.

(a)(1) Any CSAPR $SO_2$ Group 2 unit that is permanently retired shall be exempt from § 97.706(b) and (c)(1), § 97.724, and §§ 97.730 through 97.735.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $SO_2$ Group 2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) (1) A unit exempt under paragraph (a) of this section shall not emit any $SO_2$, starting on the date that the exemption takes effect.

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

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR $SO_2$ Group 2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[76 FR 48458, Aug. 8, 2011, as amended at 86 FR 23195, Apr. 30, 2021]

### § 97.706 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.713 through 97.718.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.730 through 97.735.

(2) The emissions data determined in accordance with §§ 97.730 through 97.735 shall be used to calculate allocations of CSAPR $SO_2$ Group 2 allowances under §§ 97.711(a)(2) and (b) and 97.712 and to determine compliance with the CSAPR $SO_2$ Group 2 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.730 through 97.735 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$SO_2$ emissions requirements*—(1) *CSAPR $SO_2$ Group 2 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source shall hold, in the source's compliance account, CSAPR $SO_2$ Group 2 allowances available for deduction for such control period under § 97.724(a) in an amount not less than the tons of total $SO_2$ emissions for such control period from all CSAPR $SO_2$ Group 2 units at the source.

(ii) If total $SO_2$ emissions during a control period in a given year from the CSAPR $SO_2$ Group 2 units at a CSAPR $SO_2$ Group 2 source are in excess of the CSAPR $SO_2$ Group 2 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $SO_2$ Group 2 unit at the source shall hold the CSAPR $SO_2$ Group 2 allowances required for deduction under § 97.724(d); and

(B) The owners and operators of the source and each CSAPR $SO_2$ Group 2 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $SO_2$ Group 2 assurance provisions.* (i) If total $SO_2$ emissions during a control period in a given year from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $SO_2$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $SO_2$ Group 2 allowances available for deduction for such control period under § 97.725(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.725(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $SO_2$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $SO_2$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $SO_2$ Group 2 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $SO_2$ emissions exceed the sum, for such control period, of the State $SO_2$ Group 2 trading budget under § 97.710(a) and the State's variability limit under § 97.710(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $SO_2$ emissions from the CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $SO_2$ Group 2 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or

comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $SO_2$ Group 2 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $SO_2$ Group 2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2015 or the deadline for meeting the unit's monitor certification requirements under § 97.730(b) and for each control period thereafter.

(ii) A CSAPR $SO_2$ Group 2 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.730(b) and for each control period thereafter.

(4) *Vintage of CSAPR $SO_2$ Group 2 allowances held for compliance.* (i) A CSAPR $SO_2$ Group 2 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $SO_2$ Group 2 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $SO_2$ Group 2 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $SO_2$ Group 2 allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $SO_2$ Group 2 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $SO_2$ Group 2 allowance is a limited authorization to emit one ton of $SO_2$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $SO_2$ Group 2 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $SO_2$ Group 2 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $SO_2$ Group 2 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $SO_2$ emissions using a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.730 through 97.735 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.716 for the designated representative for the source and each CSAPR $SO_2$ Group 2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.716 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $SO_2$ Group 2 Trading Program.

(2) The designated representative of a CSAPR $SO_2$ Group 2 source and each CSAPR $SO_2$ Group 2 unit at the source shall make all submissions required under the CSAPR $SO_2$ Group 2 Trading Program, except as provided in § 97.718. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability*. (1) Any provision of the CSAPR $SO_2$ Group 2 Trading Program that applies to a CSAPR $SO_2$ Group 2 source or the designated representative of a CSAPR $SO_2$ Group 2 source shall also apply to the owners and operators of such source and of the CSAPR $SO_2$ Group 2 units at the source.

(2) Any provision of the CSAPR $SO_2$ Group 2 Trading Program that applies to a CSAPR $SO_2$ Group 2 unit or the designated representative of a CSAPR $SO_2$ Group 2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities*. No provision of the CSAPR $SO_2$ Group 2 Trading Program or exemption under § 97.705 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $SO_2$ Group 2 source or CSAPR $SO_2$ Group 2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48458, Aug. 8, 2011, as amended at 77 FR 10340, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74619, Oct. 26, 2016; 86 FR 23195, Apr. 30, 2021]

### § 97.707 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $SO_2$ Group 2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR $SO_2$ Group 2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR $SO_2$ Group 2 Trading Program, is not a business day, the time period shall be extended to the next business day.

### § 97.708 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $SO_2$ Group 2 Trading Program are set forth in part 78 of this chapter.

### § 97.709 [Reserved]

### § 97.710 State $SO_2$ Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $SO_2$ Group 2 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $SO_2$ Group 2 allowances for the control periods in the years indicated are as follows:

(1) *Alabama*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 216,033 tons.

(ii) The new unit set-aside for 2015 and 2016 is 4,321 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 213,258 tons.

(v) The new unit set-aside for 2017 and thereafter is 4,265 tons.

(vi) [Reserved]

(2) *Georgia*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 158,527 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,171 tons.

(iii) [Reserved]

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 135,565 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,721 tons.

(vi) [Reserved]

(3) *Kansas*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 41,980 tons.

(ii) The new unit set-aside for 2015 and 2016 is 798 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 42 tons.

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 41,980 tons.

(v) The new unit set-aside for 2017 and thereafter is 801 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 42 tons.

(4) *Minnesota*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 41,981 tons.

(ii) The new unit set-aside for 2015 and 2016 is 798 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 42 tons.

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 41,981 tons.

(v) The new unit set-aside for 2017 and thereafter is 800 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 42 tons.

(5) *Nebraska*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 68,162 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,658 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 68 tons.

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 68,162 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,662 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 68 tons.

(6) *South Carolina*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 96,633 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,836 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 97 tons.

(iv) The $SO_2$ Group 2 trading budget for 2017 and thereafter is 96,633 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,836 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 97 tons.

(7) *Texas*. (i) The $SO_2$ Group 2 trading budget for 2015 and 2016 is 294,471 tons.

(ii) The new unit set-aside for 2015 and 2016 is 14,430 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 294 tons.

(iv)–(vi) [Reserved]

(b) The States' variability limits for the State $SO_2$ Group 2 trading budgets for the control periods in 2017 and thereafter are as follows:

(1) The variability limit for Alabama is 38,386 tons.

(2) The variability limit for Georgia is 24,402 tons.

(3) The variability limit for Kansas is 7,556 tons.

(4) The variability limit for Minnesota is 7,557 tons.

(5) The variability limit for Nebraska is 12,269 tons.

(6) The variability limit for South Carolina is 17,394 tons.

(7) [Reserved]

(c) Each State $SO_2$ Group 2 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[77 FR 10340, Feb. 21, 2012, as amended at 77 FR 10349, Feb. 21, 2012; 77 FR 34846, June 12, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74619, Oct. 26, 2016; 86 FR 23195, Apr. 30, 2021]

### § 97.711 Timing requirements for CSAPR $SO_2$ Group 2 allowance allocations.

(a) *Existing units*. (1) CSAPR $SO_2$ Group 2 allowances are allocated, for the control periods in 2015 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $SO_2$ Group 2 unit, and not providing an allocation to a unit in

such notice does not constitute a determination that the unit is not a CSAPR $SO_2$ Group 2 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2014, during the control period in two consecutive years, such unit will not be allocated the CSAPR $SO_2$ Group 2 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $SO_2$ Group 2 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $SO_2$ Group 2 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in a State, in accordance with § 97.712(a)(2) through (7) and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in a State, in accordance with § 97.712(a)(2) through (7), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $SO_2$ Group 2 units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.

(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)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2021 contains any CSAPR $SO_2$ Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $SO_2$ Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $SO_2$ Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $SO_2$ Group 2 units

in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $SO_2$ Group 2 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in accordance with § 97.712(a)(9), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $SO_2$ Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $SO_2$ Group 2 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $SO_2$ Group 2 allowances in accordance with § 97.712(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in Indian country within the borders of a State, in accordance with § 97.712(b)(2) through (7)and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in Indian country within the borders of a State, in accordance with § 97.712(b)(2) through (7), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $SO_2$ Group 2 units) are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable .

(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)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2021 contains any CSAPR $SO_2$ Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any

CSAPR $SO_2$ Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $SO_2$ Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $SO_2$ Group 2 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $SO_2$ Group 2 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $SO_2$ Group 2 allowance allocation to each CSAPR $SO_2$ Group 2 unit in accordance with § 97.712(b)(9), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $SO_2$ Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $SO_2$ Group 2 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $SO_2$ Group 2 allowances in accordance with § 97.712(b)(10).

(c) *Units incorrectly allocated CSAPR $SO_2$ Group 2 allowances.* (1) For each control period in 2015 and thereafter, if the Administrator determines that CSAPR $SO_2$ Group 2 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.39(g), (h), or (i) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.712(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.39(h) or (i) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $SO_2$ Group 2 unit under § 97.704 as of January 1, 2015 and is allocated CSAPR $SO_2$ Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.39(g), (h), or (i) of this chapter, the recipient is not actually a CSAPR $SO_2$ Group 2 unit as of January 1, 2015 and is allocated CSAPR $SO_2$ Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $SO_2$ Group 2 units as of January 1, 2015; or

(B) The recipient is not located as of January 1 of the control period in the State from whose $SO_2$ Group 2 trading budget the CSAPR $SO_2$ Group 2 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.39(g), (h), or (i) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $SO_2$ Group 2 unit under § 97.704 as of January 1 of such control period and is allocated CSAPR $SO_2$ Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under

§52.39(h) or (i) of this chapter, the recipient is not actually a CSAPR $SO_2$ Group 2 unit as of January 1 of such control period and is allocated CSAPR $SO_2$ Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $SO_2$ Group 2 units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $SO_2$ Group 2 allowances under §97.721.

(3) If the Administrator already recorded such CSAPR $SO_2$ Group 2 allowances under §97.721 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under §97.724(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $SO_2$ Group 2 allowances were recorded an amount of CSAPR $SO_2$ Group 2 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $SO_2$ Group 2 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $SO_2$ Group 2 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $SO_2$ Group 2 allowances under §97.721 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under §97.724(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $SO_2$ Group 2 allowances.

(5)(i) With regard to the CSAPR $SO_2$ Group 2 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $SO_2$ Group 2 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $SO_2$ Group 2 trading budget the CSAPR $SO_2$ Group 2 allowances were allocated; or

(B) If the State has a SIP revision approved under §52.39(h) or (i) of this chapter covering such control period, include such CSAPR $SO_2$ Group 2 allowances in the portion of the State $SO_2$ Group 2 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $SO_2$ Group 2 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $SO_2$ Group 2 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under §52.39(h) or (i) of this chapter covering such control period, include such CSAPR $SO_2$ Group 2 allowances in the portion of the State $SO_2$ Group 2 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $SO_2$ Group 2 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $SO_2$ Group 2 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74620, Oct. 26, 2016; 86 FR 23196, Apr. 30, 2021]

### §97.712 CSAPR $SO_2$ Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $SO_2$ Group 2 units in each State, the Administrator will allocate CSAPR $SO_2$

Group 2 allowances to the CSAPR $SO_2$ Group 2 units as follows:

(1) The CSAPR $SO_2$ Group 2 allowances will be allocated to the following CSAPR $SO_2$ Group 2 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $SO_2$ Group 2 units that are not allocated an amount of CSAPR $SO_2$ Group 2 allowances in the notice of data availability issued under § 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period;

(ii) CSAPR $SO_2$ Group 2 units whose allocation of an amount of CSAPR $SO_2$ Group 2 allowances for such control period in the notice of data availability issued under § 97.711(a)(1) is covered by § 97.711(c)(2) or (3);

(iii) CSAPR $SO_2$ Group 2 units that are allocated an amount of CSAPR $SO_2$ Group 2 allowances for such control period in the notice of data availability issued under § 97.711(a)(1), which allocation is terminated for such control period pursuant to § 97.711(a)(2), and that operate during the control period immediately preceding such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $SO_2$ Group 2 units under § 97.711(c)(1)(ii) whose allocation of an amount of CSAPR $SO_2$ Group 2 allowances for such control period in the notice of data availability issued under § 97.711(b)(1)(ii)(B) is covered by § 97.711(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $SO_2$ Group 2 allowances in an amount equal to the applicable amount of tons of $SO_2$ emissions as set forth in § 97.710(a) and will be allocated additional CSAPR $SO_2$ Group 2 allowances (if any) in accordance with § 97.711(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $SO_2$ Group 2 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $SO_2$ Group 2 allowances for the latestof the following control periods and for each subsequent control period:

(i) The control period in 2015;

(ii)(A) The first control period after the control period in which the CSAPR $SO_2$ Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $SO_2$ Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $SO_2$ Group 2 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $SO_2$ Group 2 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 2 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $SO_2$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $SO_2$ Group 2 allowances determined for all such CSAPR $SO_2$ Group 2 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $SO_2$ Group 2 allowances in the new unit set-

aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 2 allowances determined for each such CSAPR $SO_2$ Group 2 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $SO_2$ Group 2 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 2 unit the amount of the CSAPR $SO_2$ Group 2 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $SO_2$ Group 2 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(i) and (ii), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $SO_2$ Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $SO_2$ Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $SO_2$ Group 2 allowances referenced in the notice of data availability required under § 97.711(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 2 allowances determined for each such CSAPR $SO_2$ Group 2 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 2 unit the amount of the CSAPR $SO_2$ Group 2 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $SO_2$ Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $SO_2$ Group 2 unit that is in the State, is allocated an amount of CSAPR $SO_2$ Group 2 allowances in the notice of data availability issued under § 97.711(a)(1), and continues to be allocated CSAPR $SO_2$ Group 2 allowances for such control period in accordance with § 97.711(a)(2), an amount of CSAPR $SO_2$ Group 2 allowances equal to the following: The total amount of such remaining unallocated CSAPR $SO_2$ Group 2 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.711(a) for such control period, divided by the remainder of the amount of tons in the applicable State

$SO_2$ Group 2 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(iii), (iv), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2015 and thereafter and for the CSAPR $SO_2$ Group 2 units in Indian country within the borders of each State, the Administrator will allocate CSAPR $SO_2$ Group 2 allowances to the CSAPR $SO_2$ Group 2 units as follows:

(1) The CSAPR $SO_2$ Group 2 allowances will be allocated to the following CSAPR $SO_2$ Group 2 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $SO_2$ Group 2 units that are not allocated an amount of CSAPR $SO_2$ Group 2 allowances in the notice of data availability issued under § 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $SO_2$ Group 2 units under § 97.711(c)(1)(ii) whose allocation of an amount of CSAPR $SO_2$ Group 2 allowances for such control period in the notice of data availability issued under § 97.711(b)(2)(ii)(B) is covered by § 97.711(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $SO_2$ Group 2 allowances in an amount equal to the applicable amount of tons of $SO_2$ emissions as set forth in § 97.710(a) and will be allocated additional CSAPR $SO_2$ Group 2 allowances (if any) in accordance with § 97.711(c)(5).

(3) The Administrator will determine, for each CSAPR $SO_2$ Group 2 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $SO_2$ Group 2 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2015; and

(ii)(A) The first control period after the control period in which the CSAPR

$SO_2$ Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $SO_2$ Group 2 unit's monitoring systems under §97.730(b), for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $SO_2$ Group 2 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $SO_2$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $SO_2$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $SO_2$ Group 2 allowances determined for all such CSAPR $SO_2$ Group 2 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $SO_2$ Group 2 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 2 allowances determined for each such CSAPR $SO_2$ Group 2 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $SO_2$ Group 2 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 2 unit the amount of the CSAPR $SO_2$ Group 2 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $SO_2$ Group 2 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in §97.711(b)(2)(i) and (ii), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $SO_2$ Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $SO_2$ Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $SO_2$ Group 2 allowances referenced in the notice of data availability required under §97.711(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $SO_2$ Group 2 allowances determined for each such CSAPR $SO_2$ Group 2 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum

under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $SO_2$ Group 2 unit the amount of the CSAPR $SO_2$ Group 2 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $SO_2$ Group 2 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $SO_2$ Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $SO_2$ Group 2 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.39(h) or (i) of this chapter covering such control period, include such unallocated CSAPR $SO_2$ Group 2 allowances in the portion of the State $SO_2$ Group 2 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(2)(iii), (iv), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(2)(i), (ii), and (v), of the amount of CSAPR $SO_2$ Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $SO_2$ Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $SO_2$ Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $SO_2$ Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74620, Oct. 26, 2016; 86 FR 23196, Apr. 30, 2021]

### § 97.713 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.715, each CSAPR $SO_2$ Group 2 source, including all CSAPR $SO_2$ Group 2 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $SO_2$ Group 2 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $SO_2$ Group 2 units at the source and shall act in accordance with the certification statement in § 97.716(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.716:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $SO_2$ Group 2 unit at the source in all matters pertaining to the CSAPR $SO_2$ Group 2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $SO_2$ Group 2 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.715, each CSAPR $SO_2$ Group 2 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $SO_2$ Group 2 units at the source and shall act in accordance with the certification statement in § 97.716(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.716,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $SO_2$ Group 2 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.702, and §§ 97.714 through 97.718, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

### § 97.714 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.718 concerning delegation of authority to make submissions, each submission under the CSAPR $SO_2$ Group 2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $SO_2$ Group 2 source and CSAPR $SO_2$ Group 2 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $SO_2$ Group 2 source or a CSAPR $SO_2$ Group 2 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.718.

**§ 97.715 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.**

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.716. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $SO_2$ Group 2 source and the CSAPR $SO_2$ Group 2 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.716. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $SO_2$ Group 2 source and the CSAPR $SO_2$ Group 2 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $SO_2$ Group 2 source or a CSAPR $SO_2$ Group 2 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.716, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $SO_2$ Group 2 source or a CSAPR $SO_2$ Group 2 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.716 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $SO_2$ Group 2 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.716 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

**§ 97.716 Certificate of representation.**

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $SO_2$ Group 2 source, and each CSAPR $SO_2$ Group 2 unit at the source, for which the certificate of representation is submitted, including source name, source

category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

(3) A list of the owners and operators of the CSAPR $SO_2$ Group 2 source and of each CSAPR $SO_2$ Group 2 unit at the source.

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

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $SO_2$ Group 2 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $SO_2$ Group 2 Trading Program on behalf of the owners and operators of the source and of each CSAPR $SO_2$ Group 2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $SO_2$ Group 2 unit, or where a utility or industrial customer purchases power from a CSAPR $SO_2$ Group 2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $SO_2$ Group 2 unit at the source; and CSAPR $SO_2$ Group 2 allowances and proceeds of transactions involving CSAPR $SO_2$ Group 2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR $SO_2$ Group 2 allowances by contract, CSAPR $SO_2$ Group 2 allowances and proceeds of transactions involving CSAPR $SO_2$ Group 2 allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74620, Oct. 26, 2016]

### §97.717 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under §97.716 has been submitted and received, the Administrator will rely on the certificate of

representation unless and until a superseding complete certificate of representation under § 97.716 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $SO_2$ Group 2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $SO_2$ Group 2 allowance transfers.

**§ 97.718 Delegation by designated representative and alternate designated representative.**

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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 designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.718(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 97.718(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 97.718 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated

representative submitting such notice of delegation.

**§ 97.719 [Reserved]**

**§ 97.720 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.716, the Administrator will establish a compliance account for the CSAPR $SO_2$ Group 2 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.725(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $SO_2$ Group 2 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account 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 authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $SO_2$ Group 2 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $SO_2$ Group 2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym ''TR'' in place of the acronym ''CSAPR'' in the required certification statement will be considered a complete application for a general account under such paragraph, and

the certification statement included in such application for a general account will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances held in the general account in all matters pertaining to the CSAPR $SO_2$ Group 2 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $SO_2$ Group 2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym ''TR'' will be interpreted as if the acronym ''CSAPR'' appeared in place of the acronym ''TR''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $SO_2$ Group 2 allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $SO_2$ Group 2 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $SO_2$ Group 2 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $SO_2$ Group 2 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $SO_2$ Group 2 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $SO_2$ Group 2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $SO_2$ Group 2 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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 authorized account representative or

alternate 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 in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.720(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.720(c)(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 97.720(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $SO_2$ Group 2 allowance transfer under § 97.722 for any CSAPR $SO_2$ Group 2 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $SO_2$ Group 2 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $SO_2$ Group 2 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $SO_2$ Group 2 allowance transfer under § 97.722 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $SO_2$ Group 2 allowances in the account, only if the submission has

been made, signed, and certified in accordance with §§ 97.714(a) and 97.718 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74620, Oct. 26, 2016; 86 FR 23198, Apr. 30, 2021]

### § 97.721 Recordation of CSAPR $SO_2$ Group 2 allowance allocations and auction results.

(a) By November 7, 2011, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.711(a) for the control period in 2015.

