RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BUREAU OF ENVIRONMENT
DIVISION OF AIR POLLUTION CONTROL

CHAPTER 1200-03-27
NITROGEN OXIDES

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1200-03-27-.01 DEFINITIONS.

(1) For the purpose of this rule, the following definitions apply:

(a) "Facility" means any source or group of sources located within a contiguous area, and under common control.

(b) "Nitrogen Oxides" means all oxides of nitrogen except nitrous oxide.

(2) The definitions in Chapter 1200-03-02 apply for those terms not defined in Chapter 1200-03-27.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed March 5, 1993; effective April 19, 1993.*

1200-03-27-.02 GENERAL PROVISIONS AND APPLICABILITY.

(1) It is the purpose of this chapter to establish emission standards and requirements for certain sources of nitrogen oxides.

(2) Upon mutual agreement of any air contaminant source and the Technical Secretary, an emission limit more restrictive than that otherwise specified in this chapter may be established. Also, upon mutual agreement of any air contaminant source and the Technical Secretary, operating hours, process flow rates, or any other operating parameter may be established as a binding limit which the source must adhere to. Any items mutually agreed to shall be stated as a special condition for any permit or order concerning the source. Violation of this mutual agreement shall result in enforcement action.

(3) Nothing in this chapter shall be construed to exempt sources from meeting other applicable rules in this division and standards and requirement derived from or according to rules of this division, including, but not limited to, new source review requirements, permit conditions, and standards and requirements mutually agreed to or included in the State Implementation Plan.

(4) No owner or operator subject to these regulations may build, erect, install, or use any article, machine, equipment, process, or other method the use of which conceals emissions that would otherwise constitute non-compliance with an applicable regulation. This includes, but is not limited to, the use of gaseous diluents to achieve compliance, and the piecemeal

carrying out of an operating to avoid coverage by a regulation that applies only to operations larger than a specified size.

(5) The owner or operator of a source for which legal notice must be published to effect a source-specific compliance method, compliance demonstration method, record keeping record, reporting record, etc., shall be responsible for all costs associated with publishing the required legal notice.

(6) The owner or operator of any facility in Davidson, Rutherford, Sumner, Williamson, or Wilson County which has actual emissions from stationary sources of 25 tons or more of nitrogen oxides during a calendar year shall report to the Technical Secretary information and data concerning these emissions and VOC emissions. This information and data shall be in the form prescribed by the Technical Secretary, and shall be submitted before March 31 of the year following the calendar year for which the information and data is reported. The first report shall be for the 1993 calendar year, and shall be submitted before March 31, 1994. Each report shall be certified by an official of the company. Records must be kept by the facility, and maintained for a period of 3 years, documenting the information and data in each report.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed March 5, 1993; effective, April 19, 1993. Amendment filed April 18, 1994; effective July 2, 1994. Amendment filed May 10, 1994; effective July 24, 1994. Amendment filed August 14, 1995; effective October 28, 1995. Amendment filed September 9, 1996; effective November 23, 1996.*

1200-03-27-.03 STANDARDS AND REQUIREMENTS

(1) Emission standards for sources of nitrogen oxides apply as follows:

(a) Any owner or operator of a stationary source in Davidson, Rutherford, Sumner, Williamson, or Wilson County which emits or has the potential to emit 100 tons per year or more of nitrogen oxides (NOx) before control shall apply reasonably available control technology (RACT) to control NOx emissions from that source; and

(b) Specifically, the owner of operator of a tangentially-fired coal burning boiler having heat input capacity in excess of 600 million BTU per hour in Davidson, Rutherford, Sumner, Williamson, or Wilson County shall not allow emissions of nitrogen oxides from that boiler in excess of 0.45 pound per million BTU (30-day rolling average) (RACT).

(2) In calculation to determine whether the 100-ton-per-year threshold specified in Subparagraph (1)(a) of this rule is met, the nitrogen oxides contribution from all process emissions sources and fuel burning equipment, including those sources and that equipment listed for exemption in Paragraph (4) of this rule, shall be totaled.

(3) Compliance schedules apply as follows:

(a) The owner or operator of a boiler subject to the requirements of Subparagraph (1)(b) of this rule shall:

1. Submit a final control plan, acceptable to the Technical Secretary, for the installation of nitrogen oxides emission control systems and/or modifications of fuel burning equipment to the Technical Secretary by April 26, 1994;

2. Complete construction or installation of equipment by May 31, 1995; and

(Rule 1200-03-27-.03, continued)

3. Demonstrate full compliance with nitrogen oxides reasonably available control technology by July 31, 1995, using approved test methods and procedures; and

(b) The owner or operator of any process emission source or fuel burning equipment subject to the requirements of Subparagraph (1)(a) but not Subparagraph (1) (b) of this rule shall either:

1. Satisfy the schedule as follows:

(i) Submit a demonstrations of appropriate reasonably available control technology by February 25, 1994;

(ii) Submit a final control plan, acceptable to the Technical Secretary, for the installation of nitrogen oxides emission control systems and/or modifications of the source or equipment to the Technical Secretary by April 26, 1994;

(iii) Complete construction or installation of equipment by May 31, 1995; and

(iv) Demonstrate full compliance with nitrogen oxides reasonably available control technology by July 31, 1995, using approved test methods and procedures; or

2. In lieu of satisfying the schedule specified in Part 1 of this subparagraph, satisfy the schedule as follows:

(i) By February 25, 1994, submit a demonstration, acceptable to the Technical Secretary, that reasonably available control technology for nitrogen oxides from the process emission source or fuel burning equipment according to the schedule specified in Part 1 of this subparagraph is not practicable, for example, due to equipment unavailability or system unreliability;

(ii) Within 60 days after approval by the Technical Secretary of this demonstration, submit a schedule, acceptable to the Technical Secretary, containing dates for accomplishment on the process emission source or fuel burning equipment of the steps listed in the schedule specified in Part 1 of this subparagraph; and

(iii) Satisfy the schedule approved by the Technical Secretary.

(4) The reasonably available control technology requirements of this rule shall not apply to any of the following:

(a) A process emission source or fuel burning installation which neither emits nor has the potential to emit one ton or more per year of nitrogen oxides before control;

(b) Fuel burning equipment or a component of a process emission source which does not operate between April 1 and October 31; or

(c) An air pollution control device which is installed to effect compliance with a requirement of other chapters of Division 1200-03.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed September 7, 1993; effective November 27, 1993.*

1200-03-27-.04 STANDARDS FOR CEMENT KILNS.

(1) The requirements of this rule apply only to kilns with process rates of at least the following:

(a) Long dry kilns----------12 tons per hour (TPH);

(b) Long wet kilns----------10 TPH;

(c) Preheater kilns----------16 TPH; and

(d) Precalciner and preheater/precalciner kilns--------22 TPH.

(2) For the purpose of this rule, definitions apply as follow:

(a) “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(b) “Long dry kiln” means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(c) “Long wet kiln” means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(d) “Low-NOx burners” means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion.

(e) “Mid-kiln system firing” means secondary firing in kiln systems by injecting fuel at an intermediate point in the kiln system using a specially designed fuel injection mechanism for the purpose of decreasing nitrogen oxide (NOx) emissions through:

1. Burning part of the fuel at a lower temperature; and

2. Reducing conditions at the fuel injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(f) “Portland cement” means a hydraulic cement produced by ssentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

(g) “Portland cement kiln” means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(h) “Precalciner kiln” means a kiln system where the feed to the kiln is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(i) “Preheater kiln” means a kiln system where the feed to the kiln is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(3) After May 31, 2004, the owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with at least one of the following:

(a) Low-NOx burners;

(b) Mid-kiln system firing;

(c) Alternative control techniques approved by the Technical Secretary and the EPA as achieving at least the same emissions decreases as with low-NOx burners or mid-kiln system firing; or

(d) Reasonably available control technology approved by the Technical Secretary and the EPA.

(4) The owner or operator subject to the requirements of Paragraph (3) of this rule shall comply with the requirements as follow:

(a) By May 31, 2004, submit to the Technical Secretary the identification number and type of each kiln subject to this rule, the name and address of the facility where the kiln is located, and the name and telephone number of the person responsible for demonstrating compliance with Paragraph (3); and

(b) By October 31, 2004, submit to the Technical Secretary a report documenting for that kiln the total NO_x emissions from May 31, 2004, through September 30, 2004, and beginning in 2005 submit by October 31 of each year to the Technical Secretary a report documenting NOx emissions from May 1 through September 30 of that year.

(5) By May 31, 2004, the owner or operator of a kiln subject to this rule shall submit to the Technical Secretary a demonstration of compliance with the requirements of Paragraph (3). If compliance is being achieved by use of prescribed equipment, for example low-NOx burners or mid-kiln system firing, the demonstration of compliance shall be written certification to the Technical Secretary that this equipment is installed and is in use. If compliance is being achieved by use of alternative control techniques approved by the Technical Secretary and the EPA, demonstration of compliance shall as specified by the Technical Secretary and the EPA. In the case of compliance proposed to be achieved by use of alternative control techniques, a plan for compliance demonstration shall be submitted to the Technical Secretary by May 1, 2003. Upon receipt the Technical Secretary shall immediately forward a copy of the plan to the EPA. By November 1, 2003, the Technical Secretary shall specify in writing to the owner or operator of the kiln how compliance shall be demonstrated, this specification consistent with methods and requirements specified by the EPA following its review of the submitted plan.

