

## § 97.143

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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances under § 97.153.

(2) If the Administrator already recorded such CAIR NO<sub>x</sub> 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<sub>x</sub> allowances were recorded under § 97.153 an amount of CAIR NO<sub>x</sub> allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO<sub>x</sub> allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO<sub>x</sub> allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO<sub>x</sub> 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<sub>x</sub> allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO<sub>x</sub> allowances that are not recorded, or that are deducted, in ac-

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cordance 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<sub>x</sub> allowances allocated under § 97.142, the Administrator may allocate for the control period in 2009 up to the following amount of CAIR NO<sub>x</sub> allowances to CAIR NO<sub>x</sub> 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
<b>Total .....</b>	<b>199,997</b>

(b) For any CAIR NO<sub>x</sub> unit in a State, if the unit's average annual NO<sub>x</sub> emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, where such unit is included in a NO<sub>x</sub> averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, the unit's NO<sub>x</sub> averaging plan has an actual weighted average NO<sub>x</sub> emission rate for such year equal to or less than the actual weighted average NO<sub>x</sub> emission rate for the year before such year and if the unit achieves NO<sub>x</sub> emission reductions in 2007 and 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO<sub>x</sub> 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<sub>x</sub> unit shall monitor and report the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> unit in a State whose compliance with the CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO<sub>x</sub> 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<sub>x</sub> unit shall demonstrate that, in

the absence of allocation to the unit of the amount of CAIR NO<sub>x</sub> allowances requested, the unit's compliance with the CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances for the control period in 2009 to CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> allowances not less than the total amount of CAIR NO<sub>x</sub> allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate to each CAIR NO<sub>x</sub> unit covered by such requests the amount of CAIR NO<sub>x</sub> 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<sub>x</sub> allowances than the total amount of CAIR NO<sub>x</sub> allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate CAIR NO<sub>x</sub> allowances to each CAIR NO<sub>x</sub> 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<sub>x</sub> allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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]