(b) By November 7, 2011, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.711(a) for the control period in 2016, unless the State in which the source is located notifies the Administrator in writing by October 17, 2011 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2015 meeting the requirements of § 52.39(g)(1) through (4) of this chapter.

(1) If, by April 1, 2015, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2015 in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.711(a) for the control period in 2016.

(2) If the State submits to the Administrator by April 1, 2015, and the Administrator approves by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source as provided in such approved, complete SIP revision for the control period in 2016.

(3) If the State submits to the Administrator by April 1, 2015, and the Administrator does not approve by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.711(a) for the control period in 2016.

(c) By July 1, 2016, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control periods in 2017 and 2018.

(d) By July 1, 2017, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control periods in 2019 and 2020.

(e) By July 1, 2018, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control periods in 2021 and 2022.

(f)(1) By July 1, 2019 and July 1, 2020, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the

fourth year after the year of the applicable recordation deadline under this paragraph.

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.712(a)(2) through (8) and (12), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $SO_2$ Group 2 allowances auctioned to CSAPR $SO_2$ Group 2 units, in accordance with § 97.712(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.712(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.712(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.712(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR $SO_2$ Group 2 source's compliance account the CSAPR $SO_2$ Group 2 allowances allocated to the CSAPR $SO_2$ Group 2 units at the source in accordance with § 97.712(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $SO_2$ Group 2 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.711 or § 97.712 or with a SIP revision approved under § 52.39(h) or (i) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $SO_2$ Group 2 allowances to a CSAPR $SO_2$ Group 2 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $SO_2$ Group 2 allowance a unique identification number that will include digits

identifying the year of the control period for which the CSAPR $SO_2$ Group 2 allowance is allocated or auctioned.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74620, Oct. 26, 2016; 86 FR 23198, Apr. 30, 2021]

### § 97.722 Submission of CSAPR $SO_2$ Group 2 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $SO_2$ Group 2 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $SO_2$ Group 2 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

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

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $SO_2$ Group 2 allowance identified by serial number in the transfer.

### § 97.723 Recordation of CSAPR $SO_2$ Group 2 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $SO_2$ Group 2 allowance transfer that is correctly submitted under § 97.722, the Administrator will record a CSAPR $SO_2$ Group 2 allowance transfer by moving each CSAPR $SO_2$ Group 2 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $SO_2$ Group 2 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $SO_2$ Group 2 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.724 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $SO_2$ Group 2 allowance transfer is not correctly submitted under § 97.722, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $SO_2$ Group 2 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $SO_2$ Group 2 allowance transfer that is not correctly submitted under § 97.722, the Administrator will notify the 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.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74621, Oct. 26, 2016]

### § 97.724 Compliance with CSAPR $SO_2$ Group 2 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $SO_2$ Group 2 allowances are available to be deducted for compliance with a source's CSAPR $SO_2$ Group 2 emissions limitation for a control period in a given year only if the CSAPR $SO_2$ Group 2 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.723, of CSAPR $SO_2$ Group 2 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $SO_2$ Group 2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $SO_2$ Group 2 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $SO_2$ Group 2 allowances deducted equals the

number of tons of total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at the source for such control period; or

(2) If there are insufficient CSAPR $SO_2$ Group 2 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $SO_2$ Group 2 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $SO_2$ Group 2 allowances for deduction*—(1) *Identification by serial number*. The designated representative for a source may request that specific CSAPR $SO_2$ Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $SO_2$ Group 2 source and the appropriate serial numbers.

(2) *First-in, first-out*. The Administrator will deduct CSAPR $SO_2$ Group 2 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $SO_2$ Group 2 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $SO_2$ Group 2 allowances that were recorded in the compliance account pursuant to § 97.721 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $SO_2$ Group 2 allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions*. After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $SO_2$ Group 2 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $SO_2$ Group 2 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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 48458, Aug. 8, 2011, as amended at 81 FR 74621, Oct. 26, 2016; 86 FR 23198, Apr. 30, 2021]

### § 97.725 Compliance with CSAPR $SO_2$ Group 2 assurance provisions.

(a) *Availability for deduction*. CSAPR $SO_2$ Group 2 allowances are available to be deducted for compliance with the CSAPR $SO_2$ Group 2 assurance provisions for a control period in a given year by the owners and operators of a group of one or more CSAPR $SO_2$ Group 2 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 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 $SO_2$ Group 2 allowances available under paragraph (a) of this section for compliance with the CSAPR $SO_2$ Group 2 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR

$SO_2$ Group 2 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 $SO_2$ emissions exceed the State assurance level as described in § 97.706(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $SO_2$ emissions exceed the respective State assurance levels for such control period—

(A) 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 $SO_2$ Group 2 sources and units in such State (and such Indian country), the common designated representative's share of the total $SO_2$ emissions from all CSAPR $SO_2$ Group 2 units at CSAPR $SO_2$ Group 2 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR $SO_2$ Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.706(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $SO_2$ emissions from each CSAPR $SO_2$ Group 2 source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.706(c)(2)(iii), §§ 97.706(b) and 97.730 through 97.735, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.702, and the calculation formula in § 97.706(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having CSAPR $SO_2$ Group 2 units with total $SO_2$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) 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 $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR $SO_2$ Group 2 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)(ii) of this section and after the recordation, in accordance with § 97.723, of CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR $SO_2$ Group 2 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)(ii) 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)(ii) 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 $SO_2$ Group 2 allowances that the owners and operators are required to hold in accordance with § 97.706(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)(ii) 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 $SO_2$ Group 2 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.706(c)(2)(i) for such control period with regard to the CSAPR $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 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) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR $SO_2$ Group 2 allowances that the owners and operators are required to hold for such control period with regard to the CSAPR $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 allowances in the assurance account established by the Administrator for the appropriate CSAPR $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 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 amount, as required, as

of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 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 $SO_2$ Group 2 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate CSAPR $SO_2$ Group 2 sources, CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 allowances held in such assurance account equal to the amount of the decrease. If CSAPR $SO_2$ Group 2 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $SO_2$ Group 2 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $SO_2$ Group 2 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $SO_2$ Group 2 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $SO_2$ Group 2 assurance provisions for such control period must be a CSAPR $SO_2$ Group 2 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 48458, Aug. 8, 2011, as amended at 77 FR 10340, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74621, Oct. 26, 2016; 86 FR 23198, Apr. 30, 2021]

### § 97.726 Banking.

(a) A CSAPR $SO_2$ Group 2 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 $SO_2$ Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $SO_2$ Group 2 allowance is deducted or transferred under § 97.711(c), § 97.723, § 97.724, § 97.725, § 97.727, or § 97.728 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $SO_2$ Group 2 trading budget is set forth in § 97.710(a) for a given State, the Administrator may record a transfer of any CSAPR $SO_2$ Group 2 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

[76 FR 48458, Aug. 8, 2011, as amended at 86 FR 23199, Apr. 30, 2021]

### § 97.727 Account error.

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

### § 97.728 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $SO_2$ Group 2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $SO_2$ Group 2 allowances from or transfer CSAPR $SO_2$ Group 2 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted

under paragraph (a) of this section, and record such deductions and transfers.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74621, Oct. 26, 2016]

### § 97.729 [Reserved]

### § 97.730 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $SO_2$ Group 2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.702 and in § 72.2 of this chapter shall apply, 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 ''CSAPR $SO_2$ Group 2 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.702, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $SO_2$ Group 2 unit''. The owner or operator of a unit that is not a CSAPR $SO_2$ Group 2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR $SO_2$ Group 2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $SO_2$ Group 2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $SO_2$ mass emissions and individual unit heat input (including all systems required to monitor $SO_2$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.731 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 of a CSAPR $SO_2$ Group 2 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the later of the following dates:

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

(3) The owner or operator of a CSAPR $SO_2$ Group 2 unit for which construction of a new stack or flue or installation of add-on $SO_2$ emission controls is completed after the applicable deadline under paragraph (b)(1) or (2) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.730 through § 97.735, rather than the monitoring systems required under part 75 of this chapter;

(ii) $SO_2$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.735, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $SO_2$ Group 2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for $SO_2$ concentration, stack gas flow rate, stack gas moisture content, fuel flow

rate, and any other parameters required to determine $SO_2$ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CSAPR $SO_2$ Group 2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.735.

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

(3) No owner or operator of a CSAPR $SO_2$ Group 2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $SO_2$ mass 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 CSAPR $SO_2$ Group 2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.705 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.731(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $SO_2$ Group 2 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74621, Oct. 26, 2016]

### § 97.731 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $SO_2$ Group 2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.730(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 appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.730(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $SO_2$ Group 2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.730(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.730(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.730(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.730(a)(1) that may significantly affect the ability of the system to accurately measure or record $SO_2$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.730(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.730(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.733.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $SO_2$ Group 2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period,

each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $SO_2$ Group 2 Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.732(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

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

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

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

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

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

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

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74621, Oct. 26, 2016; 86 FR 23199, Apr. 30, 2021]

### § 97.732 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.731 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.731 for each disapproved monitoring system.

[76 FR 48458, Aug. 8, 2011, as amended at 86 FR 23199, Apr. 30, 2021]

### § 97.733 Notifications concerning monitoring.

The designated representative of a CSAPR $SO_2$ Group 2 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.734 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.714(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $SO_2$ Group 2 unit shall comply with the requirements of § 75.62 of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.731, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the $SO_2$ mass emissions data and heat input data for a CSAPR $SO_2$ Group 2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.730(b).

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall

be submitted in the manner specified in § 75.64 of this chapter.

(3) For CSAPR $SO_2$ Group 2 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $NO_X$ Ozone Season Group 1 Trading Program, or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $SO_2$ mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74621, Oct. 26, 2016]

### § 97.735 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $SO_2$ Group 2 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.730 through 97.734.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

[76 FR 48458, Aug. 8, 2011, as amended at 81 FR 74621, Oct. 26, 2016]

## Subpart EEEEE—CSAPR $NO_X$ Ozone Season Group 2 Trading Program

SOURCE: 81 FR 74621, Oct. 26, 2016, unless otherwise noted.

### § 97.801 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $NO_X$ Ozone Season Group 2 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

### § 97.802 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $NO_X$ Ozone Season Group 2 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(d), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, of the amount of such CSAPR $NO_X$ Ozone Season Group 2 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Ozone Season Group 2 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Ozone Season Group 2 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Ozone Season Group 2 allowances, the CSAPR $NO_X$ Ozone Season Group 2 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $NO_X$ Ozone Season Group 2 allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Ozone Season Group 2 allowances.

*Allowance transfer deadline* means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer

must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

*Alternate designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 2 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.825(b)(3) for certain owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Ozone Season Group 2 allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Ozone Season Group 2 assurance provisions in accordance with §§ 97.806 and 97.825.

*Auction* means, with regard to CSAPR $NO_X$ Ozone Season Group 2 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, of such CSAPR $NO_X$ Ozone Season Group 2 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account and, for a CSAPR $NO_X$ Ozone Season Group 2 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Base CSAPR $NO_X$ Ozone Season Group 2 source* means a source that includes one or more base CSAPR $NO_X$ Ozone Season Group 2 units.

*Base CSAPR $NO_X$ Ozone Season Group 2 unit* means a CSAPR $NO_X$ Ozone Season Group 2 unit, provided that any unit that would not be a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804(a) and (b) is not a base CSAPR $NO_X$ Ozone Season Group 2 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 § 97.805.

(i) For a unit that is a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this

definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 § 97.805, for a unit that is not a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.813(a) and 97.815(a) as the designated representative for a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.806(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such control period to the group of one or more base CSAPR $NO_X$ Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances purchased by an owner or operator of such base CSAPR $NO_X$ Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR $NO_X$ Ozone Season Group 2 units in accordance with the CSAPR $NO_X$ Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b) for such control period, and divided by the greater of such State $NO_X$ Ozone Season Group 2 trading budget or the sum of all amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances for such

control period allocated to or purchased in the State's auction for all such base CSAPR $NO_X$ Ozone Season Group 2 units;

(2) Provided that the allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such control period under § 97.526(d).

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more base CSAPR $NO_X$ Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $NO_X$ Ozone Season Group 2 source under this subpart, in which any CSAPR $NO_X$ Ozone Season Group 2 allowance allocations to the CSAPR $NO_X$ Ozone Season Group 2 units at the source are recorded and in which are held any CSAPR $NO_X$ Ozone Season Group 2 allowances available for use for a control period in a given year in complying with the source's CSAPR $NO_X$ Ozone Season Group 2 emissions limitation in accordance with §§ 97.806 and 97.824.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $NO_X$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.830 through 97.835. The following systems are the principal types of continuous emission monitoring systems:

(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 $NO_X$ 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 $NO_X$ emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

(5) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting May 1 of a calendar year, except as provided in § 97.806(c)(3), and ending on September 30 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with

subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart or § 97.526(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 2 allowance deduction* or *deduct CSAPR $NO_X$ Ozone Season Group 2 allowances* means the permanent withdrawal of CSAPR $NO_X$ Ozone Season Group 2 allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $NO_X$ Ozone Season Group 2 emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.806 and 97.825).

*CSAPR $NO_X$ Ozone Season Group 2 allowances held* or *hold CSAPR $NO_X$ Ozone Season Group 2 allowances* means the CSAPR $NO_X$ Ozone Season Group 2 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 2 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 2 allowance transfer in accordance with this subpart.

*CSAPR $NO_X$ Ozone Season Group 2 emissions limitation* means, for a CSAPR $NO_X$ Ozone Season Group 2 source, the tonnage of $NO_X$ emissions authorized in a control period in a given year by the CSAPR $NO_X$ Ozone Season Group 2 allowances available for deduction for the source under § 97.824(a) for such control period.

*CSAPR $NO_X$ Ozone Season Group 2 source* means a source that includes one or more CSAPR $NO_X$ Ozone Season Group 2 units.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 unit* means a unit that is subject to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(d), or § 97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or

(11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $SO_2$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*CSAPR $SO_2$ Group 2 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*Designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 2 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $NO_X$ Ozone Season Group 2 units at a CSAPR $NO_X$ Ozone Season Group 2 source during a control period in a given year that exceeds the CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.804(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of

unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Newly affected CSAPR $NO_X$ Ozone Season Group 2 unit* means a unit that was not a CSAPR $NO_X$ Ozone Season Group 2 unit when it began operating but that thereafter becomes a CSAPR $NO_X$ Ozone Season Group 2 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $NO_X$ Ozone Season Group 2 source or a CSAPR $NO_X$ Ozone Season Group 2 unit at a source respectively, any person who operates, controls, or supervises a CSAPR $NO_X$ Ozone Season Group 2 unit at the source or the CSAPR $NO_X$ Ozone Season Group 2 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $NO_X$ Ozone Season Group 2 source or a CSAPR $NO_X$ Ozone Season Group 2 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $NO_X$ Ozone Season Group 2 unit at the source or the CSAPR $NO_X$ Ozone Season Group 2 unit;

(2) Any holder of a leasehold interest in a CSAPR $NO_X$ Ozone Season Group 2 unit at the source or the CSAPR $NO_X$ Ozone Season Group 2 unit, 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 CSAPR $NO_X$ Ozone Season Group 2 unit; and

(3) Any purchaser of power from a CSAPR $NO_X$ Ozone Season Group 2 unit at the source or the CSAPR $NO_X$ Ozone Season Group 2 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $NO_X$ Ozone Season Group 2 allowances, the moving of CSAPR $NO_X$ Ozone Season Group 2 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $NO_X$ Ozone Season Group 2 allowance, the unique identification number assigned to each CSAPR $NO_X$ Ozone Season Group 2 allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program pursuant to § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55\ (W + 9H)$$

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour* or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in 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.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23199, Apr. 30, 2021]

### § 97.803 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

### § 97.804 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $NO_X$ Ozone Season Group 2 units, and any source that includes one or more such units shall be a CSAPR $NO_X$ Ozone Season Group 2 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $NO_X$ Ozone Season Group 2 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 CSAPR $NO_X$ Ozone Season Group 2 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $NO_X$ Ozone Season Group 2 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $NO_X$ Ozone Season Group 2 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 2 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 2 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 2 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program to the unit or other equipment.

(1) *Petition content*. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response*. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23200, Apr. 30, 2021]

### § 97.805 Retired unit exemption.

(a)(1) Any CSAPR $NO_X$ Ozone Season Group 2 unit that is permanently retired shall be exempt from § 97.806(b) and (c)(1), § 97.824, and §§ 97.830 through 97.835.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $NO_X$ Ozone Season Group 2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

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

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

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23200, Apr. 30, 2021]

### § 97.806 Standard requirements.

(a) *Designated representative requirements*. The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.813 through 97.818.

(b) *Emissions monitoring, reporting, and recordkeeping requirements*. (1) The owners and operators, and the designated representative, of each CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.830 through 97.835.

(2) The emissions data determined in accordance with §§ 97.830 through 97.835 shall be used to calculate allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances under §§ 97.811(a)(2) and (b) and 97.812 and to determine compliance with the CSAPR $NO_X$ Ozone Season Group 2 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions

amount for the monitoring location determined in accordance with §§ 97.830 through 97.835 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$NO_X$ emissions requirements*—(1) *CSAPR $NO_X$ Ozone Season Group 2 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall hold, in the source's compliance account, CSAPR $NO_X$ Ozone Season Group 2 allowances available for deduction for such control period under § 97.824(a) in an amount not less than the tons of total $NO_X$ emissions for such control period from all CSAPR $NO_X$ Ozone Season Group 2 units at the source.

(ii) If total $NO_X$ emissions during a control period in a given year from the CSAPR $NO_X$ Ozone Season Group 2 units at a CSAPR $NO_X$ Ozone Season Group 2 source are in excess of the CSAPR $NO_X$ Ozone Season Group 2 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall hold the CSAPR $NO_X$ Ozone Season Group 2 allowances required for deduction under § 97.824(d); and

(B) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $NO_X$ Ozone Season Group 2 assurance provisions.* (i) If total $NO_X$ emissions during a control period in a given year from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $NO_X$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $NO_X$ Ozone Season Group 2 allowances available for deduction for such control period under § 97.825(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.825(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $NO_X$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $NO_X$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $NO_X$ Ozone Season Group 2 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $NO_X$ emissions exceed the sum, for such control period,

of the State $NO_X$ Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $NO_X$ emissions from the base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $NO_X$ Ozone Season Group 2 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $NO_X$ Ozone Season Group 2 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $NO_X$ Ozone Season Group 2 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, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.830(b) and for each control period thereafter.

(ii) A base CSAPR $NO_X$ Ozone Season Group 2 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.830(b) and for each control period thereafter.

(4) *Vintage of CSAPR $NO_X$ Ozone Season Group 2 allowances held for compliance.* (i) A CSAPR $NO_X$ Ozone Season Group 2 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 2 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $NO_X$ Ozone Season Group 2 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 2 allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $NO_X$ Ozone Season Group 2 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $NO_X$ Ozone Season Group 2 allowance is a limited authorization to emit one ton of $NO_X$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $NO_X$ Ozone Season Group 2 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR $NO_X$ Ozone Season Group 2 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $NO_X$ Ozone Season Group 2 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $NO_X$ emissions using a continuous emission

monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.830 through 97.835 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.816 for the designated representative for the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.816 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

(2) The designated representative of a CSAPR $NO_X$ Ozone Season Group 2 source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall make all submissions required under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, except as provided in § 97.818. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 2 source or the designated representative of a CSAPR $NO_X$ Ozone Season Group 2 source shall also apply to the owners and operators of such source and of the CSAPR $NO_X$ Ozone Season Group 2 units at the source.