(6) By December 31 of each year, beginning in 2004, the owner or operator of a kiln subject to this rule shall submit to the Technical Secretary a written certification that compliance with the requirements of Paragraph (3) has been maintained during that year's five-month period May 1 through September 30, except for 2004 when compliance is to be maintained from May 31 through September 30. The methods of determining that this compliance has been maintained shall be as specified on the major source operating permit issued for the facility at which the kiln is operated.

(7) Beginning May 31, 2004, the owner or operator of a kiln subject to this rule shall maintain records for May 31 through September 30 of that year, and in subsequent years for May 1 through September 30, that include the data as follow:

(a) The date, time, and duration of any startup, shutdown, or malfunction in the operation of the cement kiln or its emissions monitoring equipment or of any scheduled maintenance activity that affects NOx emissions or emissions monitoring;

(b) The results of any compliance testing; and

(Rule 1200-03-27-.04, continued)

(c) Other data required by permit to be maintained.

(8) The records listed in Paragraph (7) of this rule shall be retained on-site for a minimum of 2 years following the calendar year for which they are made and shall be made available to the Technical Secretary for his review upon request.

(9) The requirements of this rule shall not apply to periods of scheduled maintenance activities that affect NOx emissions.

(10) The requirements of this rule shall not apply to periods of malfunctions, startups, and shutdowns. These periods are subject to the requirements of Chapter 1200-03-20.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed July 9, 2001; effective September 22, 2001.*

1200-03-27-.05 RESERVED.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed July 9, 2001; effective September 22, 2001.*

1200-03-27-.06 NOx BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS (40 CFR 96).

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

(a) The provisions of Sec. 96.4(a)(1) as adopted for Tennessee are revised to read as follows:

With the exception of a unit under Sec. 96.4(a)(2) that prior to September 22, 2001 was allocated NOx allowances as an industrial boiler, this allocation to be submitted to the EPA to be included in the state implementation plan, any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25MWe and sells any amount of electricity during a control period; or

(b) The provisions of Sec. 96.2 concerning the terms “NOx allowance” and “NOx Budget emissions limitation” as adopted for Tennessee are revised to read as follows:

NOx allowance means a limited authorization by the Administrator under the NOx 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 Sec. 96.54(f). No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.4(b) or Sec. 96.5 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 Sec. 96.41, Sec. 96.42, or Sec. 96.88, ``NOx 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 NOx Budget Trading Program established, and approved and administered by the Administrator, pursuant to the Federal regulation referred to in the definition of “NOx Budget Trading Program” in Sec. 96.2.

NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control

period under Sec. 96.54 (a), (b), (e), and (f) adjusted to account for excess emissions for a prior control period under Sec. 96.54 (d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.

(c) The provisions of Sec. 96.5(c)(2) as adopted for Tennessee are revised to read as follows:

The Administrator will allocate NOx allowances under subpart E of this part 96 to a unit exempt under this section. For each control period for which the unit is allocated one or more NOx allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NOx allowances.

(d) The provisions of Sec. 96.6(c)(1) as adopted for Tennessee are revised to read as follows:

The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54(a), (b), (e), or (f) as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with subpart H of this part 96, plus any amount necessary to account for actual heat input under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under Sec. 96.86 or Sec. 96.87.

(e) The provisions of Sec. 96.23(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22.

(f) The provisions of Sec. 96.40 as adopted for Tennessee are revised to read as follows:

Sec. 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period. The state trading program budget to be allocated to units under Sec. 96.4(a)(1) is 25814 tons/season, as specified for electricity generating units in the state in the EPA's final published budgets for states under the EPA's NOx SIP call. The budget to be allocated to units under Sec. 96.4(a)(2) is 5666 tons/season, the total of budgets for non-EGU units subject to this rule 1200-03-27-.06 and included in the EPA's inventory for the NOx SIP call. The portion of the state trading program budget allocated to units under Sec. 96.4(a)(2) shall be as set forth in the state implementation plan. The nitrogen oxides allowance (NOx allowance) allocated under Sec. 96.4(a)(2) must be subjected to a public hearing and submitted to the EPA for approval as a revision to the state implementation plan. The permitting authority may allocate additional allowances to NOx Budget units that have been generated through NOx emission reductions from industrial, mobile, and area source sectors that are permanent, enforceable, quantifiable, and surplus as determined by and approved by the Administrator and the permitting authority.

(Rule 1200-03-27-.06, continued)

(g) The provisions of Sec. 96.41 as adopted for Tennessee are revised to read as follows:

Sec. 96.41 Timing requirements for NOx allowance allocations.

1. The NOx allowance allocations for units that receive allocations under parts (h)2 and 3 of this paragraph for the control periods in 2004 through 2018 are as specified in Sec. 96.42.

2. By April 1, 2016, and April 1st of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this subparagraph. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this subparagraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

3. By April 1, 2005 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the applicable allocation set-aside for the prior control period.

(h) The provisions of Sec. 96.42 as adopted for Tennessee are revised to read as follows:

Sec. 96.42 NOx allowance allocations.

1. (i) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:

(I) For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or for the control period in 1995 if the unit is under Sec. 96.4(a)(2); and

(II) For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.

(ii) The unit's total heat input for the control period in each year specified under subpart (i) of this part will be determined in accordance with the requirements for a continuous emission monitoring system if the NOx Budget unit was otherwise subject to the requirements for a continuous emission monitoring system for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements for a continuous emission monitoring system for the year.

2. For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, a total number of NOx allowances equal to 95.7 percent, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:

(i) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under part 1 of this subparagraph, rounded to the nearest whole NOx allowance as appropriate.

(ii) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under subpart (i) of this part does not equal 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under this subpart (i) so that the total number of NOx allowances allocated equals 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under this subpart (i), and rounding to the nearest whole NOx allowance as appropriate.

3. For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1st of the period used to calculate heat input a NOx allowance in the state implementation plan to be submitted to EPA for approval.

4. For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, in accordance with the following procedures:

(i) The permitting authority will establish separate allocation set-aside for units under Sec. 96.4 (a)(1) and units under Sec. 96.4 (a)(2). For units under Sec. 96.4(a)(1) the allocation set-aside will be allocated NOx allowances equal to 4.3 percent of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate. For units under Sec. 96.4(a)(2), the allocation set-aside for new source growth will be the NOx allowances remaining in the state trading program budget for units under Sec. 96.4(a)(2) after allocations are set for all NOx budget units under Sec. 96.40. For units under Sec. 96.4(a)(2) the allocation set-aside will also be established in the state implementation plan.

(ii) The NOx authorized account representative of a NOx Budget unit may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances, starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.

(Rule 1200-03-27-.06, continued)

(iii) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period a NOx allowance in accordance with the following:

(I) For NOx Budget units that commenced operation after May 1, 1996, and before January 1, 2001, an allowance that does not exceed any of the following three limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. NOx allowances granted under this provision may be transferred at the request of the NOx authorized account representative to NOx Budget units which are owned by the same entity as the NOx Budget unit for which the allocation is made and are within the state.

(II) For NOx Budget units that commence operation after January 1, 2001, an allowance that does not exceed any of the following three limits: the product of the unit's maximum design heat input (in mmBtu/hr), the number of hours remaining in the control period starting with the first day of the control period on which the unit operated or is projected to operate, and 0.013 lb/mmBtu; the allowable NOx emission under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. No allocation shall be made to any unit that commences operation after January 1, 2001, with an emission rate greater than 0.013 lb/mmBtu.

(iv) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period a NOx allowance in an amount that does not exceed any of the three following limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan.

(v) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under subpart (ii) of this part in the order that a complete construction permit application is received by the permitting authority.

(I) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part.

(II) If the applicable allocation set-aside has an amount of NOx allowances not less than the number requested (as adjusted under item (I) above), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under item (I)) to the NOx Budget unit.

(III) If the applicable allocation set-aside has a smaller amount of NOx allowances than the number requested (as adjusted under subpart (i) above), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

(IV) Once an applicable allocation set-aside has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated.

(vi) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under subpart (v) of this part and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated to the NOx Budget unit.

5. For each NOx Budget unit that is allocated NOx allowances under part 4 of this subparagraph for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual emissions from the unit during the control period. After making this deduction for compliance for the control period for all such units that are allocated NOx allowances under part 4, the Administrator will notify the permitting authority of the NOx allowances that were not deducted for compliance, these allowances then to be treated as additions, or reversions, for this control period to the allocation set-aside for the control period. Following this notification, the permitting authority will allocate any NOx allowances remaining in the allocation set-asides for the control period to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

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

where:

"Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies. Unit type is as described under Sec. 96.4(a)(1) and (2);

"Unit's NOx allowance allocation" is the number of NOx allowances allocated under part 2 or 3 of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

"State trading program budget excluding allocation set-aside" is the State trading program budget apportioned to the unit type under Sec. 96.40 for the control period to which the allocation set-aside applies minus the allocation set-aside. Unit type is as described under Sec. 96.4(a)(1) and (2).