(2) Any provision of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 2 unit or the designated representative of a CSAPR $NO_X$ Ozone Season Group 2 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR $NO_X$ Ozone Season Group 2 Trading Program or exemption under § 97.805 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $NO_X$ Ozone Season Group 2 source or CSAPR $NO_X$ Ozone Season Group 2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

### § 97.807 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 2 Trading

Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, is not a business day, the time period shall be extended to the next business day.

### § 97.808 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program are set forth in part 78 of this chapter.

### § 97.809 [Reserved]

### § 97.810 State $NO_X$ Ozone Season Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $NO_X$ Ozone Season Group 2 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control periods in the years indicated are as follows:

(1) *Alabama*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 13,211 tons.

(ii) The new unit set-aside for 2017 and thereafter is 255 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 13 tons.

(2) *Arkansas*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 is 12,048 tons and for 2018 and thereafter is 9,210 tons.

(ii) The new unit set-aside for 2017 is 240 tons and for 2018 and thereafter is 185 tons.

(iii) [Reserved]

(3) [Reserved]

(4) *Illinois*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 14,601 tons.

(ii) The new unit set-aside for 2017 through 2020 is 302 tons.

(iii) [Reserved]

(5) *Indiana*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 23,303 tons.

(ii) The new unit set-aside for 2017 through 2020 is 468 tons.

(iii) [Reserved]

(6) *Iowa*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 11,272 tons.

(ii) The new unit set-aside for 2017 and thereafter is 324 tons.

(iii) The Indian country new unit set-aside is 11 tons.

(7) *Kansas*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 8,027 tons.

(ii) The new unit set-aside for 2017 and thereafter is 148 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 8 tons.

(8) *Kentucky*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 21,115 tons.

(ii) The new unit set-aside for 2017 through 2020 is 426 tons.

(iii) [Reserved]

(9) *Louisiana*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 18,639 tons.

(ii) The new unit set-aside for 2017 through 2020 is 352 tons.

(iii) The Indian country new unit set-aside for 2017 through 2020 is 19 tons.

(10) *Maryland*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 3,828 tons.

(ii) The new unit set-aside for 2017 through 2020 is 152 tons.

(iii) [Reserved]

(11) *Michigan*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 17,023 tons.

(ii) The new unit set-aside for 2017 through 2020 is 665 tons.

(iii) The Indian country new unit set-aside for 2017 through 2020 is 17 tons.

(12) *Mississippi*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 6,315 tons.

(ii) The new unit set-aside for 2017 and thereafter is 120 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 6 tons.

(13) *Missouri*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 15,780 tons.

(ii) The new unit set-aside for 2017 and thereafter is 324 tons.

(iii) [Reserved]

(14) *New Jersey*. (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 2,062 tons.

(ii) The new unit set-aside for 2017 through 2020 is 192 tons.

(iii) [Reserved]

(15) *New York.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 5,135 tons.

(ii) The new unit set-aside for 2017 through 2020 is 252 tons.

(iii) The Indian country new unit set-aside for 2017 through 2020 is 5 tons.

(16) *Ohio.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 19,522 tons.

(ii) The new unit set-aside for 2017 through 2020 is 401 tons.

(iii) [Reserved]

(17) *Oklahoma.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 11,641 tons.

(ii) The new unit set-aside for 2017 and thereafter is 221 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 12 tons.

(18) *Pennsylvania.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 17,952 tons.

(ii) The new unit set-aside for 2017 through 2020 is 541 tons.

(iii) [Reserved]

(19) *Tennessee.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 7,736 tons.

(ii) The new unit set-aside for 2017 and thereafter is 156 tons.

(iii) [Reserved]

(20) *Texas.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 52,301 tons.

(ii) The new unit set-aside for 2017 and thereafter is 998 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 52 tons.

(21) *Virginia.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 9,223 tons.

(ii) The new unit set-aside for 2017 through 2020 is 562 tons.

(iii) [Reserved]

(22) *West Virginia.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 through 2020 is 17,815 tons.

(ii) The new unit set-aside for 2017 through 2020 is 356 tons.

(iii) [Reserved]

(23) *Wisconsin.* (i) The $NO_X$ Ozone Season Group 2 trading budget for 2017 and thereafter is 7,915 tons.

(ii) The new unit set-aside for 2017 and thereafter is 151 tons.

(iii) The Indian country new unit set-aside for 2017 and thereafter is 8 tons.

(b) The States' variability limits for the State $NO_X$ Ozone Season Group 2 trading budgets for the control periods in the years indicated are as follows:

(1) The variability limit for Alabama for 2017 and thereafter is 2,774 tons.

(2) The variability limit for Arkansas for 2017 is 2,530 tons and for 2018 and thereafter is 1,934 tons.

(3) [Reserved]

(4) The variability limit for Illinois for 2017 through 2020 is 3,066 tons.

(5) The variability limit for Indiana for 2017 through 2020 is 4,894 tons.

(6) The variability limit for Iowa for 2017 and thereafter is 2,367 tons.

(7) The variability limit for Kansas for 2017 and thereafter is 1,686 tons.

(8) The variability limit for Kentucky for 2017 through 2020 is 4,434 tons.

(9) The variability limit for Louisiana for 2017 through 2020 is 3,914 tons.

(10) The variability limit for Maryland for 2017 through 2020 is 804 tons.

(11) The variability limit for Michigan for 2017 through 2020 is 3,575 tons.

(12) The variability limit for Mississippi for 2017 and thereafter is 1,326 tons.

(13) The variability limit for Missouri for 2017 and thereafter is 3,314 tons.

(14) The variability limit for New Jersey for 2017 through 2020 is 433 tons.

(15) The variability limit for New York for 2017 through 2020 is 1,078 tons.

(16) The variability limit for Ohio for 2017 through 2020 is 4,100 tons.

(17) The variability limit for Oklahoma for 2017 and thereafter is 2,445 tons.

(18) The variability limit for Pennsylvania for 2017 through 2020 is 3,770 tons.

(19) The variability limit for Tennessee for 2017 and thereafter is 1,625 tons.

(20) The variability limit for Texas for 2017 and thereafter is 10,983 tons.

(21) The variability limit for Virginia for 2017 through 2020 is 1,937 tons.

(22) The variability limit for West Virginia for 2017 through 2020 is 3,741 tons.

(23) The variability limit for Wisconsin for 2017 and thereafter is 1,662 tons.

(c) Each State $NO_X$ Ozone Season Group 2 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23200, Apr. 30, 2021]

### § 97.811 Timing requirements for CSAPR $NO_X$ Ozone Season Group 2 allowance allocations.

(a) *Existing units.* (1) CSAPR $NO_X$ Ozone Season Group 2 allowances are allocated, for the control periods in 2017 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $NO_X$ Ozone Season Group 2 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR $NO_X$ Ozone Season Group 2 unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2016, during the control period in two consecutive years, such unit will not be allocated the CSAPR $NO_X$ Ozone Season Group 2 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $NO_X$ Ozone Season Group 2 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 2 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i)(A) By June 1 of each year from 2017 through 2020, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 2 units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.

(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)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for a control period before 2021 contains any

CSAPR $NO_X$ Ozone Season Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 2 units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 2 units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in accordance with § 97.812(a)(9), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 2 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 2 allowances in accordance with § 97.812(a)(10).

(2) *Indian country new unit set-asides.* (i)(A) By June 1 of each year from 2017 through 2020, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in Indian country within the borders of a State, in accordance with § 97.812(b)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in Indian country within the borders of a State, in accordance with § 97.812(b)(2) through (7), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 2

units) are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.

(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)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for a control period before 2021 contains any CSAPR $NO_X$ Ozone Season Group 2 allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR $NO_X$ Ozone Season Group 2 units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR $NO_X$ Ozone Season Group 2 units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR $NO_X$ Ozone Season Group 2 units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR $NO_X$ Ozone Season Group 2 units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR $NO_X$ Ozone Season Group 2 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit in accordance with § 97.812(b)(9), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR $NO_X$ Ozone Season Group 2 units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 2 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 2 allowances in accordance with § 97.812(b)(10).

(c) *Units incorrectly allocated CSAPR $NO_X$ Ozone Season Group 2 allowances.* (1) For each control period in 2017 and thereafter, if the Administrator determines that CSAPR $NO_X$ Ozone Season Group 2 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(7), (8), or (9) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.812(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.38(b)(8) or (9) of this

chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804 as of May 1, 2017 and is allocated CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(7), (8), or (9) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 2 unit as of May 1, 2017 and is allocated CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 2 units as of May 1, 2017; or

(B) The recipient is not located as of May 1 of the control period in the State from whose $NO_X$ Ozone Season Group 2 trading budget the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(7), (8), or (9) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 2 unit under § 97.804 as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 2 unit as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 2 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 2 allowances under § 97.821.

(3) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 2 allowances under § 97.821 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.824(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $NO_X$ Ozone Season Group 2 allowances were recorded an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $NO_X$ Ozone Season Group 2 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $NO_X$ Ozone Season Group 2 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 2 allowances under § 97.821 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.824(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $NO_X$ Ozone Season Group 2 allowances.

(5)(i) With regard to the CSAPR $NO_X$ Ozone Season Group 2 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 2 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $NO_X$ Ozone Season Group 2 trading budget the CSAPR $NO_X$ Ozone Season Group 2 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(8) or (9) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 2 allowances in the portion of the State $NO_X$ Ozone Season Group 2 trading budget that may be allocated

for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $NO_X$ Ozone Season Group 2 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 2 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(b)(8) or (9) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 2 allowances in the portion of the State $NO_X$ Ozone Season Group 2 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $NO_X$ Ozone Season Group 2 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $NO_X$ Ozone Season Group 2 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

(d) *Recall of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods after 2020.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph and paragraphs (d)(2) through (7) of this section shall apply with regard to each CSAPR $NO_X$ Ozone Season Group 2 allowance that was allocated for a control period after 2020 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) and that was initially recorded in the compliance account for the source that includes the unit, whether such CSAPR $NO_X$ Ozone Season Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR $NO_X$ Ozone Season Group 2 allowance remains in such compliance account or has been transferred to another Allowance Management System account.

(2)(i) For each CSAPR $NO_X$ Ozone Season Group 2 allowance described in paragraph (d)(1) of this section that was allocated for a given control period and initially recorded in a given source's compliance account, one CSAPR $NO_X$ Ozone Season Group 2 allowance that was allocated for the same or an earlier control period and initially recorded in the same or any other Allowance Management System account must be surrendered in accordance with the procedures in paragraphs (d)(3) and (4) of this section.

(ii)(A) The surrender requirement under paragraph (d)(2)(i) of this section corresponding to each CSAPR $NO_X$ Ozone Season Group 2 allowance described in paragraph (d)(1) of this section initially recorded in a given source's compliance account shall apply to such source's current owners and operators, except as provided in paragraph (d)(2)(ii)(B) of this section.

(B) If the owners and operators of a given source as of a given date assumed ownership and operational control of the source through a transaction that did not also provide rights to direct the use or transfer of a given CSAPR $NO_X$ Ozone Season Group 2 allowance described in paragraph (d)(1) of this section with regard to such source (whether recordation of such CSAPR $NO_X$ Ozone Season Group 2 allowance in the source's compliance account occurred before such transaction or was anticipated to occur after such transaction), then the surrender requirement under paragraph (d)(2)(i) of this section corresponding to such CSAPR $NO_X$ Ozone Season Group 2 allowance shall apply to the most recent former owners and operators of the source before the occurrence of such a transaction.

(C) The Administrator will not adjudicate any private legal dispute among

the owners and operators of a source or among the former owners and operators of a source, including any disputes relating to the requirements to surrender CSAPR $NO_X$ Ozone Season Group 2 allowances for the source under paragraph (d)(2)(i) of this section.

(3)(i) As soon as practicable on or after June 29, 2021, the Administrator will send a notification to the designated representative for each source described in paragraph (d)(1) of this section identifying the amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for each control period after 2020 and recorded in the source's compliance account and the corresponding surrender requirements for the source under paragraph (d)(2)(i) of this section.

(ii) As soon as practicable on or after July 14, 2021, the Administrator will deduct from the compliance account for each source described in paragraph (d)(1) of this section CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (d)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such compliance account.

(iii) As soon as practicable after completion of the deductions under paragraph (d)(3)(ii) of this section, the Administrator will identify for each source described in paragraph (d)(1) of this section the amounts, if any, of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for each control period after 2020 and recorded in the source's compliance account for which the corresponding surrender requirements under paragraph (d)(2)(i) of this section have not been satisfied and will send a notification concerning such identified amounts to the designated representative for the source.

(iv) With regard to each source for which unsatisfied surrender requirements under paragraph (d)(2)(i) of this section remain after the deductions under paragraph (d)(3)(ii) of this section:

(A) Except as provided in paragraph (d)(3)(iv)(B) of this section, not later than September 15, 2021, the owners and operators of the source shall hold sufficient CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy such unsatisfied surrender requirements under paragraph (d)(2)(i) of this section in the source's compliance account.

(B) With regard to any portion of such unsatisfied surrender requirements that apply to former owners and operators of the source pursuant to paragraph (d)(2)(ii)(B) of this section, not later than September 15, 2021, such former owners and operators shall hold sufficient CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy such portion of the unsatisfied surrender requirements under paragraph (d)(2)(i) of this section either in the source's compliance account or in another Allowance Management System account identified to the Administrator on or before such date in a submission by the authorized account representative for such account.

(C) As soon as practicable on or after September 15, 2021, the Administrator will deduct from the Allowance Management System account identified in accordance with paragraph (d)(3)(iv)(A) or (B) of this section CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (d)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR $NO_X$ Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such account.

(v) When making deductions under paragraph (d)(3)(ii) or (iv) of this section to address the surrender requirements under paragraph (d)(2)(i) of this section for a given source:

(A) The Administrator will make deductions to address any surrender requirements with regard to first the 2021 control period, then the 2022 control period, then the 2023 control period, and finally the 2024 control period.

(B) When making deductions to address the surrender requirements with regard to a given control period, the Administrator will first deduct CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for such given control period and will then deduct CSAPR $NO_X$

Ozone Season Group 2 allowances allocated for each successively earlier control period in sequence.

(C) When deducting CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for a given control period from a given Allowance Management System account, the Administrator will first deduct CSAPR $NO_X$ Ozone Season Group 2 allowances initially recorded in the account under §97.821 (if the account is a compliance account) in the order of recordation and will then deduct CSAPR $NO_X$ Ozone Season Group 2 allowances recorded in the account under §97.526(d) or §97.823 in the order of recordation.

(4)(i) To the extent the surrender requirements under paragraph (d)(2)(i) of this section corresponding to any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for a control period after 2020 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraph (d)(3) of this section, as soon as practicable on or after November 15, 2021, the Administrator will deduct such initially recorded CSAPR $NO_X$ Ozone Season Group 2 allowances from any Allowance Management System accounts in which such CSAPR $NO_X$ Ozone Season Group 2 allowances are held, making such deductions in any order determined by the Administrator, until all such surrender requirements for such source have been satisfied or until all such CSAPR $NO_X$ Ozone Season Group 2 allowances have been deducted, except as provided in paragraph (d)(4)(ii) of this section.

(ii) If no person with an ownership interest in a given CSAPR $NO_X$ Ozone Season Group 2 allowance as of January 31, 2021 was an owner or operator of the source in whose compliance account such CSAPR $NO_X$ Ozone Season Group 2 allowance was initially recorded, was a direct or indirect parent or subsidiary of an owner or operator of such source, or was directly or indirectly under common ownership with an owner or operator of such source, the Administrator will not deduct such CSAPR $NO_X$ Ozone Season Group 2 allowance under paragraph (d)(4)(i) of this section. For purposes of this paragraph, each owner or operator of a source shall be deemed to be a person with an ownership interest in any CSAPR $NO_X$ Ozone Season Group 2 allowance held in that source's compliance account. The limitation established by this paragraph on the deductibility of certain CSAPR $NO_X$ Ozone Season Group 2 allowances under paragraph (d)(4)(i) of this section shall not be construed as a waiver of the surrender requirements under paragraph (d)(2)(i) of this section corresponding to such CSAPR $NO_X$ Ozone Season Group 2 allowances.

(iii) Not less than 45 days before the planned date for any deductions under paragraph (d)(4)(i) of this section, the Administrator will send a notification to the authorized account representative for the Allowance Management System account from which such deductions will be made identifying the CSAPR $NO_X$ Ozone Season Group 2 allowances to be deducted and the data upon which the Administrator has relied and specifying a process for submission of any objections to such data. Any objections must be submitted to the Administrator not later than 15 days before the planned date for such deductions as indicated in such notification.

(5) To the extent the surrender requirements under paragraph (d)(2)(i) of this section corresponding to any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for a control period after 2020 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraphs (d)(3) and (4) of this section:

(i) The persons identified in accordance with paragraph (d)(2)(ii) of this section with regard to such source and each such CSAPR $NO_X$ Ozone Season Group 2 allowance shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(ii) Each such CSAPR $NO_X$ Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

(6) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR $NO_X$ Ozone Season Group 2

allowances under paragraphs (d)(3) and (4) of this section.

(7)(i) Each submission, objection, or other written communication from a designated representative, authorized account representative, or other person to the Administrator under paragraph (d)(2), (3), or (4) of this section shall be sent electronically to the email address *CSAPR@epa.gov*. Each such communication from a designated representative must contain the certification statement set forth in § 97.814(a), and each such communication from the authorized account representative for a general account must contain the certification statement set forth in § 97.820(c)(2)(ii).

(ii) Each notification from the Administrator to a designated representative or authorized account representative under paragraph (d)(3) or (4) of this section will be sent electronically to the email address most recently received by the Administrator for such representative. In any such notification, the Administrator may provide information by means of a reference to a publicly accessible website where the information is available.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23200, Apr. 30, 2021]

### § 97.812 CSAPR $NO_X$ Ozone Season Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2017 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 2 units in each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 2 allowances to the CSAPR $NO_X$ Ozone Season Group 2 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 2 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 2 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 2 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the notice of data availability issued under § 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period;

(ii) CSAPR $NO_X$ Ozone Season Group 2 units whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(a)(1) is covered by § 97.811(c)(2) or (3);

(iii) CSAPR $NO_X$ Ozone Season Group 2 units that are allocated an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or in the notice of data availability issued under § 97.811(a)(1), which allocation is terminated for such control period pursuant to § 97.811(a)(2), and that operate during the control period immediately preceding such control period; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR $NO_X$ Ozone Season Group 2 units under § 97.811(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period in the notice of data availability issued under § 97.811(b)(1)(ii)(B) is covered by § 97.811(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 2 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.810(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 2 allowances (if any) in accordance with § 97.811(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 2 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 2 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2017;

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Ozone Season Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 2 unit's monitoring systems under §97.830(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $NO_X$ Ozone Season Group 2 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $NO_X$ Ozone Season Group 2 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 2 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 2 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 2 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 2 unit the amount of the CSAPR $NO_X$ Ozone Season Group 2 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in §97.811(b)(1)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances referenced in the notice of data availability required under §97.811(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 2 unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 2 unit the amount of the CSAPR $NO_X$ Ozone Season Group 2 allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $NO_X$ Ozone Season Group 2 unit that is in the State, is allocated an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the notice of data availability issued under § 97.811(a)(1), and continues to be allocated CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period in accordance with § 97.811(a)(2), an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances equal to the following: The total amount of such remaining unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.811(a) for such control period, divided by the remainder of the amount of tons in the applicable State $NO_X$ Ozone Season Group 2 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation

amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2017 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 2 units in Indian country within the borders of each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 2 allowances to the CSAPR $NO_X$ Ozone Season Group 2 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 2 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 2 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 2 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the notice of data availability issued under §97.811(a)(1) and that have deadlines for certification of monitoring systems under §97.830(b) not later than September 30 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR $NO_X$ Ozone Season Group 2 units under §97.811(c)(1)(ii) whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances for such control period in the notice of data availability issued under §97.811(b)(2)(ii)(B) is covered by §97.811(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 2 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in §97.810(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 2 allowances (if any) in accordance with §97.811(c)(5).

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 2 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 2 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2017; and

(ii)(A) The first control period after the control period in which the CSAPR $NO_X$ Ozone Season Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 2 unit's monitoring systems under §97.830(b), for allocations for a control period in 2021 or thereafter.

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 2 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of $NO_X$ emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of allocation amounts of the CSAPR $NO_X$ Ozone Season Group 2 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 2 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 2 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph

(b)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 2 unit the amount of the CSAPR $NO_X$ Ozone Season Group 2 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(i) and (ii), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR $NO_X$ Ozone Season Group 2 allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances referenced in the notice of data availability required under § 97.811(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 2 unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 2 unit the amount of the CSAPR $NO_X$ Ozone Season Group 2 allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(8) or (9) of this chapter covering such control period, include such unallocated CSAPR $NO_X$ Ozone Season Group 2 allowances in the portion of the State $NO_X$ Ozone Season Group 2 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(iii), (iv), and (v), of the amount of CSAPR $NO_X$ Ozone

Season Group 2 allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23203, Apr. 30, 2021]

**§ 97.813 Authorization of designated representative and alternate designated representative.**

(a) Except as provided under § 97.815, each CSAPR $NO_X$ Ozone Season Group 2 source, including all CSAPR $NO_X$ Ozone Season Group 2 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 2 units at the source and shall act in accordance with the certification statement in § 97.816(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.816:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.815, each CSAPR $NO_X$ Ozone Season Group 2 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 2 units at the source and shall act in accordance with

the certification statement in § 97.816(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.816,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.802, and §§ 97.814 through 97.818, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

### § 97.814 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.818 concerning delegation of authority to make submissions, each submission under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR $NO_X$ Ozone Season Group 2 source and CSAPR $NO_X$ Ozone Season Group 2 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $NO_X$ Ozone Season Group 2 source or a CSAPR $NO_X$ Ozone Season Group 2 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.818.

### § 97.815 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.816. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 2 source and the CSAPR $NO_X$ Ozone Season Group 2 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.816. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 2 source and the CSAPR $NO_X$ Ozone Season Group 2 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 source or a CSAPR $NO_X$ Ozone Season Group 2 unit at the source is not included in the list of owners and operators in the certificate of representation under §97.816, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $NO_X$ Ozone Season Group 2 source or a CSAPR $NO_X$ Ozone Season Group 2 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under §97.816 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $NO_X$ Ozone Season Group 2 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under §97.816 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

**§97.816 Certificate of representation.**

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $NO_X$ Ozone Season Group 2 source, and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

(3) A list of the owners and operators of the CSAPR $NO_X$ Ozone Season Group 2 source and of each CSAPR $NO_X$ Ozone Season Group 2 unit at the source.

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

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 2 unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program on behalf of the owners and operators of the source and of each CSAPR $NO_X$ Ozone Season Group 2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $NO_X$ Ozone Season Group 2 unit, or where a utility or industrial customer purchases power from a CSAPR $NO_X$ Ozone Season Group 2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $NO_X$ Ozone Season Group 2 unit at the source; and CSAPR $NO_X$ Ozone Season Group 2 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR $NO_X$ Ozone Season Group 2 allowances by contract, CSAPR $NO_X$ Ozone Season Group 2 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 2 allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section or § 97.516 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

### § 97.817 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.816 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.816 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers.

**§ 97.818 Delegation by designated representative and alternate designated representative.**

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.818(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 97.818(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.818 is terminated.''.

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section or § 97.518(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' in place of the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'', respectively.

**§ 97.819 [Reserved]**

**§ 97.820 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.816, the Administrator will establish a compliance account for the CSAPR $NO_X$ Ozone Season Group 2 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.825(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $NO_X$ Ozone Season Group 2 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

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

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

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section or § 97.520(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'' in place of the phrase ''CSAPR $NO_X$ Ozone

Season Group 2'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 2 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR $NO_X$ Ozone Season'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' appeared in place of the phrase ''TR $NO_X$ Ozone Season''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and

submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 2 allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 2 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 2 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $NO_X$ Ozone Season Group 2 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.820(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.820(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.820(c)(5) is terminated.''.

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section or § 97.520(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' in place of the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $NO_X$ Ozone Season Group 2 allowance transfer under § 97.822 for any CSAPR $NO_X$ Ozone Season Group 2 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $NO_X$ Ozone Season Group 2 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $NO_X$ Ozone Season Group 2 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $NO_X$ Ozone Season Group 2 allowance transfer under § 97.822 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $NO_X$ Ozone Season Group 2 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.814(a) and 97.818 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23204, Apr. 30, 2021]

### § 97.821 Recordation of CSAPR $NO_X$ Ozone Season Group 2 allowance allocations and auction results.

(a) By January 9, 2017, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2017.

(b) By January 9, 2017, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018, unless the State in which the source is located notifies the Administrator in writing by December 27, 2016 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2017 meeting the requirements of § 52.38(b)(7)(i) through (iv) of this chapter.

(1) If, by April 1, 2017 the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2017 in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018.

(2) If the State submits to the Administrator by April 1, 2017 and the Administrator approves by October 1, 2017 such complete SIP revision, the Administrator will record by October 1, 2017 in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source as provided in such approved, complete SIP revision for the control period in 2018.

(3) If the State submits to the Administrator by April 1, 2017 and the Administrator does not approve by October 1, 2017 such complete SIP revision, the Administrator will record by October 1, 2017 in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.811(a) for the control period in 2018.

(c) By July 1, 2018, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to

CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control periods in 2019 and 2020.

(d) By July 1, 2019, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control periods in 2021 and 2022.

(e) By July 1, 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control periods in 2023 and 2024.

(f) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.811(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g)(1) By August 1 of each year from 2017 through 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.812(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 2 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 2 units, in accordance with § 97.812(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)(1) By August 1 of each year from 2017 through 2020, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.812(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.812(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15 of each year from 2018 through 2021, the Administrator will record in each CSAPR $NO_X$ Ozone

Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.812(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15 of each year from 2018 through 2021, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 2 source's compliance account the CSAPR $NO_X$ Ozone Season Group 2 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 2 units at the source in accordance with § 97.812(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR $NO_X$ Ozone Season Group 2 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.811 or § 97.812 or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $NO_X$ Ozone Season Group 2 allowances to a CSAPR $NO_X$ Ozone Season Group 2 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $NO_X$ Ozone Season Group 2 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $NO_X$ Ozone Season Group 2 allowance is allocated or auctioned.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23204, Apr. 30, 2021]

### § 97.822 Submission of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $NO_X$ Ozone Season Group 2 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $NO_X$ Ozone Season Group 2 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $NO_X$ Ozone Season Group 2 allowance identified by serial number in the transfer.

### § 97.823 Recordation of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer that is correctly submitted under § 97.822, the Administrator will record a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer by moving each CSAPR $NO_X$ Ozone Season Group 2 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $NO_X$ Ozone Season Group 2 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $NO_X$ Ozone Season Group 2 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.824 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer is not correctly submitted under § 97.822, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $NO_X$ Ozone Season Group 2 allowance transfer that is not correctly submitted under § 97.822, the Administrator will notify the 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.

### § 97.824 Compliance with CSAPR $NO_X$ Ozone Season Group 2 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $NO_X$ Ozone Season Group 2 allowances are available to be deducted for compliance with a source's CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for a control period in a given year only if the CSAPR $NO_X$ Ozone Season Group 2 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.823, of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $NO_X$ Ozone Season Group 2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $NO_X$ Ozone Season Group 2 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances deducted equals the number of tons of total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 2 units at the source for such control period; or

(2) If there are insufficient CSAPR $NO_X$ Ozone Season Group 2 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $NO_X$ Ozone Season Group 2 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 2 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 2 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $NO_X$ Ozone Season Group 2 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $NO_X$ Ozone Season Group 2 allowances that were recorded in the compliance account pursuant to § 97.821 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $NO_X$ Ozone Season Group 2 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.526(d), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $NO_X$ Ozone Season

Group 2 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $NO_X$ Ozone Season Group 2 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23204, Apr. 30, 2021]

### § 97.825 Compliance with CSAPR $NO_X$ Ozone Season Group 2 assurance provisions.

(a) *Availability for deduction*. CSAPR $NO_X$ Ozone Season Group 2 allowances are available to be deducted for compliance with the CSAPR $NO_X$ Ozone Season Group 2 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 2 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $NO_X$ Ozone Season Group 2 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 base CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowances available under paragraph (a) of this section for compliance with the CSAPR $NO_X$ Ozone Season Group 2 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ emissions exceed the State assurance level as described in § 97.806(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $NO_X$ emissions exceed the respective State assurance levels for such control period—

(A) 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 base CSAPR $NO_X$ Ozone Season Group 2 sources and units in such State (and such Indian country), the common designated representative's share of the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 2 units at base CSAPR $NO_X$ Ozone Season Group 2 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $NO_X$ emissions from each base CSAPR $NO_X$ Ozone Season Group 2 source in each such State (and Indian country within the borders of such State).

(2) The Administrator will provide an opportunity for submission of objections to the calculations referenced by

each notice of data availability required in paragraph (b)(1)(ii) of this section.

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.806(c)(2)(iii), §§ 97.806(b) and 97.830 through 97.835, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.802, and the calculation formula in § 97.806(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having base CSAPR $NO_X$ Ozone Season Group 2 units with total $NO_X$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of base CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) 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 base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR $NO_X$ Ozone Season Group 2 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)(ii) of this section and after the recordation, in accordance with § 97.823, of CSAPR $NO_X$ Ozone Season Group 2 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 base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 2 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)(ii) 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)(ii) 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 $NO_X$ Ozone Season Group 2 allowances that the owners and operators are required to hold in accordance with § 97.806(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)(ii) 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 $NO_X$ Ozone Season Group 2 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.806(c)(2)(i) for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowances in the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 2 sources, base CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowances held in such assurance account equal to the amount of the decrease. If CSAPR $NO_X$ Ozone Season Group 2 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $NO_X$ Ozone Season Group 2 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $NO_X$ Ozone Season Group 2 assurance provisions for such control period must be a CSAPR $NO_X$ Ozone Season Group 2 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.

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23205, Apr. 30, 2021]

**§ 97.826 Banking and conversion.**

(a) A CSAPR $NO_X$ Ozone Season Group 2 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 $NO_X$ Ozone Season Group 2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $NO_X$ Ozone Season Group 2 allowance is deducted or transferred under § 97.811(c) or (d), § 97.823, § 97.824, § 97.825, § 97.827, or § 97.828 or paragraph (c) or (d) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $NO_X$ Ozone Season Group 2 trading budget is set forth in § 97.810(a) for a given State and after completion of the procedures under paragraphs (d)(1) and (2) of this section, the Administrator may record a transfer of any CSAPR $NO_X$ Ozone Season Group 2 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

(d) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter:

(1) By August 13, 2021, the Administrator will temporarily suspend acceptance of CSAPR $NO_X$ Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions:

(i) The Administrator will determine each of the following values:

(A) The total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2020 attributable to the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States), computed as the sum of the State $NO_X$ Ozone Season Group 2 trading budgets under § 97.810(a) for such States for all such control periods plus the product of 1.5 multiplied by the sum of the variability limits under § 97.810(b) for such States for the control period in 2017.

(B) The total tons of $NO_X$ emissions reported in accordance with §§ 97.806(b) and 97.830 through 97.835 for all CSAPR $NO_X$ Ozone Season Group 2 units at CSAPR $NO_X$ Ozone Season Group 2 sources in the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States) for the control periods in 2017 through 2020.

(C) The full-season CSAPR $NO_X$ Ozone Season Group 3 allowance bank target, computed as the sum for all States listed in § 52.38(b)(2)(v) of this chapter of the variability limits under § 97.1010(b) for such States for the control period in 2022.

(D) A conversion factor, computed as the quotient, rounded down to the nearest whole number, of the remainder of the total amount of CSAPR $NO_X$ Ozone Season Group 2 allowances determined under paragraph (d)(1)(i)(A) of this section minus the total tons of $NO_X$ emissions determined under paragraph (d)(1)(i)(B) of this section divided by the full-season CSAPR $NO_X$ Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(C) of this section.

(E) The adjusted CSAPR $NO_X$ Ozone Season Group 3 allowance bank target, computed as the product, rounded to

the nearest allowance, of the full-season CSAPR $NO_X$ Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(C) of this section multiplied by a fraction whose numerator is the number of days from June 29, 2021 through September 30, 2021, inclusive, and whose denominator is 153.

(ii) The Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 to sources in States listed in § 52.38(b)(2)(v) of this chapter (and Indian country within the borders of such States) as follows:

(A) The Administrator will determine for each such source the source's maximum share, computed as the quotient, rounded down to the nearest whole number, of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods before 2021 held in the source's compliance account divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(B) The Administrator will determine a source allocation scaling factor, computed as the lesser of 1.0000 or the quotient, expressed to four decimal places, of the adjusted CSAPR $NO_X$ Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section divided by the sum for all such sources of the maximum shares under paragraph (d)(1)(ii)(A) of this section.

(C) The Administrator will allocate to each such source an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of such source's maximum share under paragraph (d)(1)(ii)(A) of this section multiplied by the source allocation scaling factor determined under paragraph (d)(1)(ii)(B) of this section.

(iii) If the sum for all sources of the allocations under paragraph (d)(1)(ii)(C) of this section is less than the adjusted CSAPR $NO_X$ Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 to general accounts as follows:

(A) The Administrator will determine for each general account the account's maximum share, computed as the quotient, rounded down to the nearest whole number, of the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods before 2021 held in the account divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(B) The Administrator will determine a general account allocation scaling factor, computed as the lesser of 1.0000 or the quotient, expressed to four decimal places, of the remainder of the adjusted CSAPR $NO_X$ Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section minus the sum for all sources of the allocations under paragraph (d)(1)(ii)(C) of this section divided by the sum for all general accounts of the maximum shares under paragraph (d)(1)(iii)(A) of this section.

(C) The Administrator will allocate to each general account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of such account's maximum share under paragraph (d)(1)(iii)(A) of this section multiplied by the general account allocation scaling factor determined under paragraph (d)(1)(iii)(B) of this section.

(iv) For the compliance account of each source, and for each general account, to which an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances greater than zero is allocated under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section, respectively:

(A) The Administrator will determine the amount of CSAPR $NO_X$ Ozone Season Group 2 allowances required to be deducted from the account, computed as the product of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the source or general account under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section multiplied by the conversion factor determined under paragraph (d)(1)(i)(D) of this section. The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods before 2021 from the account on a first-in, first-out basis in the order set forth in § 97.824(c)(2)(i) and (ii).

(B) The Administrator will record in the account the allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section and the deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances under paragraph (d)(1)(iv)(A) of this section.

(2)(i) During the period beginning February 1, 2022 and ending February 28, 2022, the designated representative for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State) may request that the Administrator allocate additional CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 to the source pursuant to paragraph (d)(2)(ii) of this section. Any such request shall be submitted to the Administrator electronically at the email address *CSAPR@epa.gov*.

(ii) For each source covered by a request under paragraph (d)(2)(i) of this section, as soon as practicable on or after March 1, 2022, the Administrator will deduct from the source's compliance account, on a first-in, first-out basis in the order set forth in § 97.824(c)(2)(i) and (ii), the maximum number of sets of 18 CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods before 2021 available in the compliance account. The Administrator will then allocate to the source one CSAPR $NO_X$ Ozone Season Group 3 allowance for the control period in 2021 for each set of 18 CSAPR $NO_X$ Ozone Season Group 2 allowances deducted. The Administrator will record the allocations and deductions under this paragraph in the source's compliance account.

(3) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR $NO_X$ Ozone Season Group 2 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 2 allowances but instead will allocate and record in such account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(e) Notwithstanding any other provision of this subpart or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter, CSAPR $NO_X$ Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR $NO_X$ Ozone Season Group 2 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1) Except as provided in paragraph (e)(2) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR $NO_X$ Ozone Season Group 2 allowances for the control period in a year from 2017 through 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR $NO_X$ Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(2) CSAPR $NO_X$ Ozone Season Group 3 allowances may not be used to satisfy requirements to surrender CSAPR $NO_X$ Ozone Season Group 2 allowances under § 97.811(d).

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23205, Apr. 30, 2021]

### § 97.827 Account error.

The Administrator may, at his or her sole discretion and on his or her own

motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

### § 97.828 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $NO_X$ Ozone Season Group 2 allowances from or transfer CSAPR $NO_X$ Ozone Season Group 2 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

### § 97.829 [Reserved]

### § 97.830 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $NO_X$ Ozone Season Group 2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.802 and in § 72.2 of this chapter shall apply, 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 ''CSAPR $NO_X$ Ozone Season Group 2 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.802, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $NO_X$ Ozone Season Group 2 unit''. The owner or operator of a unit that is not a CSAPR $NO_X$ Ozone Season Group 2 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 CSAPR $NO_X$ Ozone Season Group 2 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $NO_X$ Ozone Season Group 2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.831 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 of a CSAPR $NO_X$ Ozone Season Group 2 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2017;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.834(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 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), or (3) of this section shall

meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.830 through § 97.835, rather than the monitoring systems required under part 75 of this chapter;

(ii) $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.835, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for $NO_X$ 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 CSAPR $NO_X$ Ozone Season Group 2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.835.

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

(3) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $NO_X$ mass 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 CSAPR $NO_X$ Ozone Season Group 2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.805 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.831(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

### § 97.831 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.830(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 appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.830(a)(1) that is 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 designated representative shall resubmit the petition to the Administrator under § 97.835 to determine whether the approval applies under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.830(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.830(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.830(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.830(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under § 97.830(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.830(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.833.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.832(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

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

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

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

[81 FR 74621, Oct. 26, 2016, as amended at 86 FR 23207, Apr. 30, 2021]

### § 97.832 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.831 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or

operator shall follow the applicable initial certification or recertification procedures in § 97.831 for each disapproved monitoring system.

### § 97.833 Notifications concerning monitoring.

The designated representative of a CSAPR $NO_X$ Ozone Season Group 2 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

### § 97.834 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.814(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 2 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.831, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR $NO_X$ Ozone Season Group 2 unit is subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the 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 report the $NO_X$ mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR $NO_X$ Ozone Season Group 2 unit is not subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the $NO_X$ 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.

(2) The designated representative shall report the $NO_X$ mass emissions data and heat input data for a CSAPR $NO_X$ Ozone Season Group 2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2017 through June 30, 2017;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.830(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after 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 CSAPR $NO_X$ Ozone Season Group 2 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, CSAPR $SO_2$ Group 1 Trading Program, or CSAPR $SO_2$ Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $NO_X$ mass emission data, heat

input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification*. The 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)(1)(ii)(B) of this section, the $NO_X$ emission rate and $NO_X$ concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate $NO_X$ emissions.

### § 97.835 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $NO_X$ Ozone Season Group 2 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.830 through 97.834.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

## Subpart FFFFF—Texas $SO_2$ Trading Program

SOURCE: 82 FR 48364, Oct. 17, 2017, unless otherwise noted.

### § 97.901 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Texas $SO_2$ Trading Program under sections 110 and 169A of the Clean Air Act and 40 CFR 52.2312, as a means of addressing Texas' obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to sulfur dioxide emissions from electricity generating units.

### § 97.902 Definitions.

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

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to Texas $SO_2$ Trading Program allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart or any SIP revision submitted by the State approved by the Administrator, of the amount of such Texas $SO_2$ Trading Program allowances to be initially credited, at no cost to the recipient, to a Texas $SO_2$ Trading Program unit.

*Allowance Management System* means the system by which the Administrator records allocations, transfers, and deductions of Texas $SO_2$ Trading Program allowances under the Texas $SO_2$ Trading Program. Such allowances are allocated, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Texas $SO_2$ Trading Program allowances.