(i) The provisions of Sec. 96.53 as adopted for Tennessee are revised to read as follows:

Sec. 96.53 Recordation of NOx allowance allocations.

1. The Administrator will record the NOx allowances for 2004 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2004 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

2. By May 1, 2002, the Administrator will record the NOx allowances for 2005 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.4(b)(4)(ii) or Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2005 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

3. By May 1, 2003, the Administrator will record the NOx allowances for 2006 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2006 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

4. By May 1, 2004, the Administrator will record the NOx allowances for 2007 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2007 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

5. Each year starting with 2005, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)), the Administrator will record:

   (i) NOx allowances, in the compliance account, as allocated to the unit under subpart E of this part 96 for the third year after the year of the control period for which such deductions were or could have been made;

   (ii) NOx allowances, in the general account specified by the owners and operators of the unit, as allocated under Sec. 96.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

   (iii) NOx allowances, in the compliance account, as allocated to the unit under Sec. 96.88(a).

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

(j) The provisions of Sec. 96.54 as adopted for Tennessee are revised to read as follows:

Sec. 96.54 Compliance.

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

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

   (ii) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.

2. Deductions for compliance.

   (i) Following the recordation, in accordance with Sec. 96. 61, of NOx 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 NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under part 1 of this subparagraph to cover the unit's NOx emissions (as determined in accordance with subpart H of this part 96), or to account for actual emissions under Sec. 96.42(e) for the control period:

      (I) From the compliance account; and

      (II) Only if no more NOx allowances available under part 1 of this subparagraph 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 NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System 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).

   (ii) The Administrator will deduct NOx allowances first under item (i)(I) of this part and then under item (i)(II):

      (I) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined; or

      (II) Until no more NOx allowances available under subparagraph (a) of this paragraph remain in the respective account.

3. (i) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under part 2, 4, or 5 of this subparagraph. Such identification shall

be made in the compliance certification report submitted in accordance with Sec. 96.30.

(ii) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under subpart (ii) of this part, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(I) Those NOx allowances that were allocated for the control period to the unit under subpart E or I of this part 96;

(II) Those NOx 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 96, in order of their date of recordation;

(III) Those NOx allowances that were allocated for a prior control period to the unit under subpart E or I of this part 96; and

(IV) Those NOx 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 96, in order of their date of recordation.

4. Deductions for excess emissions.

(i) After making the deductions for compliance under part 2 of this subparagraph, 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 NOx 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.

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

(iii) Any allowance deduction required under this subparagraph shall not affect the liability of the owners and operators of the NOx 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 CAA 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 NOx 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.

5. 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 96:

(i) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

(ii) Notwithstanding item 2(ii)(I) of this subparagraph, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under subpart 5(i) of this subparagraph) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part 96, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

6. The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to part 2, 4, or 5 of this subparagraph.

(k) The provisions of Sec. 96.55 as adopted for Tennessee are revised to read as follows:

Sec. 96.55 Banking.

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

(i) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part 96, or subpart I of this part 96.

(ii) The Administrator will designate, as a "banked" NOx allowance, any NOx 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 Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)) and that was allocated for that control period or a control period in a prior year.

2. Each year starting in 2005, after the Administrator has completed the designation of banked NOx allowances under subpart 1(ii) of this subparagraph and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:

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

(ii) If the total number of banked NOx allowances determined, under subpart (i) of this part, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.

(Rule 1200-03-27-.06, continued)

(iii) If the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:

(I) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts.

(II) The Administrator will multiply that ratio by the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.

3. Any NOx Budget unit may reduce its NOx emission rate in the 2001, 2002, or 2003 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2004 to the unit in accordance with the following requirements.

(i) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) of this part shall monitor NOx emissions in accordance with subpart H of this part. Each budget unit for which early reduction credits are requested must have monitoring data for at least one control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during any control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(ii) NOx emission rate and heat input under subparts (iii) through (v) below shall be determined in accordance with subpart H of this part 96.

(iii) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) below shall reduce its NOx emission rate, for each control period for which early reduction credits are requested as follows:

(I) For EGUs, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period, this emission rate for the 2000 control period having been established through monitoring in accordance with subpart H of this part 96.

(II) For non-EGUs, to less than 95 percent of the unit's NOx emission rate in the 2000, 2001, or 2002 control period, that control period being the earliest one for which monitoring data acceptable to the

Administrator and the Technical Secretary establishes the NOx emission rate for that unit. For example, emission rate reductions achieved in the 2003 control period would be as compared to the 2000 control period if the NOx emission rate for the 2000 control period had been accepted by the Administrator and the Technical Secretary as having been established.

(iv) The NOx authorized account representative of a NOx Budget unit that meets the requirements of subparts (i) and (iii) of this part may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001, 2002, and/or 2003 in accordance with subpart (iii) of this part.

(I) In the early reduction credit request, the NOx authorized account representative for EGUs 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 the acid deposition control requirement for the unit type and the unit's NOx emission rate for such control period in lb/mmBtu, divided by 2000 lb/ton, and rounded to the nearest ton. For non-EGUs, the NOx authorized account representative 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 the unit's emission rate prior to the NOx emission rate reduction in lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton; the difference must reflect only reductions additional to prior existing requirements.

(II) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(v) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of subparts (i) and (iii) of this part and covered by early reduction requests meeting the requirements of item (iv)(I) of this part, in accordance with the following procedures:

(I) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of subparts (i) and (iii) and item (iv)(II) of this part are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of subparts (ii) and (iv) of this part.

(II) If the State's compliance supplement pool of 10565 tons/season has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 (as adjusted under item (v)(I) of this part), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under item (v)(I)). If the State's compliance

supplement pool, after deduction of the early reduction credits for the 2001 control period, has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2002 (as adjusted under item (v)(I)), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under item (v)(I)). The same procedure will be followed for early reduction credit requests from the 2003 control period as from the 2002 control period.

(III) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for any control period (as adjusted under item (v)(I) of this part), the permitting authority will allocate NOx allowances for that control period to each NOx Budget unit covered by such accepted requests according to the following formula:

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NOx allowances from the State's compliance supplement pool)

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).

"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool with appropriate deductions made for any early reduction credits previously allocated.

(vi) By May 1, 2004, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under subpart (v) of this part. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparts (i) through (v) of this part.

(vii) NOx allowances recorded under subpart (vi) of this part may be deducted for compliance under Sec. 96.54 for the control periods in 2004 or 2005. Notwithstanding part 1 of this subparagraph, the Administrator will deduct as retired any NOx allowance that is recorded under subpart (vi) and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2004 or 2005.

(viii) NOx allowances recorded under subpart (vi) are treated as banked allowances in 2005 for the purposes of parts 1 and 2 of this subparagraph.

(Rule 1200-03-27-.06, continued)

4. One thousand NOx tons of the State's compliance supplement pool is set aside to be allocated to units under Sec. 96.4(a)(2). If this specified amount of the compliance supplement pool is not all or in part allocated to units under Sec. 96.4(a)(2), then qualifying units under Sec. 96.4(a)(1) may be allocated these NOx tons.

5. The permitting authority may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension beyond the May 31, 2004 compliance deadline according to the following procedures:

(i) The permitting authority shall initiate the issuance process by the later date of September 30, 2002, or after the State issues credit according to the procedures in part 3 of this subparagraph.

(ii) The permitting authority shall complete the issuance process by no later than May 31, 2004.

(iii) The State shall issue credit to a source only if the source complies with all applicable requirements referred to in the definition of "NOx Budget Trading Program" in sec. 96.2.

(vi) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocation compliance supplement pool credits under this paragraph.

(l) The provisions of Sec. 96.70(b)(1) as adopted for Tennessee are revised to read as follows:

NOx Budget units for which the owner or operator intends to apply for early reduction credits under part (k)3 of this paragraph must comply with the requirements of this subpart by May 1, 2000, for credits to be earned from the 2001 control period; by May 1, 2001, for credits from the 2002 control period; and May 1, 2002, for credits from the 2003 control period.

(m) The provisions of Sec. 96.70(c) as adopted for Tennessee are revised to read as follows:

Reporting data prior to initial certification. The owner or operator of a NOx Budget unit under paragraph (b)(3), (b)(4), (b)(5), or (b)(6) of this section shall determine, record and report NOx mass emissions, heat input rate, and any other values required to determine NOx mass emissions (e.g., NOx emission rate and heat input rate, or NOx concentration and stack flow rate) in accordance with the provisions for reporting data prior to initial certification of the mass emission provisions for a continuous emission monitoring system, from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted optional SO_2 emission data protocol for gas-fired and oil-fired units and NOx emission estimation protocol for gas-fired peaking units and oil-fired peaking units under provisions for a continuous emission monitoring system, or low mass emission excepted monitoring methodology referred to in Sec. 96.71(b), is provisionally certified.