*Allowance transfer deadline* means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a Texas $SO_2$ Trading Program allowance transfer must be submitted for recordation in a Texas $SO_2$ Trading Program source's compliance account in order to be available for use in complying with the source's Texas $SO_2$ Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

*Alternate designated representative* means, for a Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program 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 this subpart, to act on behalf of the designated representative in matters pertaining to the Texas $SO_2$ Trading Program. If the Texas $SO_2$ Trading Program source is also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.925(b)(3) for certain owners and operators of a group of one or more Texas $SO_2$ Trading Program sources and

units, in which are held Texas $SO_2$ Trading Program allowances available for use for a control period in a given year in complying with the Texas $SO_2$ Trading Program assurance provisions in accordance with §§ 97.906 and 97.925.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of Texas $SO_2$ Trading Program allowances held in the general account and, for a Texas $SO_2$ Trading Program source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Business day* means a day that does not fall on a weekend or a federal holiday.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Commence commercial operation* means, with regard to a Texas $SO_2$ Trading Program unit, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of July 1 immediately after the allowance transfer deadline for such control period, the same natural person is authorized under §§ 97.913(a) and 97.915(a) as the designated representative for a group of one or more Texas $SO_2$ Trading Program sources and units.

*Common designated representative's assurance level* means, with regard to a specific common designated representative and control period in a given year for which the State assurance level is exceeded as described in § 97.906(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of Texas $SO_2$ Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to the group of one or more Texas $SO_2$ Trading Program units having the common designated representative for such control period multiplied by the sum for such control period of the Texas $SO_2$ Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b) and divided by the sum of the total amount of Texas $SO_2$ Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to all Texas $SO_2$ Trading Program units;

(2) Provided that, in the case of a Texas $SO_2$ Trading Program unit that operates during, but has no amount of Texas $SO_2$ Trading Program allowances allocated under § 97.911 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated the amount of Texas $SO_2$ Trading Program allowances shown for the unit in § 97.911(a)(1).

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and the total amount of $SO_2$ emissions from all Texas $SO_2$ Trading Program units during such control period, the total tonnage of $SO_2$ emissions during such control period from the group of one or more Texas $SO_2$ Trading Program units having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a Texas $SO_2$ Trading Program source under this subpart, in which any Texas $SO_2$ Trading Program allowance allocations to the Texas $SO_2$ Trading Program units at the source are recorded and in which are held any Texas $SO_2$ Trading Program allowances available

for use for a control period in a given year in complying with the source's Texas $SO_2$ Trading Program emissions limitation in accordance with §§ 97.906 and 97.924.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $SO_2$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.930 through 97.935. The following systems are the principal types of continuous emission monitoring systems:

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

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

(4) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting January 1 of a calendar year, except as provided in § 97.906(c)(3), and ending on December 31 of the same year, inclusive.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16), of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under §§ 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*Designated representative* means, for a Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the Texas $SO_2$ Trading Program. If the Texas $SO_2$ Trading Program source is also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the Texas $SO_2$ Trading Program units at a Texas $SO_2$ Trading Program source during a control period in a given year that exceeds the Texas $SO_2$ Trading Program emissions limitation for the source for such control period.

*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 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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.

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

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in § 72.2 of this chapter.

*Natural person* means a human being, as opposed to a legal person, which may be a private (*i.e.*, business entity or non-governmental organization) or public (*i.e.*, government) organization.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a Texas $SO_2$ Trading Program source or a Texas $SO_2$ Trading Program unit at a source respectively, any person who operates, controls, or supervises a Texas $SO_2$ Trading Program unit at the source or the Texas $SO_2$ Trading Program unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a Texas $SO_2$ Trading Program source or a Texas $SO_2$

Trading Program unit at a source, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a Texas $SO_2$ Trading Program unit at the source or the Texas $SO_2$ Trading Program unit;

(2) Any holder of a leasehold interest in a Texas $SO_2$ Trading Program unit at the source or the Texas $SO_2$ Trading Program unit, 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 Texas $SO_2$ Trading Program unit; and

(3) Any purchaser of power from a Texas $SO_2$ Trading Program unit at the source or the Texas $SO_2$ Trading Program unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Receive* or *receipt of* means, when referring to 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 Administrator in the regular course of business.

*Recordation*, *record*, or *recorded* means, with regard to Texas $SO_2$ Trading Program allowances, the moving of Texas $SO_2$ Trading Program allowances by the Administrator into, out of, or between Allowance Management 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Serial number* means, for a Texas $SO_2$ Trading Program allowance, the unique identification number assigned to each Texas $SO_2$ Trading Program allowance by the Administrator.

*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. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means Texas.

*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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

*Texas $SO_2$ Trading Program* means an $SO_2$ air pollution control and emission reduction program established in accordance with this subpart and 40 CFR 52.2312 (including such a program that is revised in a SIP revision approved by the Administrator), or established in a SIP revision approved by the Administrator, as a means of addressing the State's obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to emissions of $SO_2$ from electricity generating units.

*Texas $SO_2$ Trading Program allowance* means a limited authorization issued and allocated by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator, to emit one ton of $SO_2$ during a control period of the specified calendar year

for which the authorization is allocated or of any calendar year thereafter under the Texas $SO_2$ Trading Program.

*Texas $SO_2$ Trading Program allowance deduction* or *deduct Texas $SO_2$ Trading Program allowances* means the permanent withdrawal of Texas $SO_2$ Trading Program allowances by the Administrator from a compliance account (*e. g.*, in order to account for compliance with the Texas $SO_2$ Trading Program emissions limitation) or from an assurance account (*e. g.*, in order to account for compliance with the assurance provisions under §§ 97.906 and 97.925).

*Texas $SO_2$ Trading Program allowances held* or *hold Texas $SO_2$ Trading Program allowances* means the Texas $SO_2$ Trading Program allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, Texas $SO_2$ Trading Program allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, Texas $SO_2$ Trading Program allowance transfer in accordance with this subpart.

*Texas $SO_2$ Trading Program emissions limitation* means, for a Texas $SO_2$ Trading Program source, the tonnage of $SO_2$ emissions authorized in a control period by the Texas $SO_2$ Trading Program allowances available for deduction for the source under § 97.924(a) for such control period.

*Texas $SO_2$ Trading Program source* means a source that includes one or more Texas $SO_2$ Trading Program units.

*Texas $SO_2$ Trading Program unit* means a unit that is subject to the Texas $SO_2$ Trading Program under § 97.904.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour or hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49214, Aug. 12, 2020; 86 FR 23207, Apr. 30, 2021]

### § 97.903 Measurements, abbreviations, and acronyms.

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

BART—best available retrofit technology
Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide

### § 97.904 Applicability.

(a) Each of the units in Texas listed in the table in § 97.911(a)(1) shall be a Texas $SO_2$ Trading Program unit, and each source that includes one or more such units shall be a Texas $SO_2$ Trading Program source, subject to the requirements of this subpart.

(b) [Reserved]

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

### § 97.905 Retired unit exemptions.

(a)(1) Any Texas $SO_2$ Trading Program unit that is permanently retired shall be exempt from § 97.906(b) and (c)(1), § 97.924, and §§ 97.930 through 97.935.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Texas $SO_2$ Trading Program unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) (1) A unit exempt under paragraph (a) of this section shall not emit any $SO_2$, starting on the date that the exemption takes effect.

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

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

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. A retired unit that resumes operation will not receive an allowance allocation under § 97.911. The unit may receive allowances from the Supplemental Allowance Pool pursuant to § 97.912. All other provisions of Subpart FFFFF regarding monitoring, reporting, recordkeeping and compliance will apply on the first date on which the unit resumes operation.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23207, Apr. 30, 2021]

**§ 97.906 General provisions.**

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.913 through 97.918.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.930 through 97.935.

(2) The emissions data determined in accordance with §§ 97.930 through 97.935 shall be used to calculate allocations of Texas $SO_2$ Trading Program allowances under § 97.912 and to determine compliance with the Texas $SO_2$ Trading Program emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.930 through 97.935 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero and any fraction of a ton greater than or equal to 0.50 being deemed to be a whole ton.

(c) *$SO_2$ emissions requirements*—(1) *Texas $SO_2$ Trading Program emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program unit at the source shall hold, in the source's compliance account, Texas $SO_2$ Trading Program allowances available for deduction for such control period under § 97.924(a) in an amount not less than the tons of total $SO_2$ emissions for such control period from all Texas $SO_2$ Trading Program units at the source.

(ii) If total $SO_2$ emissions during a control period in a given year from the Texas $SO_2$ Trading Program units at a Texas $SO_2$ Trading Program source are

in excess of the Texas $SO_2$ Trading Program emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each Texas $SO_2$ Trading Program unit at the source shall hold the Texas $SO_2$ Trading Program allowances required for deduction under § 97.924(d); and

(B) The owners and operators of the source and each Texas $SO_2$ Trading Program unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *Texas $SO_2$ Trading Program assurance provisions.* (i) If total $SO_2$ emissions during a control period in a given year from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $SO_2$ emissions during such control period exceeds the common designated representative's assurance level for such control period, shall hold (in the assurance account established for the owners and operators of such group) Texas $SO_2$ Trading Program allowances available for deduction for such control period under § 97.925(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.925(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $SO_2$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units for such control period, by which each common designated representative's share of such $SO_2$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the Texas $SO_2$ Trading Program allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources during a control period in a given year exceed the State assurance level if such total $SO_2$ emissions exceed the sum, for such control period, of the Texas $SO_2$ Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources during a control period exceed the State assurance level or if a common designated representative's share of total $SO_2$ emissions from the Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold Texas $SO_2$ Trading Program allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each Texas $SO_2$ Trading Program allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A Texas $SO_2$ Trading Program unit shall be subject

to the requirements under paragraph (c)(1) of this section for the control period starting on January 1, 2019 and for each control period thereafter.

(ii) A Texas $SO_2$ Trading Program unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on January 1, 2021 and for each control period thereafter.

(4) *Vintage of Texas $SO_2$ Trading Program allowances held for compliance.* (i) A Texas $SO_2$ Trading Program allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a Texas $SO_2$ Trading Program allowance that was allocated for such control period or a control period in a prior year.

(ii) A Texas $SO_2$ Trading Program allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a Texas $SO_2$ Trading Program allowance that was allocated for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each Texas $SO_2$ Trading Program allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A Texas $SO_2$ Trading Program allowance is a limited authorization to emit one ton of $SO_2$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the Texas $SO_2$ Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A Texas $SO_2$ Trading Program allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of Texas $SO_2$ Trading Program allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $SO_2$ emissions using a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.930 through 97.935 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.916 for the designated representative for the source and each Texas $SO_2$ Trading Program 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 certificate of representation and

documents are superseded because of the submission of a new certificate of representation under § 97.916 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the Texas $SO_2$ Trading Program.

(2) The designated representative of a Texas $SO_2$ Trading Program source and each Texas $SO_2$ Trading Program unit at the source shall make all submissions required under the Texas $SO_2$ Trading Program, except as provided in § 97.918. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability*. (1) Any provision of the Texas $SO_2$ Trading Program that applies to a Texas $SO_2$ Trading Program source or the designated representative of a Texas $SO_2$ Trading Program source shall also apply to the owners and operators of such source and of the Texas $SO_2$ Trading Program units at the source.

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

(g) *Effect on other authorities*. No provision of the Texas $SO_2$ Trading Program or exemption under § 97.905 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a Texas $SO_2$ Trading Program source or Texas $SO_2$ Trading Program unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

### § 97.907 Computation of time.

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

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

(c) Unless otherwise stated, if the final day of any time period, under the Texas $SO_2$ Trading Program, is not a business day, the time period shall be extended to the next business day.

### § 97.908 Administrative appeal procedures.

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

### § 97.909 [Reserved]

### § 97.910 Texas $SO_2$ Trading Program budget, Supplemental Allowance Pool budget, and variability limit.

(a) The budgets for the Texas $SO_2$ Trading Program and Supplemental Allowance Pool for the control periods in 2019 and thereafter are as follows:

(1) The Texas $SO_2$ Trading Program budget for the control period in 2019 and each future control period is 238,395 tons.

(2) The Texas $SO_2$ Trading Program Supplemental Allowance Pool budget for the control period in 2019 and each future control period is 10,000 tons.

(b) The variability limit for the Texas $SO_2$ Trading Program budget for the control periods in 2021 and thereafter is 16,688 tons.

(c) The Texas $SO_2$ Trading Program budget in paragraph (a)(1) of this section does not include any tons in the Supplemental Allowance Pool budget in paragraph (a)(2) of this section or the variability limit in paragraph (b) of this section.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

### § 97.911 Texas $SO_2$ Trading Program allowance allocations.

(a) *Allocations from the Texas $SO_2$ Trading Program budget*. (1) Except as

provided in paragraph (a)(2) of this section, Texas $SO_2$ Trading Program allowances from the Texas $SO_2$ Trading Program budget will be allocated, for the control periods in 2019 and each year thereafter, as provided in Table 1 to this paragraph (a)(1):

TABLE 1 TO PARAGRAPH (a)(1)—TEXAS $SO_2$ TRADING PROGRAM ALLOCATIONS

| Texas $SO_2$ trading program units | ORIS code | Texas $SO_2$ trading program allocation (tons) | Affiliated ownership group |
|---|---|---|---|
| Big Brown Unit 1 | 3497 | 8,473 | Vistra. |
| Big Brown Unit 2 | 3497 | 8,559 | Vistra. |
| Coleto Creek Unit 1 | 6178 | 9,057 | Vistra. |
| Fayette (Sam Seymour) Unit 1 | 6179 | 7,979 | Lower Colorado River Authority/City of Austin. |
| Fayette (Sam Seymour) Unit 2 | 6179 | 8,019 | Lower Colorado River Authority/City of Austin. |
| Graham Unit 2 | 3490 | 226 | Vistra. |
| HW Pirkey Unit 1 | 7902 | 8,882 | American Electric Power. |
| Harrington Unit 061B | 6193 | 5,361 | Xcel Energy. |
| Harrington Unit 062B | 6193 | 5,255 | Xcel Energy. |
| Harrington Unit 063B | 6193 | 5,055 | Xcel Energy. |
| JT Deely Unit 1 | 6181 | 6,170 | City of San Antonio. |
| JT Deely Unit 2 | 6181 | 6,082 | City of San Antonio. |
| Limestone Unit 1 | 298 | 12,081 | NRG Energy. |
| Limestone Unit 2 | 298 | 12,293 | NRG Energy. |
| Martin Lake Unit 1 | 6146 | 12,024 | Vistra. |
| Martin Lake Unit 2 | 6146 | 11,580 | Vistra. |
| Martin Lake Unit 3 | 6146 | 12,236 | Vistra. |
| Monticello Unit 1 | 6147 | 8,598 | Vistra. |
| Monticello Unit 2 | 6147 | 8,795 | Vistra. |
| Monticello Unit 3 | 6147 | 12,216 | Vistra. |
| Newman Unit 2 | 3456 | 1 | El Paso Electric. |
| Newman Unit 3 | 3456 | 1 | El Paso Electric. |
| Newman Unit **4 | 3456 | 2 | El Paso Electric. |
| Newman Unit **5 | 3456 | 2 | El Paso Electric. |
| Sandow Unit 4 | 6648 | 8,370 | Vistra. |
| Sommers Unit 1 | 3611 | 55 | City of San Antonio. |
| Sommers Unit 2 | 3611 | 7 | City of San Antonio. |
| Stryker Unit ST2 | 3504 | 145 | Vistra. |
| Tolk Unit 171B | 6194 | 6,900 | Xcel Energy. |
| Tolk Unit 172B | 6194 | 7,062 | Xcel Energy. |
| WA Parish Unit WAP4 | 3470 | 3 | NRG Energy. |
| WA Parish Unit WAP5 | 3470 | 9,580 | NRG Energy. |
| WA Parish Unit WAP6 | 3470 | 8,900 | NRG Energy. |
| WA Parish Unit WAP7 | 3470 | 7,653 | NRG Energy. |
| Welsh Unit 1 | 6139 | 6,496 | American Electric Power. |
| Welsh Unit 2 | 6139 | 7,050 | American Electric Power. |
| Welsh Unit 3 | 6139 | 7,208 | American Electric Power. |
| Wilkes Unit 1 | 3478 | 14 | American Electric Power. |
| Wilkes Unit 2 | 3478 | 2 | American Electric Power. |
| Wilkes Unit 3 | 3478 | 3 | American Electric Power. |

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation pursuant to the table in paragraph (a)(1) of this section does not operate, starting after 2018, during the control period in two consecutive years, such unit will not be allocated the Texas $SO_2$ Trading Program allowances provided in paragraph (a)(1) of this section for the unit for the control periods in the fifth year after the first such year and in each year after that

fifth year. All Texas $SO_2$ Trading Program allowances that would otherwise have been allocated to such unit will be transferred to the Supplemental Allowance Pool for potential allocation in accordance with § 97.912.

(b) [Reserved]

(c) *Units incorrectly allocated Texas $SO_2$ Trading Program allowances.* (1) For each control period in 2019 and thereafter, if the Administrator determines that Texas $SO_2$ Trading Program allowances were incorrectly allocated under paragraph (a) of this section, or under a provision of a SIP revision approved by the Administrator, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such Texas $SO_2$ Trading Program allowances under § 97.921.

(3) If the Administrator already recorded such Texas $SO_2$ Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will deduct from the account in which such Texas $SO_2$ Trading Program allowances were recorded an amount of Texas $SO_2$ Trading Program allowances allocated for the same or a prior control period equal to the amount of such already recorded Texas $SO_2$ Trading Program allowances. The authorized account representative shall ensure that there are sufficient Texas $SO_2$ Trading Program allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such Texas $SO_2$ Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded Texas $SO_2$ Trading Program allowances.

(5) With regard to the Texas $SO_2$ Trading Program allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section, the Administrator will transfer such Texas $SO_2$ Trading Program allowances to the Supplemental Allowance Pool for potential allocation in accordance with § 97.912.

[82 FR 48364, Oct. 17, 2017, as amended at 82 FR 50580, Nov. 1, 2017; 85 FR 49216, Aug. 12, 2020; 86 FR 23207, Apr. 30, 2021]

### § 97.912 Texas $SO_2$ Trading Program Supplemental Allowance Pool.

(a) For the control periods in 2019 and 2020, the Administrator will allocate Texas $SO_2$ Trading Program allowances from the Texas $SO_2$ Trading Program Supplemental Allowance Pool as follows:

(1) No later than February 15, 2020 and February 15, 2021, the Administrator will review all the quarterly $SO_2$ emissions reports provided under § 97.934(d) for each Texas $SO_2$ Trading Program unit for the previous control period. The Administrator will identify each Texas $SO_2$ Trading Program source for which the total amount of emissions reported for the units at the source for that control period exceeds the total amount of allowances allocated to the units at the source for that control period under § 97.911 and recorded under § 97.921.

(2) For each Texas $SO_2$ Trading Program source identified under paragraph (a)(1) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount of allowances allocated for that control period under § 97.911 and recorded under § 97.921.

(3)(i) For Coleto Creek (ORIS 6178), if the source is identified under paragraph (a)(1) of this section, the Administrator will allocate and record in the source's compliance account an amount of allowances from the Supplemental Allowance Pool equal to the lesser of the amount calculated for the source under paragraph (a)(2) of this section or the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section.

(ii) For any Texas $SO_2$ Trading Program sources identified under paragraph (a)(1) of this section other than Coleto Creek (ORIS 6178), the Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will allocate and record in the compliance account for each such source an amount of allowances from the Supplemental Allowance Pool equal to the amount calculated for the source under paragraph (a)(2) of this section.

(B) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will calculate each such source's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (a)(2) of this section for the source by the sum of the amounts calculated under paragraph (a)(2) of this section for all such sources, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section and rounding to the nearest allowance. The Administrator will adjust the sources' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the sources' allocations to equal the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section. The Administrator will then record the calculated allocations of allowances in the applicable compliance accounts.

(iii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraphs (a)(3)(i) and (ii) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (d) of this section.