(n) The provisions of Sec. 96.71(b)(2) as adopted for Tennessee are revised to read as follows:

Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may

significantly affect the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the continuous emission monitoring system QA and QC requirements, the owner or operator shall recertify the monitoring system according to the recertification approval process provisions for a continuous emission monitor system. 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 emission monitoring system according to the recertification approval process provisions mentioned above. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or complete replacement of an existing continuous emission monitoring system.

(o) The provisions of the opening and Sec. (1) of Sec. 96.71 (b)(3)(v)(A) as adopted for Tennessee are revised to read as follows:

The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under the disapproval provisions of the certification and recertification approval processes, the disapproval of certification application provisions for low mass emission units using excepted methodology referred to in Sec. 96.71(b), and the consequences of audits provisions of the QA and QC requirements for a continuous emission monitoring system and continuing until the date and hour that the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certified tests successfully completed:

1. For units that the owner or operator intends to monitor or monitors for NOx emission rate and heat input rate or intends to determine or determines NOx mass emissions using the low mass emission excepted methodology specified in Sec. 96.71(b)(3)(ii), the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit; and

(p) The provisions of Sec. 96.71(c) as adopted for Tennessee are revised to read as follows:

Initial certification and recertification procedures for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements for a continuous emission monitoring system and the applicable requirements for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). 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 NOx Budget Trading Program as of the following dates:

1. For a unit that does not have monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx authorized account representative submits the certification application for low mass emissions excepted methodology, starting on the date of such submission until the completion of the period for the Administrator's review.

2. For a unit that has monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx authorized account representative submits the certification application for low mass emissions excepted methodology for the unit and that reports data on an annual

basis under Sec. 96.74(d), starting January 1 of the year after the year of such submission until the completion of the period for the Administrator's review.

3. For a unit that has monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx Authorized Account Representative submits the certification application under for low mass emissions excepted methodology for the unit and that reports on a control season basis under Sec. 96.74(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.

(q) The provisions of Sec. 96.74(d)(1)(ii) as adopted for Tennessee are revised to read as follows:

For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

(r) The provisions of Sec. 96.74(d)(2)(ii) as adopted for Tennessee are revised to read as follows:

Submit quarterly reports covering the period May 1 through September 30 of each year and including the hourly data and results of QA tests required under the annual and ozone season monitoring and reporting requirements for a continuous emission monitoring system. The NOx authorized account representative shall submit such quarterly reports, beginning with:

1. For a unit for which the owner or operator intends to apply or applies for early reduction credits, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c). Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

2. For a unit that commences operation on or before May 31, 2004, and that is not subject to paragraph (d)(2)(i) of this section, the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1, 2003; or

3. For a unit that commences operation after May 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or

4. For a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1 of the first control period after the unit commences operation.

(s) The provisions of Sec. 96.85(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget opt-in permit will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22.

(t) For the purpose of this rule, the provisions of part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the year 2002 are amended to refer to year 2003, those that refer to year 2003 are amended to refer to year 2004, and those that refer to year 2004 to are amended to refer to year 2005. For example, the requirement in Sec. 96.70(b)(2) for units that commence operation before January 1, 2002, to comply with Subpart H by May 1, 2002, is amended by this paragraph to specify that units that commence operation before January 1, 2003, must comply by May 1, 2003. Also for the purpose of this rule, the provisions of Part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the specific date May 1, 2003, are amended to refer to the date May 31, 2004. For example, the specification in Sec. 96.6(c)(3) that a unit be subject to requirements starting on May 1, 2003, is amended by this paragraph to specify that the unit is subject starting on May 31, 2004, instead.

(u) The citations in this rule 1200-03-27-.06, including in part 96 in this rule's paragraph (2), to sections within part 96 that are amended by paragraph (1) of this rule are to be taken as citations to those sections as amended by this paragraph.

(2) PART 96--NOx Budget Trading Program for State Implementation Plans

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Subpart A--NOx Budget Trading Program General Provisions

Sec. 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NOx Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for Sec. 96.4(b)), subparts B through D, subpart F (except for Sec. 96.55(c)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NOx Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

Sec. 96.2 Definitions.

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

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NOx authorized account representative for a NOx Budget source or a group of identified NOx Budget sources who is authorized to represent the owners and operators of such source or sources and of the NOx Budget units at such source or sources with regard to matters under the NOx Budget Trading Program.

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

Acid Rain emissions limitation means, as defined in Sec. 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 CAA.

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

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NOx allowances to be initially credited to a NOx 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.

(Rule 1200-03-27-.06, continued)

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.

CAA means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

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 Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 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 Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 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 Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 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 Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date of commencement of operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 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 NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under subpart F of this part, in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx Budget emissions limitation.

Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NOx Budget source's or a NOx Budget unit's compliance or noncompliance with this part and that is signed by the NOx authorized account representative in accordance with subpart B of this part.

Continuous emission monitoring system or CEMS means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:

Flow monitor;

Nitrogen oxides pollutant concentration monitors;

Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;

A continuous moisture monitor when such monitoring is required by subpart H of this part; and

An automated data acquisition and handling system.

Control period means the period beginning May 1 of a year 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 NOx 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 NOx Budget unit during a control period that exceeds the NOx 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:

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 any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

The combustion 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 NOx 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 the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

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:

For the life of the unit;

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

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 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 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 flow rate and either the maximum carbon dioxide concentration (in percent CO2) or the minimum oxygen concentration (in percent O2).

Maximum potential NOx 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 nitrogen oxides concentration as defined in 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 CO2), 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 (mmBtu) 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 NOx emissions limitation means, with regard to a NOx Budget opt-in source, the lowest NOx 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 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 CAA and regulatory authority under the CAA, other than title V of the CAA and part 70 or 71 of this chapter.

(Rule 1200-03-27-.06, continued)

NOx allowance means an authorization by the permitting authority or the Administrator under the NOx 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.

NOx allowance deduction or deduct NOx allowances means the permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

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

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

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

NOx 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 NOx allowances may be submitted for recordation in a NOx Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NOx Budget emissions limitation for the control period immediately preceding such deadline.

NOx authorized account representative means, for a NOx Budget source or NOx Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOx 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 NOx 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 NOx allowances held in the general account.

NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54(a) and (b), adjusted by any deductions of such NOx allowances to account for actual utilization under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.

NOx Budget opt-in permit means a NOx Budget permit covering a NOx Budget opt-in source.

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

NOx 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 NOx Budget Trading Program requirements applicable to a NOx Budget source, to each NOx Budget unit at the NOx Budget source, and to the owners

and operators and the NOx authorized account representative of the NOx Budget source and each NOx Budget unit.

NOx Budget source means a source that includes one or more NOx Budget units.

NOx Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to Sec. 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NOx Budget unit means a unit that is subject to the NOx Budget Trading Program emissions limitation under Sec. 96.4 or Sec. 96.80.

Operating means, with regard to a unit under Secs. 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOx Budget permit under Sec. 96.83(a).

Operator means any person who operates, controls, or supervises a NOx Budget unit, a NOx Budget source, or unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 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 NOx Budget unit under the NOx Budget Trading Program through a final, effective NOx Budget opt-in permit under subpart I of this part.

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

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a NOx Budget unit or from a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 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 NOx Budget unit or the unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 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 NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person’s ownership interest with respect to NOx allowances.

(Rule 1200-03-27-.06, continued)

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 NOx Budget Trading Program in accordance with subpart C of this part.

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 NOx allowances, the movement of NOx allowances by the Administrator from one NOx 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 NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under Sec. 96.53(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 CAA. For purposes of section 502(c) of the CAA, a ``source,'' including a ``source'' with multiple units, shall be considered a single ``facility.''

State means one of the 48 contiguous States and the District of Columbia specified in Sec. 51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NOx Budget Trading Program pursuant to Sec. 51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term ``State'' shall mean the incorporating State. The term ``State'' shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NOx tons apportioned to all NOx Budget units in a given State, in accordance with the NOx Budget Trading Program, for use in a given control period.

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 CAA 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 CAA and part 70 or 71 of this chapter.

(Rule 1200-03-27-.06, continued)

Ton or tonnage means any ``short ton'' (i.e., 2,000 pounds). For the purpose of determining compliance with the NOx 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 load means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

(2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

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.

Utilization means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NOx Budget 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 if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

Sec. 96.3 Measurements, abbreviations, and acronyms.

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

Btu--British thermal unit.
hr--hour.
Kwh--kilowatt hour.
lb--pounds.
mmBtu--million Btu.
MWe--megawatt electrical.
ton--2000 pounds.
CO2--carbon dioxide.
NOx--nitrogen oxides.
O2--oxygen.

Sec. 96.4 Applicability.

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

(Rule 1200-03-27-.06, continued)

(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(2) Any unit that is not a unit under paragraph (a)(1) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

(b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NOx mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NOx Budget unit.

(1) For each control period under paragraph (b) of this section, the federally enforceable permit must:

(i) Restrict the unit to burning only natural gas or fuel oil.

(ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NOx mass emissions by the unit's maximum potential hourly NOx mass emissions.

(iii) Require that the unit's potential NOx mass emissions shall be calculated as follows:

(A) Select the default NOx emission rate in Table 2 of Sec. 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NOx emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1)(i) of this section; and

(B) Multiply the default NOx emission rate under paragraph (b)(1)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under Sec. 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iv) Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

(v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of

operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.