(b) For each control period in 2021 and thereafter, the Administrator will allocate Texas $SO_2$ Trading Program allowances from the Texas $SO_2$ Trading Program Supplemental Allowance Pool as follows:

(1) For each control period, the Administrator will assign each Texas $SO_2$ Trading Program unit to an affiliated ownership group reflecting the unit's ownership as of December 31 of the control period. The affiliated ownership group assignments for each control period will be as shown in §97.911(a)(1) except that the Administrator will revise the assignments, based on the information required to be submitted in accordance with §97.915(c) and any other information available to the Administrator, as necessary to reflect any ownership transfer resulting in a 50% or greater ownership share of a unit being held by a new owner that the Administrator determines is not affiliated with the previous holder of a 50% or greater ownership share of the unit.

(2) No later than May 1, 2022 and May 1 of each year thereafter, the Administrator will review all the quarterly $SO_2$ emissions reports provided under §97.934(d) for each Texas $SO_2$ Trading Program unit for the previous control period. The Administrator will identify each affiliated ownership group of Texas $SO_2$ Trading Program units as of December 31 of such control period for which the total amount of emissions reported for the units in the group for that control period exceeds the total amount of allowances allocated to the units in the group for that control period under §97.911 and recorded under §97.921.

(3) For each affiliated ownership group of Texas $SO_2$ Trading Program

units identified under paragraph (b)(2) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount of allowances allocated for that control period under § 97.911 and recorded under § 97.921.

(4)(i) The Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then each such group's allocation of allowances from the Supplemental Allowance Pool shall equal to the amount calculated for the group under paragraph (b)(3) of this section.

(B) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then the Administrator will calculate each such group's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (b)(3) of this section for the group by the sum of the amounts calculated under paragraph (b)(3) of this section for all such groups, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section and rounding to the nearest allowance. The Administrator will adjust the groups' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the groups' allocations to equal the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section.

(C) When an affiliated ownership group receives an allocation of allowances under paragraph (b)(4)(i)(A) or (B) of this section, each source in the group whose emissions during the control period for which allowances are being allocated exceed the amount of allowances allocated to the source under § 97.911 and recorded under § 97.921 will receive a share of the group's allocation. The Administrator will compute each such source's share by dividing the amount of the source's emissions during the control period exceeding the source's allocation under § 97.911 by the sum for all such sources of the amounts of the sources' emissions during the control period exceeding the sources' allocations under § 97.911, then multiplying by the group's allocation under paragraph (b)(4)(i)(A) or (B) of this section and rounding to the nearest allowance. The Administrator will adjust the sources' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the sources' allocations to equal the group's allocation. The Administrator will then record the calculated allocations of allowances in the applicable sources' compliance accounts.

(ii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraph (b)(4)(i) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (d) of this section.

(c) The Administrator will notify the designated representative of each Texas $SO_2$ Trading Program source when the allowances from the Supplemental Allowance Pool have been recorded.

(d) The total amount of allowances in the Supplemental Allowance Pool available for allocation for a control period is equal to the sum of the Supplemental Allowance Pool budget under § 97.910(a)(2), any allowances from retired units pursuant to § 97.911(a)(2) and from corrections pursuant to § 97.911(c)(5), and any allowances maintained in the Supplemental Allowance Pool pursuant to paragraph (a)(3)(iii) or (b)(4)(ii) of this section, provided that if the number of allowances in the Supplemental Allowance Pool exceeds the applicable limit for

the control period under paragraph (d)(1) or (d)(2) of this section, then the Administrator may only allocate allowances up to such applicable limit.

(1) For the control periods in 2019 and 2020, the total amount of allowances allocated from the Supplemental Allowance Pool for a control period may not exceed by more than 44,711 tons the sum of the Supplemental Allowance Pool budget under § 97.910(a)(2) and any portion of the Texas $SO_2$ Trading Program budget under § 97.910(a)(1) not otherwise allocated for that control period under § 97.911(a)(1).

(2) For each control period in 2021 and thereafter, the total amount of allowances allocated from the Supplemental Allowance Pool for a control period may not exceed the sum of the variability limit under § 97.910(b) and any portion of the Texas $SO_2$ Trading Program budget under § 97.910(a)(1) not otherwise allocated for that control period under § 97.911(a)(1).

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49216, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021]

### § 97.913 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.915, each Texas $SO_2$ Trading Program source, including all Texas $SO_2$ Trading Program units at the source, shall have one and only one designated representative, with regard to all matters under the Texas $SO_2$ Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas $SO_2$ Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each Texas $SO_2$ Trading Program unit at the source in all matters pertaining to the Texas $SO_2$ Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each Texas $SO_2$ Trading Program unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.915, each Texas $SO_2$ Trading Program source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas $SO_2$ Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each Texas $SO_2$ Trading Program unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.902, and §§ 97.914 through 97.918, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020]

**§ 97.914 Responsibilities of designated representative and alternate designated representative.**

(a) Except as provided under § 97.918 concerning delegation of authority to make submissions, each submission under the Texas $SO_2$ Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each Texas $SO_2$ Trading Program source and Texas $SO_2$ Trading Program unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a Texas $SO_2$ Trading Program source or a Texas $SO_2$ Trading Program unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.918.

**§ 97.915 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.**

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the Texas $SO_2$ Trading Program source and the Texas $SO_2$ Trading Program units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the Texas $SO_2$ Trading Program source and the Texas $SO_2$ Trading Program units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a Texas $SO_2$ Trading Program source or a Texas $SO_2$ Trading Program unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.916, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a Texas $SO_2$ Trading Program source or a Texas $SO_2$ Trading Program unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.916 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which

units are located at a Texas $SO_2$ Trading Program source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.916 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020]

### § 97.916 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Texas $SO_2$ Trading Program source, and each Texas $SO_2$ Trading Program unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, and actual date of commencement of commercial operation, and a statement of whether such source is located in Indian country.

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

(3) A list of the owners and operators of the Texas $SO_2$ Trading Program source and of each Texas $SO_2$ Trading Program unit at the source.

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

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

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas $SO_2$ Trading Program on behalf of the owners and operators of the source and of each Texas $SO_2$ Trading Program unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Texas $SO_2$ Trading Program unit, or where a utility or industrial customer purchases power from a Texas $SO_2$ Trading Program 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Texas $SO_2$ Trading Program unit at the source; and Texas $SO_2$ Trading Program allowances and proceeds of transactions involving Texas $SO_2$ Trading Program 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 Texas $SO_2$ Trading Program allowances by contract, Texas $SO_2$ Trading Program allowances and proceeds of transactions involving Texas $SO_2$ Trading Program allowances will be deemed to be held or distributed in accordance with the contract.''

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

**§ 97.917 Objections concerning designated representative and alternate designated representative.**

(a) Once a complete certificate of representation under § 97.916 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.916 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the Texas $SO_2$ Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of Texas $SO_2$ Trading Program allowance transfers.

**§ 97.918 Delegation by designated representative and alternate designated representative.**

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(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 97.918(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.918 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

**§ 97.919 [Reserved]**

**§ 97.920 Establishment of compliance accounts, assurance accounts, and general accounts.**

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.916, the Administrator will establish a compliance account for the Texas $SO_2$ Trading Program source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.925(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring Texas $SO_2$ Trading Program allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to Texas $SO_2$ Trading Program allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

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

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

(B) An identifying name for the general account;

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

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to

Texas $SO_2$ Trading Program allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas $SO_2$ Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Texas $SO_2$ Trading Program allowances held in the general account in all matters pertaining to the Texas $SO_2$ Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to Texas $SO_2$ Trading Program allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to Texas $SO_2$ Trading Program allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Texas $SO_2$ Trading Program 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) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the Texas $SO_2$ Trading Program allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the Texas $SO_2$ Trading Program allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to Texas $SO_2$ Trading Program 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to Texas $SO_2$ Trading Program allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 Texas $SO_2$ Trading Program allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the Texas $SO_2$ Trading Program.

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

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.920(c)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted Texas $SO_2$ Trading Program allowance transfer under § 97.922 for any Texas $SO_2$ Trading Program allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no Texas $SO_2$ Trading Program allowance transfers to or from the account for a 12-month period or longer and does not contain any Texas $SO_2$ Trading Program allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted Texas $SO_2$ Trading Program allowance transfer under § 97.922 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Texas $SO_2$ Trading Program allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.914(a) and 97.918 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021]

### § 97.921 Recordation of Texas $SO_2$ Trading Program allowance allocations.

(a) By November 1, 2018, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the Texas $SO_2$ Trading Program allowances allocated to the Texas $SO_2$ Trading Program units at the source in accordance with § 97.911(a) for the control periods in 2019, 2020, 2021, and 2022.

(b)(1) By July 1, 2019 and July 1, 2020, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the Texas $SO_2$ Trading Program allowances allocated to the Texas $SO_2$ Trading Program units at the source in accordance with § 97.911(a) for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the Texas $SO_2$ Trading Program allowances allocated to the Texas $SO_2$ Trading Program units at the source in accordance with § 97.911(a) for the control period in the third year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(c) By February 15 of 2020 and 2021 and May 1 of each year thereafter, the Administrator will record in each Texas $SO_2$ Trading Program source's compliance account the allowances allocated from the Texas $SO_2$ Trading Program Supplemental Allowance Pool in accordance with § 97.912 for the control period in the year before the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(d) [Reserved]

(e) When recording the allocation of Texas $SO_2$ Trading Program allowances to a Texas $SO_2$ Trading Program unit in an Allowance Management System account, the Administrator will assign each Texas $SO_2$ Trading Program allowance a unique identification number that will include digits identifying the year of the control period for which the Texas $SO_2$ Trading Program allowance is allocated.

(f) Notwithstanding paragraphs (a) and (b) of this section, with respect to the Texas $SO_2$ Trading Program allowances allocated to Newman Unit **5 in accordance with § 97.911(a) for the control periods in 2019, 2020, 2021, 2022, 2023, and 2024, the Administrator will record the allowances in the source's compliance account by December 31, 2020, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021]

### § 97.922 Submission of Texas $SO_2$ Trading Program allowance transfers.

(a) An authorized account representative seeking recordation of a Texas $SO_2$ Trading Program allowance transfer shall submit the transfer to the Administrator.

(b) A Texas $SO_2$ Trading Program allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each Texas $SO_2$ Trading Program allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each Texas $SO_2$ Trading Program allowance identified by serial number in the transfer.

### § 97.923 Recordation of Texas $SO_2$ Trading Program allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Texas $SO_2$ Trading Program allowance transfer that is correctly submitted under § 97.922, the Administrator will record a Texas $SO_2$ Trading Program allowance transfer by moving each Texas $SO_2$ Trading Program allowance from the transferor account to the transferee account as specified in the transfer.

(b) A Texas $SO_2$ Trading Program allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Texas $SO_2$ Trading Program allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.924 for the control period immediately before such allowance transfer deadline.

(c) Where a Texas $SO_2$ Trading Program allowance transfer is not correctly submitted under § 97.922, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a Texas $SO_2$ Trading Program allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a Texas $SO_2$ Trading Program allowance transfer that is not correctly submitted under § 97.922, the Administrator will notify the 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.

### § 97.924 Compliance with Texas $SO_2$ Trading Program emissions limitations.

(a) *Availability for deduction for compliance.* Texas $SO_2$ Trading Program allowances are available to be deducted for compliance with a source's Texas $SO_2$ Trading Program emissions limitation for a control period in a given year only if the Texas $SO_2$ Trading Program allowances:

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

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.923, of Texas $SO_2$ Trading Program allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account Texas $SO_2$ Trading Program allowances available under paragraph (a) of this section in order to determine whether the source meets the Texas $SO_2$ Trading Program emissions limitation for such control period, as follows:

(1) Until the amount of Texas $SO_2$ Trading Program allowances deducted equals the number of tons of total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at the source for such control period; or

(2) If there are insufficient Texas $SO_2$ Trading Program allowances to complete the deductions in paragraph (b)(1) of this section, until no more Texas $SO_2$ Trading Program allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of Texas $SO_2$ Trading Program allowances for deduction*—(1) *Identification by serial number*. The designated representative for a source may request that specific Texas $SO_2$ Trading Program allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas $SO_2$ Trading Program source and the appropriate serial numbers.

(2) *First-in, first-out*. The Administrator will deduct Texas $SO_2$ Trading Program allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of Texas $SO_2$ Trading Program allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any Texas $SO_2$ Trading Program allowances that were recorded in the compliance account pursuant to § 97.921 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other Texas $SO_2$ Trading Program allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions*. After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the Texas $SO_2$ Trading Program source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Texas $SO_2$ Trading Program allowances, allocated for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to three 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.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23208, Apr. 30, 2021]

### § 97.925 Compliance with Texas $SO_2$ Trading Program assurance provisions.

(a) *Availability for deduction*. Texas $SO_2$ Trading Program allowances are available to be deducted for compliance with the Texas $SO_2$ Trading Program assurance provisions for a control period in a given year by the owners and operators of a group of one or more Texas $SO_2$ Trading Program sources and units only if the Texas $SO_2$ Trading Program allowances:

(1) Were allocated 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 Texas $SO_2$ Trading Program sources and units 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 Texas $SO_2$ Trading Program allowances available under paragraph (a) of this section for compliance with the Texas $SO_2$ Trading Program assurance provisions for a control period in a given year in accordance with the following procedures:

(1) By August 1, 2022 and August 1 of each year thereafter, the Administrator will:

(i) Calculate the total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total $SO_2$ emissions exceed the State assurance level as described in § 97.906(c)(2)(iii); and

(ii) If the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $SO_2$ emissions exceed the State assurance level for such control period—

(A) Calculate, for such control period and each common designated representative for such control period for a group of one or more Texas $SO_2$ Trading Program sources and units, the common designated representative's share of the total $SO_2$ emissions from all Texas $SO_2$ Trading Program units at Texas $SO_2$ Trading Program sources, the common designated representative's assurance level, and the amount (if any) of Texas $SO_2$ Trading Program allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.906(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $SO_2$ emissions from each Texas $SO_2$ Trading Program source.

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.906(c)(2)(iii), §§ 97.906(b) and 97.930 through 97.935, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.902, and the calculation formula in § 97.906(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) of this section.

(3) The Administrator will establish one assurance account for each set of owners and operators referenced, in each notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of Texas $SO_2$ Trading Program sources and units having a common designated representative for such control period and as being required to hold Texas $SO_2$ Trading Program allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) 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 Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units under paragraph (b)(3) of this section a total amount of Texas $SO_2$ Trading Program 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 and units 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)(ii) of this section and after the recordation, in accordance with § 97.923, of Texas $SO_2$ Trading Program 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 Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units established under paragraph (b)(3) of this section, the amount of Texas $SO_2$ Trading Program allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources and units

as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(ii) 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)(ii) 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 Texas $SO_2$ Trading Program allowances that the owners and operators are required to hold in accordance with § 97.906(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)(ii) 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 Texas $SO_2$ Trading Program allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.906(c)(2)(i) for such control period with regard to the Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of Texas $SO_2$ Trading Program allowances that the owners and operators are required to hold for such control period with regard to the Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units involved—

(A) Where the amount of Texas $SO_2$ Trading Program 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 Texas $SO_2$ Trading Program allowances in the assurance account established by the Administrator for the appropriate Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each Texas $SO_2$ Trading Program 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 Texas $SO_2$ Trading Program 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 Texas $SO_2$ Trading Program allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate Texas $SO_2$ Trading Program sources and Texas $SO_2$ Trading Program units under paragraph (b)(3) of this section, a total amount of the Texas $SO_2$ Trading Program allowances held in such assurance account equal to the amount of the decrease. If Texas $SO_2$ Trading Program allowances were transferred to such assurance account from more than one account, the amount of Texas $SO_2$ Trading Program allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of Texas $SO_2$ Trading Program allowances transferred to such assurance account for such control period from such transferor account.

(C) Each Texas $SO_2$ Trading Program allowance held under paragraph

(b)(6)(iii)(A) of this section as a result of recalculation of requirements under the Texas $SO_2$ Trading Program assurance provisions for such control period must be a Texas $SO_2$ Trading Program 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.

[85 FR 49218, Aug. 12, 2020, as amended at 86 FR 23208, Apr. 30, 2021]

### § 97.926 Banking.

(a) A Texas $SO_2$ Trading Program allowance may be banked for future use or transfer in a compliance account or general account in accordance with paragraph (b) of this section.

(b) Any Texas $SO_2$ Trading Program allowance that is held in a compliance account or a general account will remain in such account unless and until the Texas $SO_2$ Trading Program allowance is deducted or transferred under § 97.911(c), § 97.923, § 97.924, § 97.925, § 97.927, or § 97.928.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

### § 97.927 Account error.

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

### § 97.928 Administrator's action on submissions.

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

(b) The Administrator may deduct Texas $SO_2$ Trading Program allowances from or transfer Texas $SO_2$ Trading Program allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

### § 97.929 [Reserved]

### § 97.930 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a Texas $SO_2$ Trading Program unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.902 and in § 72.2 of this chapter shall apply, 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 ''Texas $SO_2$ Trading Program unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.902. The owner or operator of a unit that is not a Texas $SO_2$ Trading Program unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Texas $SO_2$ Trading Program unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Texas $SO_2$ Trading Program unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $SO_2$ mass emissions and individual unit heat input (including all systems required to monitor $SO_2$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.931 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 of a Texas

$SO_2$ Trading Program unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after January 1, 2019.

(1) [Reserved]

(2) [Reserved]

(3) The owner or operator of a Texas $SO_2$ Trading Program unit for which construction of a new stack or flue or installation of add-on $SO_2$ emission controls is completed after January 1, 2019 shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.930 through § 97.935, rather than the monitoring systems required under part 75 of this chapter;

(ii) $SO_2$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.935, rather than § 75.66 of this chapter.

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

(d) *Prohibitions.* (1) No owner or operator of a Texas $SO_2$ Trading Program unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.935.

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

(3) No owner or operator of a Texas $SO_2$ Trading Program unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $SO_2$ mass 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 Texas $SO_2$ Trading Program unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.905 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.931(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a Texas $SO_2$ Trading Program unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

**§ 97.931 Initial monitoring system certification and recertification procedures.**

(a) The owner or operator of a Texas $SO_2$ Trading Program unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.930(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 appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.930(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a Texas $SO_2$ Trading Program unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.930(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.930(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.930(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.930(a)(1) that may significantly affect the ability of the system to accurately measure or record $SO_2$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.930(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.930(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office

and the Administrator written notice of the dates of certification testing, in accordance with §97.933.

(ii) *Certification application*. The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.

(iii) *Provisional certification date*. The provisional certification date for a monitoring system shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Texas $SO_2$ Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process*. The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Texas $SO_2$ Trading Program.

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

(B) *Incomplete application notice*. If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice*. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under §75.20(a)(3) of this chapter).

(D) *Audit decertification*. The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with §97.932(b).

(v) *Procedures for loss of certification*. If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

*(1)* For a disapproved $SO_2$ pollutant concentration monitor and disapproved

flow monitor, respectively, the maximum potential concentration of $SO_2$ and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

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

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

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

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

### § 97.932 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.931 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.931 for each disapproved monitoring system.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23208, Apr. 30, 2021]

### § 97.933 Notifications concerning monitoring.

The designated representative of a Texas $SO_2$ Trading Program unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

**§ 97.934 Recordkeeping and reporting.**

(a) *General provisions.* The designated representative of a Texas $SO_2$ Trading Program unit shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.914(a).

(b) *Monitoring plans.* The owner or operator of a Texas $SO_2$ Trading Program unit shall comply with the requirements of § 75.62 of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.931, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the $SO_2$ mass emissions data and heat input data for a Texas $SO_2$ Trading Program unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the calendar quarter covering January 1, 2019 through March 31, 2019.

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

(3) For Texas $SO_2$ Trading Program units that are also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $SO_2$ mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

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

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

(2) For a unit with add-on $SO_2$ emission controls and for all hours where $SO_2$ data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters

listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate $SO_2$ emissions.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

### § 97.935 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a Texas $SO_2$ Trading Program unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.930 through 97.934.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

## Subpart GGGGG—CSAPR $NO_X$ Ozone Season Group 3 Trading Program

SOURCE: 86 FR 23208, Apr. 30, 2021, unless otherwise noted.