(2) The permitting authority that issues the federally enforceable permit with the fuel use restriction under paragraph (b)(1)(i) and the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section will notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

(3) If, for any control period under paragraph (b) of this section, the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section, the unit shall be a NOx Budget unit, subject to the requirements of this part. Such unit shall be treated as commencing operation and, for a unit under paragraph (a)(1) of this section, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

Sec. 96.5 Retired unit exemption.

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

(b) (1) Any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired shall be exempt from the NOx Budget Trading Program, except for the provisions of this section, Secs. 96.2, 96.3, 96.4, 96.7 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 NOx 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 NOx Budget permit for the unit. A copy of the statement shall be submitted 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. 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. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.

(2) (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 NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume 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 NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under this section shall comply with the requirements of the NOx 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.

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

(5) 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.

(6) Loss of exemption.

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

(A) The date on which the NOx authorized account representative submits a NOx Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NOx authorized account representative is required under paragraph (c)(2) of this section to submit a NOx Budget permit application.

(ii) 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.

Sec. 96.6 Standard requirements.

(a) Permit Requirements.

(1) The NOx authorized account representative of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 in accordance with the deadlines specified in Sec. 96.21(b) and (c);

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

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

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

(b) Monitoring requirements.

(1) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx Budget source and each NOx 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 NOx Budget emissions limitation under paragraph (c) of this section.

(c) Nitrogen oxides requirements.

(1) The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx 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 utilization under Sec. 96.42(e) for the control period.

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

(3) A NOx Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.

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

(5) A NOx 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 NOx allowance was allocated.

(6) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NOx Budget Trading Program. No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(7) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from a NOx Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOx Budget permit of the NOx Budget unit by operation of law without any further review.

(d) Excess emissions requirements.

(1) The owners and operators of a NOx Budget unit that has excess emissions in any control period shall:

(i) Surrender the NOx allowances required for deduction under Sec. 96.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under Sec. 96.54(d)(3).

(e) Recordkeeping and Reporting requirements.

(1) Unless otherwise provided, the owners and operators of the NOx Budget source and each NOx 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 for the NOx authorized account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Sec. 96.13; 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 changing the NOx 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 NOx Budget Trading Program.

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

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

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under Sec. 96.5 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 NOx 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 NOx Budget Trading Program that occurs prior to the date that the revision takes effect.

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

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

(6) Any provision of the NOx Budget Trading Program that applies to a NOx Budget unit (including a provision applicable to the NOx authorized account representative of a NOx 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 NOx authorized account representative of one NOx Budget unit shall not be liable for any violation by any other NOx Budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.

(Rule 1200-03-27-.06, continued)

(g) Effect on other authorities. No provision of the NOx Budget Trading Program, a NOx Budget permit application, a NOx Budget permit, or an exemption under Sec. 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NOx authorized account representative of a NOx Budget source or NOx Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.

Sec. 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NOx 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 NOx 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 NOx 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--NOx Authorized Account Representative for NOx Budget Sources

Sec. 96.10 Authorization and responsibilities of the NOx authorized account representative.

(a) Except as provided under Sec. 96.11, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.

(b) The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, the NOx 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 NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under Sec. 96.13 for a NOx authorized account representative of the source and the NOx Budget units at the source.

(e) (1) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such

(Rule 1200-03-27-.06, continued)

submission shall include the following certification statement by the NOx authorized account representative: ``I am authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx 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 NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

Sec. 96.11 Alternate NOx authorized account representative.

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

(b) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, any representation, action, inaction, or submission by the alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

(c) Except in this section and Secs. 96.10(a), 96.12, 96.13, and 96.51, whenever the term ``NOx authorized account representative'' is used in this part, the term shall be construed to include the alternate NOx authorized account representative.

Sec. 96.12 Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.

(a) Changing the NOx authorized account representative. The NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx 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 NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(b) Changing the alternate NOx authorized account representative. The alternate NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx 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 NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(c) Changes in the owners and operators.

(1) In the event a new owner or operator of a NOx Budget source or a NOx Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, 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 NOx authorized account representative and any alternate NOx 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 NOx Budget source or a NOx Budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Sec. 96.13 Account certificate of representation.

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

(1) Identification of the NOx Budget source and each NOx 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 NOx authorized account representative and any alternate NOx authorized account representative.

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

(4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: ``I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of the owners and operators of the NOx Budget source and of each NOx 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 NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

(Rule 1200-03-27-.06, continued)

(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.

Sec. 96.14 Objections concerning the NOx authorized account representative.

(a) Once a complete account certificate of representation under Sec. 96.13 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 Sec. 96.13 is received by the Administrator.

(b) Except as provided in Sec. 96.12(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 NOx authorized account representative shall affect any representation, action, inaction, or submission of the NOx authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NOx 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 NOx authorized account representative, including private legal disputes concerning the proceeds of NOx allowance transfers.

Subpart C--Permits

Sec. 96.20 General NOx Budget trading program permit requirements.

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

(1) For NOx Budget sources required to have a title V operating permit, the NOx 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. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.

(2) For NOx Budget sources required to have a non-title V permit, the NOx 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. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the Administrator.

(Rule 1200-03-27-.06, continued)

(b) Each NOx Budget permit (including a draft or proposed NOx Budget permit, if applicable) shall contain all applicable NOx Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

Sec. 96.21 Submission of NOx Budget permit applications.

(a) Duty to apply. The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 by the applicable deadline in paragraph (b) of this section.

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

(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

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

(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

(c) Duty to reapply.

(1) For a NOx Budget source required to have a title V operating permit, the NOx authorized account representative shall submit a complete NOx Budget permit

application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NOx Budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

Sec. 96.22 Information requirements for NOx Budget permit applications.

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

(a) Identification of the NOx 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 NOx Budget unit at the NOx Budget source and whether it is a NOx budget unit under Sec. 96.4 or under subpart I of this part;

(c) The standard requirements under Sec. 96.6; and

(d) For each NOx Budget opt-in unit at the NOx Budget source, the following certification statements by the NOx 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 NOx Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect.''

(2) If the application is for an initial NOx Budget opt-in permit, ``I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2.''

Sec. 96.23 NOx Budget permit contents.

(a) Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx Budget permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.

Sec. 96.24 Effective date of initial NOx Budget permit.

(Rule 1200-03-27-.06, continued)

The initial NOx Budget permit covering a NOx Budget unit for which a complete NOx Budget permit application is timely submitted under Sec. 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NOx Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NOx Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

Sec. 96.25 NOx Budget permit revisions.

(a) For a NOx Budget source with a title V operating permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NOx Budget source with a non-title V permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D--Compliance Certification

Sec. 96.30 Compliance certification report.

(a) Applicability and deadline. For each control period in which one or more NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx 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 NOx 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 NOx Budget emissions limitation for the control period covered by the report:

(1) Identification of each NOx Budget unit;

(2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under Sec. 96.54 for the control period;

(3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx 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 Sec. 96.54(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 NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx 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 NOx Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NOx 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 NOx emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NOx 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 has 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, has 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.

Sec. 96.31 Permitting authority's and Administrator's action on compliance certifications.

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOx Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NOx allowances from or transfer NOx 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.

(Rule 1200-03-27-.06, continued)

Subpart E--NOx Allowance Allocations

Sec. 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.

Sec. 96.41 Timing requirements for NOx allowance allocations.

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NOx allowance allocations, for the control periods in 2003, 2004, and 2005.

(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control periods in 2018 through 2032. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the allocation set-aside for the prior control period.

Sec. 96.42 NOx allowance allocations.

(a) (1) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:

(i) For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or the control period in 1995 if the unit is under Sec. 96.4(a)(2); and

(ii) For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.

(2) The unit's total 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 if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(b) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:

(Rule 1200-03-27-.06, continued)

(1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.

(2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (b)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.

(c) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to non-electric generating units under Sec. 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.

(2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (c)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.

(d) For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used

to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

(1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NOx allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate.

(2) The NOx authorized account representative of a NOx Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.

(3) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period NOx allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(4) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period NOx allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(5) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.

(i) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.

(ii) If the allocation set-aside for the control period for which NOx allowances are requested has an amount of NOx allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NOx allowances

requested (as adjusted under paragraph (d)(5)(i) of this section) to the NOx Budget unit.

(iii) If the allocation set-aside for the control period for which NOx allowances are requested has a smaller amount of NOx allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx Budget unit.

(e) For a NOx Budget unit that is allocated NOx allowances under paragraph (d) of this section for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NOx allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:

NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(1) = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.15 lb/mmBtu); and

NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(2) = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.17 lb/mmBtu)

Where:

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

"Unit's actual control period utilization'' is the utilization (in mmBtu), as defined in Sec. 96.2, of the unit during the control period.

(f) After making the deductions for compliance under Sec. 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NOx allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NOx allowances to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

(Rule 1200-03-27-.06, continued)

Unit's share of NOx allowances remaining in allocation set-aside = Total NOx allowances remaining in allocation set-aside x (Unit's NOx allowance allocation <divide> (State trading program budget excluding allocation set-aside)

Where:

"Total NOx allowances remaining in allocation set-aside'' is the total number of NOx allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

"Unit's NOx allowance allocation'' is the number of NOx 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 trading program budget excluding allocation set-aside'' is the State trading program budget under Sec. 96.40 for the control period to which the allocation set-aside applies multiplied by 95 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NOx allowance as appropriate.

Subpart F--NOx Allowance Tracking System

Sec. 96.50 NOx Allowance Tracking System accounts.

(a) Nature and function of compliance accounts and overdraft accounts. Consistent with Sec. 96.51(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with one or more NOx Budget units. Allocations of NOx allowances pursuant to subpart E of this part or Sec. 96.88 and deductions or transfers of NOx allowances pursuant to Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.

(b) Nature and function of general accounts. Consistent with Sec. 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.

Sec. 96.51 Establishment of accounts.

(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Sec. 96.13, the Administrator will establish:

(1) A compliance account for each NOx 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 NOx Budget units.

(b) General accounts.

(1) Any person may apply to open a general account for the purpose of holding and transferring allowances. 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:

(Rule 1200-03-27-.06, continued)

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

(ii) At the option of the NOx authorized account representative, organization name and type of organization;

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

(iv) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: ``I certify that I was selected as the NOx authorized account representative or the NOx alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx 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.''

(v) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

(vi) 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.

(2) 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 NOx authorized account representative and any alternate NOx 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 NOx allowances held in the general account in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative or any alternate NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOx authorized account representative or any alternate NOx authorized account representative by the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx authorized account representative for the persons having an

ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative any: ``I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx 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.''

(iv) 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)(iii) of this section.

(3) (i) An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.

(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

(4) (i) The NOx 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 NOx 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 NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate NOx 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 NOx 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 NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to NOx 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 NOx authorized account representative and any alternate NOx 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 NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx 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 NOx allowances in the general account to include the change.

(5) (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)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative or the finality of any decision or order by the Administrator under the NOx 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 NOx authorized account representative or any alternate NOx authorized account representative for a general account, including private legal disputes concerning the proceeds of NOx 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.

Sec. 96.52 NOx Allowance Tracking System responsibilities of NOx authorized account representative.

(a) Following the establishment of a NOx 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 NOx allowances in the account, shall be made only by the NOx authorized account representative for the account.

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

Sec. 96.53 Recordation of NOx allowance allocations.

(a) The Administrator will record the NOx allowances for 2003 in the NOx Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NOx allowances allocated under Sec. 96.88(a)(1) for each NOx Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54, the Administrator will record NOx allowances, as allocated to the unit under subpart E of this part or under Sec. 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

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

Sec. 96.54 Compliance.

(a) NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx Budget emissions limitation for a control period in a given year only if the NOx 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 NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.

(b) Deductions for compliance.

(1) Following the recordation, in accordance with Sec. 96.61, of NOx 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 NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this section to cover the unit's NOx emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under Sec. 96.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NOx 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 NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx

Allowance Tracking System 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 NOx 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 NOx allowances deducted for the control period equals the number of tons of NOx 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 NOx allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period; or

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

(c) (1) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

(2) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx 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 NOx allowances that were allocated for the control period to the unit under subpart E or I of this part;

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

(iv) Those NOx 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 NOx 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 NOx allowances, the Administrator will deduct the required number of NOx

allowances, regardless of the control period for which they were allocated, whenever NOx 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 NOx 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 CAA 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 NOx 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 NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NOx 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 or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period.

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

Sec. 96.55 Banking.

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

(1) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part.

(2) The Administrator will designate, as a ``banked'' NOx allowance, any NOx 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 Sec. 96.54.

(b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this section and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:

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

(2) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.

(3) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.

(c) Any NOx Budget unit may reduce its NOx emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NOx 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 monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(Rule 1200-03-27-.06, continued)

(2) NOx emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.

(3) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NOx 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 NOx emission rate in the 2000 control period.

(4) The NOx authorized account representative of a NOx Budget unit that meets the requirements of paragraphs (c)(1)and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.

(i) In the early reduction credit request, the NOx 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 NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(5) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.

(ii) If the State's compliance supplement pool has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).

(iii) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NOx allowances to each NOx Budget unit covered by such accepted requests according to the following formula:

(Rule 1200-03-27-.06, continued)

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)] x (Available NOx allowances from the State's compliance supplement pool)

where:

"Unit's adjusted early reduction credits'' is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Total adjusted early reduction credits requested by all units'' is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Available NOx allowances from the State's compliance supplement pool'' is the number of NOx allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.

(7) NOx allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under Sec. 96.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the Administrator will deduct as retired any NOx allowance that is recorded under paragraph (c)(6) of this section and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2003 or 2004.

(8) NOx allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

Sec. 96.56 Account error.

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

Sec. 96.57 Closing of general accounts.

(a) The NOx 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 NOx Allowance Tracking System and by correctly submitting for recordation under Sec. 96.60 an allowance transfer of all NOx allowances in the account to one or more other NOx 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 NOx allowances, the Administrator may notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx 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 NOx allowances into

the account under Sec. 96.60 or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G--NOx Allowance Transfers

Sec. 96.60 Submission of NOx allowance transfers.

The NOx authorized account representatives seeking recordation of a NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOx 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 NOx allowance to be transferred; and

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

Sec. 96.61 EPA recordation.

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

(1) The transfer is correctly submitted under Sec. 96.60;

(2) The transferor account includes each NOx allowance identified by serial number in the transfer; and

(3) The transfer meets all other requirements of this part.

(b) A NOx allowance transfer that is submitted for recordation following the NOx allowance transfer deadline and that includes any NOx allowances allocated for a control period prior to or the same as the control period to which the NOx allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NOx allowance allocations in Sec. 96.53(b).

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

Sec. 96.62 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a NOx allowance transfer under Sec. 96.61, the Administrator will notify each party to the transfer. Notice will be given to the NOx authorized account representatives of both the transferror and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a NOx allowance transfer that fails to meet the requirements of Sec. 96.61(a), the Administrator will notify the NOx authorized account representatives of both accounts subject to the transfer of:

(Rule 1200-03-27-.06, continued)

(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 NOx allowance transfer for recordation following notification of non-recordation.

Subpart H--Monitoring and Reporting

Sec. 96.70 General requirements.

The owners and operators, and to the extent applicable, the NOx authorized account representative of a NOx Budget unit, shall comply with the monitoring 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 Sec. 96.2 and in Sec. 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 replaced by the terms ``NOx Budget unit,'' ``NOx authorized account representative,'' and ``continuous emission monitoring system'' (or ``CEMS''), respectively, as defined in Sec. 96.2.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each NOx Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx 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 NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with Secs. 75.72 and 75.76.

(2) Install all monitoring systems for monitoring heat input, if required under Sec. 96.76 for developing NOx allowance allocations.

(3) Successfully complete all certification tests required under Sec. 96.71 and meet all other provisions 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, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this section.

(b) Compliance dates. The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:

(1) NOx Budget units for which the owner or operator intends to apply for early reduction credits under Sec. 96.55(d) must comply with the requirements of this subpart by May 1, 2000.

(2) Except for NOx Budget units under paragraph (b)(1) of this section, NOx Budget units under Sec. 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2002.

(3) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) May 1, 2002; or

(ii) The earlier of:

(A) 180 days after the date on which the unit commences operation or,

(B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(4) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on a control season basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) The earlier of:

(A) 180 days after the date on which the unit commences operation or,

(B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(ii) However, if the applicable deadline under paragraph (b)(4)(i) does not occur during a control period, then the next May 1 immediately following the date determined in accordance with paragraph (b)(4)(i) of this section.

(5) For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:

(i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(ii) However, if the unit reports on a control season basis under Sec. 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (b)(5)(i) of this section.

(6) For a unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.

(c) Reporting data prior to initial certification.

(1) The owner or operator of a NOx Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.

(2) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NOx mass, heat input (if required for purposes of allocations) and any other values required to determine NOx Mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of Sec. 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(d) Prohibitions.

(1) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) 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 Sec. 96.75.

(2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NOx 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 for in Sec. 75.74 of this chapter.

(3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx 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 except as provided for in Sec. 75.74 of this chapter.

(4) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) 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 a retired unit exemption under Sec. 96.5 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 NOx authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Sec. 96.71(b)(2).

Sec. 96.71 Initial certification and recertification procedures

(a) The owner or operator of a NOx 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, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under Sec. 75.17(a) or (b) of this chapter for apportioning the NOx emission rate measured in a common stack or a petition under Sec. 75.66 of this chapter for an alternative to a requirement in Sec. 75.17 of this chapter, the NOx authorized account representative shall resubmit the petition to the Administrator under Sec.

96.75(a) to determine if the approval applies under the NOx Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in Sec. 75.72 of this chapter, or for any NOx concentration CEMS used under the provisions of Sec. 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 NOx Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under Sec. 75.19 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in Sec. 75.72 of this chapter, or that uses a NOx concentration CEMS under Sec. 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.