### § 97.1001 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) $NO_X$ Ozone Season Group 3 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

### § 97.1002 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

*Acid Rain Program* means a multistate $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(d), § 97.826(d), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, of the amount of such CSAPR $NO_X$ Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR $NO_X$ Ozone Season Group 3 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR $NO_X$ Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR $NO_X$ Ozone Season Group 3 allowances, the CSAPR $NO_X$ Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR $NO_X$ Ozone Season Group 3 allowances.

*Allowance Management System* means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR $NO_X$ Ozone Season Group 3 allowances under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR $NO_X$ Ozone Season Group 3 allowances.

*Allowance transfer deadline* means, for a control period in a given year, midnight of June 1 immediately after such control period (or if such June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer must be submitted for recordation in a CSAPR $NO_X$ Ozone Season Group 3 source's compliance account in order to be available for use in complying with the source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for such control period in accordance with §§ 97.1006 and 97.1024.

*Alternate designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 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 this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, or CSAPR $SO_2$ Group 1 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Assurance account* means an Allowance Management System account, established by the Administrator under § 97.1025(b)(3) for certain owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR $NO_X$ Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions in accordance with §§ 97.1006 and 97.1025.

*Auction* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(11) or (12) of this chapter, of such CSAPR $NO_X$ Ozone Season Group 3 allowances to be initially recorded in an Allowance Management System account.

*Authorized account representative* means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account and, for a CSAPR $NO_X$ Ozone Season Group 3 source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Base CSAPR $NO_X$ Ozone Season Group 3 source* means a source that includes

one or more base CSAPR $NO_X$ Ozone Season Group 3 units.

*Base CSAPR $NO_X$ Ozone Season Group 3 unit* means a CSAPR $NO_X$ Ozone Season Group 3 unit, provided that any unit that would not be a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004(a) and (b) is not a base CSAPR $NO_X$ Ozone Season Group 3 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter.

*Biomass* means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

*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 unit* means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

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

*Coal* means ''coal'' as defined in § 72.2 of this chapter.

*Cogeneration system* means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

*Cogeneration unit* means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle 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; or

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

*Combustion turbine* means an enclosed device comprising:

(1) If the device is simple cycle, 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 device is combined cycle, the equipment described in paragraph (1) of this definition and 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 §97.1005.

(i) For a unit that is a CSAPR $NO_X$ Ozone Season Group 3 unit under §97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or 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 CSAPR $NO_X$ Ozone Season Group 3 unit under §97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, 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 §97.1005, for a unit that is not a CSAPR $NO_X$ Ozone Season Group 3 unit under §97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR $NO_X$ Ozone Season Group 3 unit under §97.1004.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or 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 the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, 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.

*Common designated representative* means, with regard to a control period in a given year, a designated representative where, as of July 1 immediately after the allowance transfer deadline for such control period, the same natural person is authorized under §§97.1013(a) and 97.1015(a) as the designated representative for a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in a State (and Indian country within the borders of such State).

*Common designated representative's assurance level* means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which

the State assurance level is exceeded as described in § 97.1006(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for such control period to the group of one or more base CSAPR $NO_X$ Ozone Season Group 3 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances purchased by an owner or operator of such base CSAPR $NO_X$ Ozone Season Group 3 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR $NO_X$ Ozone Season Group 3 units in accordance with the CSAPR $NO_X$ Ozone Season Group 3 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter, multiplied by the sum of the State $NO_X$ Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(b) for such control period, and divided by the greater of such State $NO_X$ Ozone Season Group 3 trading budget or the sum of all amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period allocated to or purchased in the State's auction for all such base CSAPR $NO_X$ Ozone Season Group 3 units;

(2) Provided that—

(i) The allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for such control period under § 97.526(d) or § 97.826(d); and

(ii) For purposes of this definition for the control period in 2021 only, for each State the amount of the State $NO_X$ Ozone Season Group 3 trading budget shall be deemed to be increased by the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under § 97.1010(d) and the amount of the State's variability limit shall be deemed to be increased by the product (rounded to the nearest allowance) of 0.21 multiplied by the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under § 97.1010(d).

*Common designated representative's share* means, with regard to a specific common designated representative for a control period in a given year and a total amount of $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of $NO_X$ emissions during such control period from the group of one or more base CSAPR $NO_X$ Ozone Season Group 3 units in such State (and such Indian country) having the common designated representative for such control period.

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

*Compliance account* means an Allowance Management System account, established by the Administrator for a CSAPR $NO_X$ Ozone Season Group 3 source under this subpart, in which any CSAPR $NO_X$ Ozone Season Group 3 allowance allocations to the CSAPR $NO_X$ Ozone Season Group 3 units at the source are recorded and in which are held any CSAPR $NO_X$ Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation in accordance with §§ 97.1006 and 97.1024.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $NO_X$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.1030 through 97.1035. The following systems are the principal types of continuous emission monitoring systems:

(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 $NO_X$ 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 $NO_X$ emission rate (or $NO_X$-diluent) monitoring system, consisting of a $NO_X$ pollutant concentration monitor, a diluent gas ($CO_2$ or $O_2$) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of $NO_X$ concentration, in parts per million (ppm), diluent gas concentration, in percent $CO_2$ or $O_2$, and $NO_X$ emission rate, in pounds per million British thermal units (lb/mmBtu);

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

(5) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ monitor plus suitable mathematical equations from which the $CO_2$ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of $CO_2$ emissions, in percent $CO_2$; and

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

*Control period* means the period starting May 1 of a calendar year, except as provided in §97.1006(c)(3), and ending on September 30 of the same year, inclusive.

*CSAPR $NO_X$ Annual Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart AAAAA of this part and §52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under §52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under §52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 2 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or §97.526(d), or by a State or permitting authority under a SIP revision approved by the Administrator under §52.38(b)(7), (8), or (9) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and §52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under §52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under §52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 allowance* means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, §97.526(d), or §97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under §52.38(b)(10), (11), or (12) of this chapter, to emit one ton of $NO_X$ during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $NO_X$ Ozone Season Group 3 allowance deduction* or *deduct CSAPR $NO_X$ Ozone Season Group 3 allowances* means the permanent withdrawal of CSAPR $NO_X$ Ozone Season Group 3 allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation) or from an assurance account

(*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.1006 and 97.1025).

*CSAPR $NO_X$ Ozone Season Group 3 allowances held* or *hold CSAPR $NO_X$ Ozone Season Group 3 allowances* means the CSAPR $NO_X$ Ozone Season Group 3 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 3 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR $NO_X$ Ozone Season Group 3 allowance transfer in accordance with this subpart.

*CSAPR $NO_X$ Ozone Season Group 3 emissions limitation* means, for a CSAPR $NO_X$ Ozone Season Group 3 source, the tonnage of $NO_X$ emissions authorized in a control period in a given year by the CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for the source under § 97.1024(a) for such control period.

*CSAPR $NO_X$ Ozone Season Group 3 source* means a source that includes one or more CSAPR $NO_X$ Ozone Season Group 3 units.

*CSAPR $NO_X$ Ozone Season Group 3 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*CSAPR $NO_X$ Ozone Season Group 3 unit* means a unit that is subject to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

*CSAPR $SO_2$ Group 1 Trading Program* means a multi-state $SO_2$ air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and $SO_2$.

*Designated representative* means, for a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program. If the CSAPR $NO_X$ Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, or CSAPR $SO_2$ Group 1 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the CSAPR $NO_X$ Ozone Season Group 3 units at a CSAPR $NO_X$ Ozone Season Group 3 source during a control period in a given year that exceeds the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for the source for such control period.

*Fossil fuel* means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in

§97.1004(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

*Fossil-fuel-fired* means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

*General account* means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

*Generator* means a device that produces electricity.

*Heat input* means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

*Heat input rate* means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and 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.

*Indian country* means ''Indian country'' as defined in 18 U.S.C. 1151.

*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 rate* means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the 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 this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Nameplate capacity* means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) 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 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 (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

*Natural gas* means ''natural gas'' as defined in §72.2 of this chapter.

*Newly affected CSAPR $NO_X$ Ozone Season Group 3 unit* means a unit that was not a CSAPR $NO_X$ Ozone Season Group 3 unit when it began operating but that thereafter becomes a CSAPR $NO_X$ Ozone Season Group 3 unit.

*Nitrogen oxides* means all oxides of nitrogen except nitrous oxide ($N_2O$), reported on an equivalent molecular weight basis as nitrogen dioxide ($NO_2$).

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a CSAPR $NO_X$ Ozone Season Group 3 source or a

CSAPR $NO_X$ Ozone Season Group 3 unit at a source respectively, any person who operates, controls, or supervises a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

*Owner* means, for a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit;

(2) Any holder of a leasehold interest in a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit, 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 CSAPR $NO_X$ Ozone Season Group 3 unit; and

(3) Any purchaser of power from a CSAPR $NO_X$ Ozone Season Group 3 unit at the source or the CSAPR $NO_X$ Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

*Potential electrical output capacity* means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), 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 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to CSAPR $NO_X$ Ozone Season Group 3 allowances, the moving of CSAPR $NO_X$ Ozone Season Group 3 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, 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 retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

*Sequential use of energy* means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

*Serial number* means, for a CSAPR $NO_X$ Ozone Season Group 3 allowance, the unique identification number assigned to each CSAPR $NO_X$ Ozone Season Group 3 allowance by the Administrator.

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

*Source* means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means one of the States that is subject to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program pursuant to § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) 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;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

*Total energy input* means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

*Total energy output* means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour* or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

*Useful power* means, with regard to a unit, electricity or mechanical energy that the unit makes 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 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.*, in an absorption chiller).

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

### §97.1003 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit
$CO_2$—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
$H_2O$—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
$NO_X$—nitrogen oxides
$O_2$—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

### §97.1004 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR $NO_X$ Ozone Season Group 3 units, and any source that includes one or more such units shall be a CSAPR $NO_X$ Ozone Season Group 3 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, 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 CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 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) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR $NO_X$ Ozone Season Group 3 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 3 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. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 3 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR $NO_X$ Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR $NO_X$ Ozone Season Group 3 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 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR $NO_X$ Ozone Season Group 3 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program to the unit or other equipment.

(1) *Petition content*. The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment 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) *Response*. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

### § 97.1005 Retired unit exemption.

(a)(1) Any CSAPR $NO_X$ Ozone Season Group 3 unit that is permanently retired shall be exempt from § 97.1006(b) and (c)(1), § 97.1024, and §§ 97.1030 through 97.1035.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR $NO_X$ Ozone Season Group 3 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

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

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

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

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

### § 97.1006 Standard requirements.

(a) *Designated representative requirements*. The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.1013 through 97.1018.

(b) *Emissions monitoring, reporting, and recordkeeping requirements*. (1) The owners and operators, and the designated representative, of each CSAPR $NO_X$

Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.1030 through 97.1035.

(2) The emissions data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances under §§ 97.1011(a)(2) and (b) and 97.1012 and to determine compliance with the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$NO_X$ emissions requirements*—(1) *CSAPR $NO_X$ Ozone Season Group 3 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall hold, in the source's compliance account, CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the tons of total $NO_X$ emissions for such control period from all CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(ii) If total $NO_X$ emissions during a control period in a given year from the CSAPR $NO_X$ Ozone Season Group 3 units at a CSAPR $NO_X$ Ozone Season Group 3 source are in excess of the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall hold the CSAPR $NO_X$ Ozone Season Group 3 allowances required for deduction under § 97.1024(d); and

(B) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR $NO_X$ Ozone Season Group 3 assurance provisions.* (i) If total $NO_X$ emissions during a control period in a given year from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such $NO_X$ emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR $NO_X$ Ozone Season Group 3 allowances available for deduction for such control period under § 97.1025(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.1025(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such $NO_X$ emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such $NO_X$ emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base

CSAPR $NO_X$ Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR $NO_X$ Ozone Season Group 3 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total $NO_X$ emissions exceed the sum, for such control period, of the State $NO_X$ Ozone Season Group 3 trading budget under §97.1010(a), the State's variability limit under §97.1010(b), and, for the control period in 2021 only, the product (rounded to the nearest allowance) of 1.21 multiplied by the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State under §97.1010(d).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total $NO_X$ emissions from the base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR $NO_X$ Ozone Season Group 3 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section:

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR $NO_X$ Ozone Season Group 3 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR $NO_X$ Ozone Season Group 3 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, 2021 or the deadline for meeting the unit's monitor certification requirements under §97.1030(b) and for each control period thereafter.

(ii) A base CSAPR $NO_X$ Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under §97.1030(b) and for each control period thereafter.

(4) *Vintage of CSAPR $NO_X$ Ozone Season Group 3 allowances held for compliance.* (i) A CSAPR $NO_X$ Ozone Season Group 3 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 3 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR $NO_X$ Ozone Season Group 3 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR $NO_X$ Ozone Season Group 3 allowance that was 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.

(5) *Allowance Management System requirements.* Each CSAPR $NO_X$ Ozone Season Group 3 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR $NO_X$ Ozone Season Group 3 allowance is

a limited authorization to emit one ton of $NO_X$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR $NO_X$ Ozone Season Group 3 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right*. A CSAPR $NO_X$ Ozone Season Group 3 allowance does not constitute a property right.

(d) *Title V permit requirements*. (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $NO_X$ emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.1030 through 97.1035 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements*. (1) Unless otherwise provided, the owners and operators of each CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) 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 Administrator.

(i) The certificate of representation under § 97.1016 for the designated representative for the source and each CSAPR $NO_X$ Ozone Season Group 3 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 certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.1016 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(2) The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall make all submissions required under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, except as provided in § 97.1018. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability*. (1) Any provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program that applies to a CSAPR $NO_X$ Ozone Season Group 3 source or the designated representative of a CSAPR $NO_X$ Ozone Season Group 3 source shall also apply to the owners and operators of such source and of the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(2) Any provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program that applies to a CSAPR $NO_X$

Ozone Season Group 3 unit or the designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities*. No provision of the CSAPR $NO_X$ Ozone Season Group 3 Trading Program or exemption under §97.1005 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR $NO_X$ Ozone Season Group 3 source or CSAPR $NO_X$ Ozone Season Group 3 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

### §97.1007 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 Trading Program, is not a business day, the time period shall be extended to the next business day.

### §97.1008 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program are set forth in part 78 of this chapter.

### §97.1009 [Reserved]

### §97.1010 State $NO_X$ Ozone Season Group 3 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State $NO_X$ Ozone Season Group 3 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Tables 1, 2, and 3 to this paragraph, respectively:

TABLE 1 TO PARAGRAPH (a)—STATE $NO_X$ OZONE SEASON GROUP 3 TRADING BUDGETS BY YEAR

[Tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Illinois | 9,102 | 9,102 | 8,179 | 8,059 |
| Indiana | 13,051 | 12,582 | 12,553 | 9,564 |
| Kentucky | 15,300 | 14,051 | 14,051 | 14,051 |
| Louisiana | 14,818 | 14,818 | 14,818 | 14,818 |
| Maryland | 1,499 | 1,266 | 1,266 | 1,348 |
| Michigan | 12,727 | 12,290 | 9,975 | 9,786 |
| New Jersey | 1,253 | 1,253 | 1,253 | 1,253 |
| New York | 3,416 | 3,416 | 3,421 | 3,403 |
| Ohio | 9,690 | 9,773 | 9,773 | 9,773 |
| Pennsylvania | 8,379 | 8,373 | 8,373 | 8,373 |
| Virginia | 4,516 | 3,897 | 3,980 | 3,663 |
| West Virginia | 13,334 | 12,884 | 12,884 | 12,884 |

TABLE 2 TO PARAGRAPH (a)—NEW UNIT SET-ASIDES BY YEAR

[Tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Illinois | 265 | 265 | 248 | 244 |
| Indiana | 262 | 254 | 249 | 190 |
| Kentucky | 309 | 283 | 283 | 283 |
| Louisiana | 430 | 430 | 430 | 430 |
| Maryland | 135 | 115 | 115 | 122 |
| Michigan | 500 | 482 | 388 | 382 |
| New Jersey | 27 | 27 | 27 | 27 |
| New York | 168 | 168 | 168 | 167 |

TABLE 2 TO PARAGRAPH (a)—NEW UNIT SET-ASIDES BY YEAR—Continued

[Tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Ohio | 291 | 290 | 290 | 290 |
| Pennsylvania | 335 | 339 | 339 | 339 |
| Virginia | 185 | 161 | 166 | 150 |
| West Virginia | 266 | 261 | 261 | 261 |

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR

[Tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Illinois. | | | | |
| Indiana. | | | | |
| Kentucky. | | | | |
| Louisiana | 15 | 15 | 15 | 15 |
| Maryland. | | | | |
| Michigan | 13 | 12 | 10 | 10 |
| New Jersey. | | | | |
| New York | 3 | 3 | 3 | 3 |
| Ohio. | | | | |
| Pennsylvania. | | | | |
| Virginia. | | | | |
| West Virginia. | | | | |

(b) The States' variability limits for the State $NO_X$ Ozone Season Group 3 trading budgets for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Table 4 to this paragraph:

TABLE 4 TO PARAGRAPH (b)—VARIABILITY LIMITS BY YEAR

[Tons]

| State | 2021 | 2022 | 2023 | 2024 and thereafter |
|---|---|---|---|---|
| Illinois | 1,911 | 1,911 | 1,718 | 1,692 |
| Indiana | 2,741 | 2,642 | 2,636 | 2,008 |
| Kentucky | 3,213 | 2,951 | 2,951 | 2,951 |
| Louisiana | 3,112 | 3,112 | 3,112 | 3,112 |
| Maryland | 315 | 266 | 266 | 283 |
| Michigan | 2,673 | 2,581 | 2,095 | 2,055 |
| New Jersey | 263 | 263 | 263 | 263 |
| New York | 717 | 717 | 718 | 715 |
| Ohio | 2,035 | 2,052 | 2,052 | 2,052 |
| Pennsylvania | 1,760 | 1,758 | 1,758 | 1,758 |
| Virginia | 948 | 818 | 836 | 769 |
| West Virginia | 2,800 | 2,706 | 2,706 | 2,706 |

(c) Each State $NO_X$ Ozone Season Group 3 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

(d) For the control period in 2021 only, the Administrator will determine for each State a supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances computed as the product (rounded to the nearest allowance) of the remainder of the State $NO_X$ Ozone Season Group 2 trading budget for the control period in 2020 under § 97.810(a) minus the State $NO_X$ Ozone Season Group 3 trading budget for the control period in 2021 under paragraph (a) of this section multiplied by a fraction whose numerator is the number of days from May 1, 2021 through June 28, 2021, inclusive, and whose denominator is 153.

**§97.1011 Timing requirements for CSAPR $NO_X$ Ozone Season Group 3 allowance allocations.**

(a) *Existing units.* (1) CSAPR $NO_X$ Ozone Season Group 3 allowances are allocated, for the control periods in 2021 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR $NO_X$ Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR $NO_X$ Ozone Season Group 3 unit. For the control period in 2021, a unit's allocation under this paragraph will include the unit's share (if any) of the supplemental amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for the State in which the unit is located under §97.1010(d).

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2020, during the control period in two consecutive years, such unit will not be allocated the CSAPR $NO_X$ Ozone Season Group 3 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR $NO_X$ Ozone Season Group 3 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in a State, in accordance with §97.1012(a)(2) through (7), (10), and (12) and §§97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(1)(i) of this section.

(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)(1)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will promulgate a notice of data availability of the results 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)(1)(ii)(A) of this section.

(iii) [Reserved]

(iv) [Reserved]

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 3 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with §97.1012(a)(10).

(2) *Indian country new unit set-asides.* (i) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR $NO_X$ Ozone Season Group 3 allowance allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit in Indian country within the borders of a State, in accordance with §97.1012(b)(2) through (7), (10), and (12)

and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR $NO_X$ Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section.

(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)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will promulgate a notice of data availability of the results 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)(ii)(A) of this section.