(1) Requirements for initial certification. The owner or operator shall ensure that each 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 Sec. 75.20 of this chapter. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in Sec. 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to Sec. 75.20 is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the requirements of Sec. 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system according to Sec. 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 the Administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to Sec. 75.20(b) of this chapter. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) Certification approval process for initial certifications and recertification.

(i) Notification of certification. The NOx authorized account representative shall submit to the permitting authority, the appropriate and EPA Regional Office a written notice of the dates of certification in accordance with Sec. 96.73.

(ii) Certification application. The NOx authorized account representative shall submit to the permitting authority a certification application for each 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 Sec. 75.19 of this chapter, the provisional certification date for a monitor shall be determined using the procedures set forth in Sec. 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

(iv) Certification application formal approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which 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 NOx 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 permitting authority 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 permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification application. If the NOx authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.

(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, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and

the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

(D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with Sec. 96.72(b).

(v) Procedures for loss of certification. If the permitting authority 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 beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under Sec. 75.20(a)(5)(i) of this chapter:

(1) For units using or intending to monitor for NOx emission rate and heat input or for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit.

(2) For units intending to monitor for NOx mass emissions using a NOx pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOx and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;

(B) The NOx 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; and

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's 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 Sec. 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 Sec. 75.19 of this chapter shall meet the applicable general operating requirements of Sec. 75.10 of this chapter, the applicable requirements of Sec. 75.19 of this chapter, and the applicable certification requirements of Sec. 96.71 of this chapter, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program, as of the following dates:

(Rule 1200-03-27-.06, continued)

(1) For units that are reporting on an annual basis under Sec. 96.74(d);

(i) For a unit that has commences operation before its compliance deadline under Sec. 96.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for permitting authority review, or

(2) For units that are reporting on a control period basis under Sec. 96.74(b)(3)(ii) of this part:

(i) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(iii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.

(iv) For a unit that has not operated after its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority's review.

(d) Certification/recertification procedures for alternative monitoring systems. The NOx authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall apply for certification to the permitting authority prior to use of the system under the NOx Trading Program. The NOx authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and Sec. 75.20(f) of this chapter .

Sec. 96.72 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 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 system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under Sec. 96.71 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 permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component 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. The owner or operator shall follow the initial certification or recertification procedures in Sec. 96.71 for each disapproved system.

Sec. 96.73 Notifications.

The NOx authorized account representative for a NOx Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with Sec. 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

Sec. 96.74 Recordkeeping and reporting.

(a) General provisions.

(1) The NOx authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of Sec. 96.10(e).

(2) If the NOx authorized account representative for a NOx 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 which 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, 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 Sec. 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 Sec. 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 NOx authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under Sec. 96.71 including the information required under subpart H of part 75 of this chapter.

(d) Quarterly reports. The NOx 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 NOx budget unit chooses to meet the annual reporting requirements of this subpart H, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For units that elect to comply with the early reduction credit provisions under Sec. 96.55 of this part, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

(iii) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

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

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

(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under Sec. 75.74(d)(3) through September 30 of each year in accordance with the provisions of Sec. 75.74(b) of this chapter. The NOx authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(A) For units that elect to comply with the early reduction credit provisions under Sec. 96.55, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data

shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

(B) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or

(C) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or

(D) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(E) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(3) The NOx 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 Sec. 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 NOx Budget unit (or group of units using a common stack) as well as 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 NOx Budget unit (or group of units using a common stack).

(Rule 1200-03-27-.06, continued)

(4) Compliance certification. The NOx 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; and

(ii) For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with Sec. 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and

(iii) For a unit that is reporting on a control period basis under Sec. 96.74(d) the NOx emission rate and NOx 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 NOx emissions.

Sec. 96.75 Petitions.

(a) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) 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, in consultation with the permitting authority.

(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter, the petition is governed by paragraph (b) of this section.

(b) The NOx authorized account representative of a NOx Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter or a NOx concentration CEMS used under 75.71(a)(2) of this chapter.

(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.

(Rule 1200-03-27-.06, continued)

Sec. 96.76 Additional requirements to provide heat input data for allocations purposes.

(a) The owner or operator of a unit that elects to monitor and report NOx Mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source located in a state developing source allocations based upon heat input.

(b) The owner or operator of a unit that monitors and reports NOx mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source that is applying for early reduction credits under Sec. 96.55.

Subpart I--Individual Unit Opt-ins

Sec. 96.80 Applicability.

A unit that is in the State, is not a NOx Budget unit under Sec. 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NOx Budget opt-in source. A unit that is a NOx Budget unit, is covered by a retired unit exemption under Sec. 96.5 that is in effect, or is not operating is not eligible to become a NOx Budget opt-in source.

Sec. 96.81 General.

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

Sec. 96.82 NOx authorized account representative.

A unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, or a NOx Budget opt-in source, located at the same source as one or more NOx Budget units, shall have the same NOx authorized account representative as such NOx Budget units.

Sec. 96.83 Applying for NOx Budget opt-in permit.

(a) Applying for initial NOx Budget opt-in permit. In order to apply for an initial NOx Budget opt-in permit, the NOx authorized account representative of a unit qualified under Sec. 96.80 may submit to the permitting authority at any time, except as provided under Sec. 96.86(g):

(1) A complete NOx Budget permit application under Sec. 96.22;

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

(3) A complete account certificate of representation under Sec. 96.13, if no NOx authorized account representative has been previously designated for the unit.

(b) Duty to reapply. The NOx authorized account representative of a NOx Budget opt-in source shall submit a complete NOx Budget permit application under Sec. 96.22 to renew the NOx Budget opt-in permit in accordance with Sec. 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

Sec. 96.84 Opt-in process.

(Rule 1200-03-27-.06, continued)

The permitting authority will issue or deny a NOx Budget opt-in permit for a unit for which an initial application for a NOx Budget opt-in permit under Sec. 96.83 is submitted, in accordance with Sec. 96.20 and the following:

(a) Interim review of monitoring plan. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx Budget opt-in permit under Sec. 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input 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 permitting authority 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 NOx 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 monitoring system 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 ``NOx Budget unit'' prior to issuance of a NOx Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NOx Budget opt-in permit on the NOx authorized account representative of the unit.

(e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx authorized account representative of the unit must submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under Sec. 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.

(f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt-in the unit under paragraph (e) of this section, the permitting authority will issue the draft NOx Budget opt-in permit in accordance with Sec. 96.20.

(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NOx Budget opt-in source under Sec. 96.80, the permitting authority will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with Sec. 96.20.

(h) Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under Sec. 96.83 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx

authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under Sec. 96.83.

(i) Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the permitting authority. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

Sec. 96.85 NOx Budget opt-in permit contents.

(a) Each NOx Budget opt-in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt-in permit or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located.

Sec. 96.86 Withdrawal from NOx Budget Trading Program.

(a) Requesting withdrawal. To withdraw from the NOx Budget Trading Program, the NOx authorized account representative of a NOx Budget opt-in source shall submit to 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 NOx Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NOx Budget Trading Program and the NOx 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 NOx authorized account representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with Sec. 96.30.

(2) If the NOx Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, the full amount required under Sec. 96.54(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 NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to that source under Sec. 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining

allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

(c) A NOx Budget opt-in source that withdraws from the NOx Budget Trading Program shall comply with all requirements under the NOx Budget Trading Program concerning all years for which such NOx Budget opt-in source was a NOx Budget opt-in source, 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 NOx allowances required), the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source of the acceptance of the withdrawal of the NOx Budget opt-in source 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 permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source that the NOx Budget opt-in source's request to withdraw is denied. If the NOx Budget opt-in source's request to withdraw is denied, the NOx Budget opt-in source shall remain subject to the requirements for a NOx Budget opt-in source.

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

(f) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the NOx Budget opt-in source's request to withdraw, the NOx 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 NOx Budget Trading Program. Once a NOx Budget opt-in source withdraws from the NOx Budget Trading Program and its NOx Budget opt-in permit is terminated under this section, the NOx authority account representative may not submit another application for a NOx Budget opt-in permit under Sec. 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.

Sec. 96.87 Change in regulatory status.

(a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx Budget opt-in source's regulatory status, within 30 days of such change.

(Rule 1200-03-27-.06, continued)

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

(1) (i) When the NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the permitting authority will revise the NOx Budget opt-in source's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under Sec. 96.23 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4.

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

(1) Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for any control period after the last control period during which the unit's NOx Budget opt-in permit was effective; and

(2) If the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for the control period multiplied by the ratio of 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.

(B) The NOx authorized account representative shall ensure that the compliance account of the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, includes the NOx 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 sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(iii) (A) For every control period during which the NOx Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NOx Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NOx allowance allocations under Sec. 96.42, as a unit that commenced operation on the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NOx allowances under Sec. 96.42.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1)(i) of this section under Sec. 96.42 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under Sec. 96.42 for the control period multiplied by the ratio of

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.

(2) (i) When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under Sec. 96.83(b), the Administrator will deduct from the NOx Budget opt-in unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt-in source under Sec. 96.88 for any control period after the last control period for which the NOx Budget opt-in permit is effective. The NOx authorized account representative shall ensure that the NOx Budget opt-in source's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx 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 NOx Budget opt-in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under Sec. 96.54, the Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

Sec. 96.88 NOx allowance allocations to opt-in units.