(iii) [Reserved]

(iv) [Reserved]

(v) To the extent any CSAPR $NO_X$ Ozone Season Group 3 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR $NO_X$ Ozone Season Group 3 allowances in accordance with § 97.1012(b)(10).

(c) *Units incorrectly allocated CSAPR $NO_X$ Ozone Season Group 3 allowances.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR $NO_X$ Ozone Season Group 3 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.1012(a)(2) through (7) and (12) and (b)(2) through (7) and (12), or under a provision of a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 as of May 1, 2021 and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit as of May 1, 2021 and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 3 units as of May 1, 2021; or

(B) The recipient is not located as of May 1 of the control period in the State from whose $NO_X$ Ozone Season Group 3 trading budget the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit under § 97.1004 as of May 1 of such control period and is allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, the recipient is not actually a CSAPR $NO_X$ Ozone Season Group 3 unit as of May 1 of such control period and is allocated

CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR $NO_X$ Ozone Season Group 3 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR $NO_X$ Ozone Season Group 3 allowances under §97.1021.

(3) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 3 allowances under §97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under §97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR $NO_X$ Ozone Season Group 3 allowances were recorded an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR $NO_X$ Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR $NO_X$ Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR $NO_X$ Ozone Season Group 3 allowances under §97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under §97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR $NO_X$ Ozone Season Group 3 allowances.

(5)(i) With regard to the CSAPR $NO_X$ Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose $NO_X$ Ozone Season Group 3 trading budget the CSAPR $NO_X$ Ozone Season Group 3 allowances were allocated; or

(B) If the State has a SIP revision approved under §52.38(b)(11) or (12) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR $NO_X$ Ozone Season Group 3 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under §52.38(b)(11) or (12) of this chapter covering such control period, include such CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR $NO_X$ Ozone Season Group 3 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR $NO_X$ Ozone Season Group 3 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

### §97.1012 CSAPR $NO_X$ Ozone Season Group 3 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR $NO_X$

Ozone Season Group 3 units in each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the CSAPR $NO_X$ Ozone Season Group 3 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 3 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 3 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 3 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period;

(ii) CSAPR $NO_X$ Ozone Season Group 3 units whose allocation of an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1) is covered by § 97.1011(c)(2) or (3);

(iii) CSAPR $NO_X$ Ozone Season Group 3 units that are allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1), which allocation is terminated for such control period pursuant to § 97.1011(a)(2), and that operate during such control period; or

(iv) [Reserved]

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR $NO_X$ Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (a)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 3 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2021;

(ii) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 3 unit's monitoring systems under § 97.1030(b);

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR $NO_X$ Ozone Season Group 3 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR $NO_X$ Ozone Season Group 3 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the control period in which the unit resumes operation.

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the control period.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 3 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph

(a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) [Reserved]

(9) [Reserved]

(10) If, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR $NO_X$ Ozone Season Group 3 unit that is in the State, is allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under §97.1011(a)(1), and continues to be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances for such control period in accordance with §97.1011(a)(2), an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under §97.1011(a) for such control period, divided by the remainder of the amount of tons in the applicable State $NO_X$ Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in §97.1011(b)(1)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period in a given year under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (a)(7) or (10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR $NO_X$ Ozone Season Group 3 units in Indian country within the borders of each State, the Administrator will allocate CSAPR $NO_X$ Ozone Season Group 3 allowances to the CSAPR $NO_X$ Ozone Season Group 3 units as follows:

(1) The CSAPR $NO_X$ Ozone Season Group 3 allowances will be allocated to the following CSAPR $NO_X$ Ozone Season Group 3 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR $NO_X$ Ozone Season Group 3 units that are not allocated an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the notice of data availability issued under §97.1011(a)(1) and that have deadlines for certification of monitoring systems under §97.1030(b) not later than September 30 of the year of the control period; or

(ii) [Reserved]

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR $NO_X$ Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of $NO_X$ emissions as set forth in §97.1010(a) and will

be allocated additional CSAPR $NO_X$ Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5).

(3) The Administrator will determine, for each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (b)(1) of this section, an allocation of CSAPR $NO_X$ Ozone Season Group 3 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2021; and

(ii) The control period containing the deadline for certification of the CSAPR $NO_X$ Ozone Season Group 3 unit's monitoring systems under § 97.1030(b).

(4)(i) The allocation to each CSAPR $NO_X$ Ozone Season Group 3 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of $NO_X$ emissions during the control period.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for all such CSAPR $NO_X$ Ozone Season Group 3 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances determined for each such CSAPR $NO_X$ Ozone Season Group 3 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR $NO_X$ Ozone Season Group 3 unit the amount of the CSAPR $NO_X$ Ozone Season Group 3 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8)–(9) [Reserved]

(10) If, after completion of the procedures under paragraphs (b)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(11) or (12) of this chapter covering such control period, include such unallocated CSAPR $NO_X$ Ozone Season Group 3 allowances in the portion of the State $NO_X$ Ozone Season Group 3 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i), (ii), and (v), of the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR $NO_X$ Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period in a given year under paragraph (b)(7) of this section would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR $NO_X$ Ozone Season Group 3 units in descending order based on such units' allocation

amounts under paragraph (b)(7) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR $NO_X$ Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

**§97.1013 Authorization of designated representative and alternate designated representative.**

(a) Except as provided under §97.1015, each CSAPR $NO_X$ Ozone Season Group 3 source, including all CSAPR $NO_X$ Ozone Season Group 3 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in §97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.1016:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under §97.1015, each CSAPR $NO_X$ Ozone Season Group 3 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR $NO_X$ Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in §97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.1016:

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, §97.1002, and §§97.1014 through 97.1018, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

**§97.1014 Responsibilities of designated representative and alternate designated representative.**

(a) Except as provided under §97.1018 concerning delegation of authority to make submissions, each submission under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program shall be made, signed, and certified by the designated representative or alternate

designated representative for each CSAPR $NO_X$ Ozone Season Group 3 source and CSAPR $NO_X$ Ozone Season Group 3 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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.''

(b) The Administrator will accept or act on a submission made for a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.1018.

### § 97.1015 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and the CSAPR $NO_X$ Ozone Season Group 3 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.1016, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR $NO_X$ Ozone Season Group 3 source or a CSAPR $NO_X$ Ozone Season Group 3 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.1016 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR $NO_X$ Ozone Season Group 3 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation

under §97.1016 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

**§97.1016 Certificate of representation.**

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR $NO_X$ Ozone Season Group 3 source, and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available;

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative;

(3) A list of the owners and operators of the CSAPR $NO_X$ Ozone Season Group 3 source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source;

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

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR $NO_X$ Ozone Season Group 3 unit at the source.'';

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program on behalf of the owners and operators of the source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''; and

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR $NO_X$ Ozone Season Group 3 unit, or where a utility or industrial customer purchases power from a CSAPR $NO_X$ Ozone Season Group 3 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR $NO_X$ Ozone Season Group 3 unit at the source; and CSAPR $NO_X$ Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 allowances by contract, CSAPR $NO_X$ Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR $NO_X$ Ozone Season Group 3 allowances will be deemed to be held or distributed in accordance with the contract.''; and

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section, § 97.516, or § 97.816 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' appeared in place of the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2''.

### § 97.1017 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.1016 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.1016 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

### § 97.1018 Delegation by designated representative and alternate designated representative.

(a) A 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 subpart.

(b) An alternate 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 subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such

natural person (referred to in this section 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 designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d) shall be deemed to be an electronic submission by me.''; and

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1018 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section, §97.518(c), or §97.818(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' in place of the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively.

### §97.1019 [Reserved]

### §97.1020 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under §97.1016, the Administrator will establish a compliance account for the CSAPR $NO_X$ Ozone Season Group 3 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with §97.1025(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR $NO_X$ Ozone Season Group 3 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who

may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

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

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

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR $NO_X$ Ozone Season Group 3 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 decision or order issued to me by the Administrator regarding the general account.''; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section, § 97.520(c)(1), or § 97.820(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' in place of the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' appeared in place of the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account in all matters pertaining to the CSAPR $NO_X$ Ozone Season Group 3 Trading Program, notwithstanding any agreement

between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 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) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR $NO_X$ Ozone Season Group 3'' appeared in place of the phrase ''TR $NO_X$ Ozone Season'' or the phrase ''CSAPR $NO_X$ Ozone Season Group 2''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous 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 authorized account representative and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account.

(ii) The alternate authorized account representative of 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 (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate 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 authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to

CSAPR $NO_X$ Ozone Season Group 3 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 authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate 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 CSAPR $NO_X$ Ozone Season Group 3 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(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 (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account 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 subpart.

(ii) An alternate authorized account representative of a general account 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 subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate 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, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any

electronic submission to the Administrator that is made 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 an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1020(c)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate 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 authorized account representative or alternate 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 (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section, §97.520(c)(5)(iii), or §97.820(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' in place of the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under §97.1022 for any CSAPR $NO_X$ Ozone Season Group 3 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR $NO_X$ Ozone Season Group 3 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR $NO_X$ Ozone Season Group 3 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under §97.1022 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR $NO_X$ Ozone Season Group 3 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.1014(a) and 97.1018 or paragraphs (c)(2)(ii) and (c)(5) of this section.

### § 97.1021 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance allocations and auction results.

(a) By July 29, 2021, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2021.

(b) By July 29, 2021, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022, unless the State in which the source is located notifies the Administrator in writing by June 29, 2021 of the State's intent to submit to the Administrator a complete SIP revision by September 1, 2021 meeting the requirements of § 52.38(b)(10)(i) through (iv) of this chapter.

(1) If, by September 1, 2021 the State does not submit to the Administrator such complete SIP revision, the Administrator will record by September 15, 2021 in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(2) If the State submits to the Administrator by September 1, 2021 and the Administrator approves by March 1, 2022 such complete SIP revision, the Administrator will record by March 1, 2022 in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2022.

(3) If the State submits to the Administrator by September 1, 2021 and the Administrator does not approve by March 1, 2022 such complete SIP revision, the Administrator will record by March 1, 2022 in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(c) By July 1, 2022, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control periods in 2023 and 2024.

(d) By July 1, 2023, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control periods in 2025 and 2026.

(e) [Reserved]

(f) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season

Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with §97.1011(a), or with a SIP revision approved under §52.38(b)(11) or (12) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR $NO_X$ Ozone Season Group 3 allowances auctioned to CSAPR $NO_X$ Ozone Season Group 3 units, in accordance with §97.1012(a), or with a SIP revision approved under §52.38(b)(11) or (12) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR $NO_X$ Ozone Season Group 3 source's compliance account the CSAPR $NO_X$ Ozone Season Group 3 allowances allocated to the CSAPR $NO_X$ Ozone Season Group 3 units at the source in accordance with §97.1012(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) [Reserved]

(j) [Reserved]

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (h) of this section, of CSAPR $NO_X$ Ozone Season Group 3 allowances to a recipient is made by or are submitted to the Administrator in accordance with §97.1011 or §97.1012 or with a SIP revision approved under §52.38(b)(11) or (12) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR $NO_X$ Ozone Season Group 3 allowances to a CSAPR $NO_X$ Ozone Season Group 3 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR $NO_X$ Ozone Season Group 3 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR $NO_X$ Ozone Season Group 3 allowance is allocated or auctioned.

(m) Notwithstanding any other provision of this subpart, if, as of the otherwise applicable deadline for recording any CSAPR $NO_X$ Ozone Season Group 3 allowances in any CSAPR $NO_X$ Ozone Season Group 3 source's compliance account under any other provision of this section, the Administrator has not completed all deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances required for the source under §97.811(d), such otherwise applicable deadline shall not apply, and the Administrator instead will record such CSAPR $NO_X$ Ozone Season Group 3 allowances in the source's compliance account as expeditiously as practicable after the Administrator has completed all deductions of CSAPR $NO_X$ Ozone Season Group 2 allowances required for the source under §97.811(d).

### §97.1022 Submission of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR $NO_X$ Ozone Season Group 3 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR $NO_X$ Ozone Season Group 3 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR $NO_X$ Ozone Season Group 3 allowance identified by serial number in the transfer.

### § 97.1023 Recordation of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer that is correctly submitted under § 97.1022, the Administrator will record a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer by moving each CSAPR $NO_X$ Ozone Season Group 3 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR $NO_X$ Ozone Season Group 3 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR $NO_X$ Ozone Season Group 3 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.1024 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer is not correctly submitted under § 97.1022, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR $NO_X$ Ozone Season Group 3 allowance transfer that is not correctly submitted under § 97.1022, the Administrator will notify the 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.

### § 97.1024 Compliance with CSAPR $NO_X$ Ozone Season Group 3 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR $NO_X$ Ozone Season Group 3 allowances are available to be deducted for compliance with a source's CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for a control period in a given year only if the CSAPR $NO_X$ Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.1023, of CSAPR $NO_X$ Ozone Season Group 3 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR $NO_X$ Ozone Season Group 3 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances deducted equals the number of tons of total $NO_X$ emissions from all CSAPR $NO_X$ Ozone Season Group 3 units at the source for such control period; or

(2) If there are insufficient CSAPR $NO_X$ Ozone Season Group 3 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR $NO_X$ Ozone Season Group 3 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR $NO_X$ Ozone Season Group 3 allowances, identified by serial number, in the source's

compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR $NO_X$ Ozone Season Group 3 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR $NO_X$ Ozone Season Group 3 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR $NO_X$ Ozone Season Group 3 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR $NO_X$ Ozone Season Group 3 allowances that were recorded in the compliance account pursuant to §97.1021 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR $NO_X$ Ozone Season Group 3 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to §97.526(d) or §97.826(d), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR $NO_X$ Ozone Season Group 3 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR $NO_X$ Ozone Season Group 3 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two 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.

### §97.1025 Compliance with CSAPR $NO_X$ Ozone Season Group 3 assurance provisions.

(a) *Availability for deduction.* CSAPR $NO_X$ Ozone Season Group 3 allowances are available to be deducted for compliance with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR $NO_X$ Ozone Season Group 3 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR $NO_X$ Ozone Season Group 3 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 base CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowances available under paragraph (a) of this section for compliance with the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By August 1, 2022 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ emissions exceed the State assurance level as described in §97.1006(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total $NO_X$ emissions exceed the respective State assurance levels for such control period—

(A) 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 base CSAPR $NO_X$ Ozone Season Group 3 sources and units in such State (and such Indian country), the common designated representative's share of the total $NO_X$ emissions from all base CSAPR $NO_X$ Ozone Season Group 3 units at base CSAPR $NO_X$ Ozone Season Group 3 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.1006(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the $NO_X$ emissions from each base CSAPR $NO_X$ Ozone Season Group 3 source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.1006(c)(2)(iii), §§ 97.1006(b) and 97.1030 through 97.1035, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.1002, and the calculation formula in § 97.1006(c)(2)(i).

(ii) 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)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results 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)(i) 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)(ii) of this section as having base CSAPR $NO_X$ Ozone Season Group 3 units with total $NO_X$ 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 operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of base CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) 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 base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR $NO_X$ Ozone Season Group 3 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)(ii) of this section and after the recordation, in accordance with §97.1023, of CSAPR $NO_X$ Ozone Season Group 3 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 base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 3 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)(ii) 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)(ii) 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 $NO_X$ Ozone Season Group 3 allowances that the owners and operators are required to hold in accordance with §97.1006(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)(ii) 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 $NO_X$ Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in §97.1006(c)(2)(i) for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 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)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowances in the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 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 amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR $NO_X$ Ozone Season Group 3 sources, base CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowances held in such assurance account equal to the amount of the decrease. If CSAPR $NO_X$ Ozone Season Group 3 allowances were transferred to such assurance account from more than one account, the amount of CSAPR $NO_X$ Ozone Season Group 3 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR $NO_X$ Ozone Season Group 3 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR $NO_X$ Ozone Season Group 3 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR $NO_X$ Ozone Season Group 3 assurance provisions for such control period must be a CSAPR $NO_X$ Ozone Season Group 3 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.

### § 97.1026 Banking.

(a) A CSAPR $NO_X$ Ozone Season Group 3 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 $NO_X$ Ozone Season Group 3 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR $NO_X$ Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State $NO_X$ Ozone Season Group 3 trading budget is set forth in § 97.1010(a) for a given State, the Administrator may record a transfer of any CSAPR $NO_X$ Ozone Season Group 3 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

### § 97.1027 Account error.

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

### § 97.1028 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR $NO_X$ Ozone Season Group 3 allowances from or transfer CSAPR $NO_X$ Ozone Season Group 3 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

**§97.1029 [Reserved]**

**§97.1030 General monitoring, recordkeeping, and reporting requirements.**

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR $NO_X$ Ozone Season Group 3 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in §97.1002 and in §72.2 of this chapter shall apply, 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 ''CSAPR $NO_X$ Ozone Season Group 3 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in §97.1002, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR $NO_X$ Ozone Season Group 3 unit''. The owner or operator of a unit that is not a CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR $NO_X$ Ozone Season Group 3 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $NO_X$ mass emissions and individual unit heat input (including all systems required to monitor $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under §97.1031 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 of a CSAPR $NO_X$ Ozone Season Group 3 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2021;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under §97.1034(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 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), or (3) of this section shall meet the requirements of §75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under §97.1030 through §97.1035, rather than the monitoring systems required under part 75 of this chapter;

(ii) $NO_X$ emission rate, $NO_X$ concentration, stack gas moisture content, stack gas volumetric flow rate, and $O_2$ or $CO_2$ concentration data shall be determined and reported, rather than the data listed in §75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under §75.4(e)(2) of this chapter

shall be submitted under § 97.1035, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 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 CSAPR $NO_X$ Ozone Season Group 3 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.1035.

(2) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall operate the unit so as to discharge, or allow to be discharged, $NO_X$ to the atmosphere without accounting for all such $NO_X$ in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 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 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 CSAPR $NO_X$ Ozone Season Group 3 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.1005 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.1031(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

### § 97.1031 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.1030(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 appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.1030(a)(1) that is 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 designated representative shall resubmit the petition to the Administrator under §97.1035 to determine whether the approval applies under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under §97.1030(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under §75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under §97.1030(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §97.1030(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under §97.1030(a)(1) that may significantly affect the ability of the system to accurately measure or record $NO_X$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, under §97.1030(a)(1) are subject to the recertification requirements in §75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under §97.1030(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and 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) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with §97.1033.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a

monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR $NO_X$ Ozone Season Group 3 Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.1032(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

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

(*1*) For a disapproved $NO_X$ emission rate (*i.e.*, $NO_X$-diluent) system, the maximum potential $NO_X$ emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved $NO_X$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $NO_X$ and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent

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

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

(*5*) For a disapproved excepted $NO_X$ monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential $NO_X$ emission rate, as defined in §72.2 of this chapter.

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

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

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

### §97.1032 Monitoring system out-of-control periods.

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

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §97.1031 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in §97.1031 for each disapproved monitoring system.

### §97.1033 Notifications concerning monitoring.

The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit shall submit written notice to the Administrator in accordance with §75.61 of this chapter.

### §97.1034 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of

this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.1014(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR $NO_X$ Ozone Season Group 3 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.1031, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR $NO_X$ Ozone Season Group 3 unit is subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the 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 report the $NO_X$ mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR $NO_X$ Ozone Season Group 3 unit is not subject to the Acid Rain Program or the CSAPR $NO_X$ Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the $NO_X$ mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the $NO_X$ 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.

(2) The designated representative shall report the $NO_X$ mass emissions data and heat input data for a CSAPR $NO_X$ Ozone Season Group 3 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2021 through June 30, 2021;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.1030(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after 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 CSAPR $NO_X$ Ozone Season Group 3 units that are also subject to the Acid Rain Program, CSAPR $NO_X$ Annual Trading Program, or CSAPR $SO_2$ Group 1 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $NO_X$ mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative

must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification*. The 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)(1)(ii)(B) of this section, the $NO_X$ emission rate and $NO_X$ concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate $NO_X$ emissions.

### §97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR $NO_X$ Ozone Season Group 3 unit may submit a petition under §75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§97.1030 through 97.1034.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

# PART 98—MANDATORY GREENHOUSE GAS REPORTING

## Subpart A—General Provisions

Sec.

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