(a) NOx allowance allocation.

(1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.

(2) By no later than December 31, after the first control period for which the NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.

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

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

(Rule 1200-03-27-.06, continued)

(i) The NOx Budget opt-in source's baseline heat input determined pursuant to Sec. 96.84(c); or

(ii) The NOx Budget opt-in source'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 NOx allocations are being calculated.

(2) The permitting authority will allocate NOx allowances to the NOx Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:

(i) The NOx Budget opt-in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to Sec. 96.84(c); or

(ii) The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.

Subpart J--Mobile and Area Sources [Reserved]

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *Original rule filed July 9, 2001; effective September 22, 2001. Amendment filed May 13, 2003; effective July 27, 2003. Amendment filed August 5, 2003; effective October 19, 2003.*

1200-03-27-.07 VOLUNTARY NOx EMISSIONS REDUCTION PROGRAM.

(1) The purpose of this rule is to provide. a method by which sources that emit NOx but are not subject to the requirements of Rule .06 of this chapter can voluntarily make emission reductions and thereby earn marketable NOx allowances for use in the EPA's NOx Budget Trading Program.

(2) Terms used in this rule shall have the meanings given in Rule .06 of this chapter, Rule .02 of this chapter, and other rules of Division 1200-03, in this order of precedence.

(3) Any owner or operator of a stationary source may submit to the technical secretary a NOx emission reduction proposal, as described in Paragraph (6) below, for reducing NOx emissions during control periods, if each emission unit from which NOx reductions at the source will be obtained meets the following criteria at the time a NOx emission reduction proposal is submitted and during each control period thereafter for which creditable emission reductions are claimed:

(a) Discharges NOx emissions through a stack;

(b) Is fossil fuel-fired;

(c) Has a major source operating permit issued under Chapter 1200-03-9-.02 or a comparable local program rule;

(d) Is not subject to the requirements of Rule .06 of this chapter, including opt-in units;

(e) Is in compliance with all NOx emission requirements applicable to the source and unit so that any NOx reductions made pursuant to this rule are surplus to those requirements;

(f) Installed or implemented a NOx emission control strategy after July 1, 2002;

(g) Conducted an emission baseline determination using the protocol described in Paragraph (5) below prior to initiating the NOx emission control strategy;

(h) Makes emission reductions that are not the result of shutting down; and

(i) Is not an IC engine that according to EPA's final NOx SIP Call inventory had actual average daily NOx emissions of one ton or more during the five-month period May 1 through September 30, 1995.

(4) Any owner or operator of an eligible unit may participate by:

(a) Submitting a NOx emission reduction proposal in accordance with Paragraph (6) below;

(b) Making NOx emission reductions during a control period that are federally enforceable, quantifiable, and surplus to regulatory requirements; and

(c) Submitting a quantification report, in accordance with Paragraph (7) below, after any control period for which creditable reductions are claimed.

(5) Emission reductions made at a participating unit shall be quantified. using an emission reduction quantification protocol approved by the EPA or approved by the technical secretary and submitted to EPA for approval. The emissions measurements recorded and reported in accordance with this protocol shall be used to determine the emission reductions made by the source under this rule and eligible to be issued as allowances for use in the EPA's NOx Budget Trading Program. Each participating unit shall comply with the applicable monitoring requirements prescribed by the approved protocol.

(6) Each NOx emission reduction proposal shall contain the elements and be processed as follows:

(a) Each NOx emission reduction proposal shall include the following:

1. Information identifying each emission reduction unit from which NOx emission reductions have been or will be achieved, including the name, location, operating permit number, and identification number of the source and unit;

2. Description of the NOx controls present on the unit prior to making emission reductions;

3. Explanation of the methods used to achieve the NOx emission reductions;

4. Identification of the emission reduction quantification protocol, approved by the EPA or approved by the technical secretary and submitted to EPA for approval, that will be used to calculate the proposed emission reductions; and

5. Emissions baseline determination for each unit made in accordance with the approved protocol described in Paragraph (5) above.

(b) The technical secretary shall notify in writing the owner or operator submitting a NOx emission reduction proposal of his decision with respect to the proposal. If the technical secretary disapproves a proposal, this written notice shall include a statement of the specific reasons for the disapproval of the proposal. Following such a disapproval the

owner or operator may submit an amended or a different NOx emissions reduction proposal for the unit.

(7) Each NOx emission reduction quantification report shall be submitted and processed as follows:

(a) By October 30 following the control period during which the emission reductions were made, the owner or operator of the participating unit must submit a quantification report to the technical secretary stating the reductions achieved during the control period.

(b) The quantification report shall include the following:

1. The amount in tons of the NOx emission reductions made during the control season, calculated based on the approved quantification protocol and including supporting calculations and documentation;

2. Certification by the owner or operator that the NOx reductions achieved during the control period were calculated based on the approved protocol; and

3. A written statement signed by the owner or operator certifying the following:

Based on information and belief formed after reasonable inquiry, I believe the statements and information in this document are true, accurate and complete.

(c) The technical secretary shall. review the quantification report and either approve the emission reductions as being in accordance with the quantification protocol or disapprove them. If they are approved, the technical secretary shall notify the EPA of such approval in accordance with Paragraph (8) below. If they are disapproved, the technical secretary shall notify the, source in writing and shall state the specific reasons for the disapproval, The source may rectify the deficiencies in its quantification report and submit an amended report.

(8) Upon approval of a quantification report, the technical secretary shall notify the EPA of the number of allowances to be transferred from the state's general account into an account of the source or its designee for use in the federal NOx Budget Trading Program. The total number of allowances to be transferred shall be ninety percent (90%) of the creditable NOx emission reductions achieved by the unit. The remaining ten percent (10%) shall be retired by the state. The Administrator shall record the transfer.

(9) Each NOx allowance issued for NOx emission reductions meeting the requirements of this rule is an authorization to emit one ton of NOx in accordance with the federal NOx Budget Trading Program.

(10) Within 90 days after the NOx allowance transfer deadline for the NOx Budget Trading Program, the technical secretary shall provide the Administrator a report reconciling the allowances transferred for the purpose of this rule, including:

(a) The number of allowances deposited into the state's general account for the control period immediately preceding such deadline;

(b) The number of allowances earned by sources pursuant to this rule; and

(c) The number of unused allowances, which shall be retired.

(Rule 1200-03-27-.07, continued)

(11) The owner or operator of a source submitting a quantification report that contains an error that affects an allocation must notify the technical secretary in writing within 30 days of the error.

(12) If the owner or operator of a unit has submitted a quantification report that incorrectly overstated the amount of emission reductions achieved and, as a result of this report, allowances in excess of those that should have been have been transferred from the state's general account were transferred into another account for use in the federal NOx Budget Trading Program, the owner or operator shall place into the state's general account an amount of allowances equal to three times the amount of the overstatement within 30 days of discovery of the overstatement by the owner or operator.

(13) The owner or operator of a source, or its designee, shall maintain all records used to calculate the emission reductions in accordance with the quantification protocol. Each record shall be maintained for five (5) years following the date the record is created and shall be made available for inspection by the technical secretary or his representative immediately upon request.

(14) After the third control period this program has been in effect, and every three years thereafter, the technical secretary shall evaluate the program and submit a report to the board, summarizing the results of the evaluation.

Authority: *T.C.A. §§4-5-201 et seq. and 68-201-105.* ***Administrative History:*** *Original rule filed September 11, 2003; effective November 25, 2003.*

1200-03-27-.08 RESERVED.

1200-03-27-.09 COMPLIANCE PLANS FOR NO_X EMMISSIONS FROM STATIONARY INTERNAL COMBUSTION (IC) ENGINES.

(1) For the purposes of this rule, the following definitions shall apply:

(a) "Affected Engine" means any stationary IC engine that is a Large NOx SIP Call Engine, or other stationary IC engine that is subject to NOx control under a compliance plan established pursuant to Paragraph (3) of this rule.

(b) "Engine Seasonal NOx 2007 Tonnage Reduction" means the year 2007 seasonal NOx emissions reductions value (tons) for a Large NOx SIP Call Engine which is calculated as the difference between the 2007 Ozone Season Base NOx Emissions and the 2007 Ozone Season Budget NOx Emissions contained in the NOx SIP Call Engine Inventory.

(c) "Facility Seasonal NOx 2007 Tonnage Reduction" means the total of the Engine Seasonal NOx 2007 Tonnage Reductions attributable to all of an owner/operator's Large NOx SIP Call Engines.

(d) "Large NOx SIP Call Engine" means a stationary IC engine identified and designated as "large" in the NOx SIP Call Engine Inventory as emitting more than one ton of NOx per average ozone season day in 1995.

(e) "NOx SIP Call Engine Inventory" means the inventory of IC engines compiled by EPA as part of the NOx SIP Call Rule, including the Technical Amendments (Federal Register/Vol. 65, No. 42/March 2, 2000, Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone), and the adjustment of the 2007 Budget NOx Control

(Rule 1200-03-27-.09, continued)

Efficiency to 82 percent for large gas-fired engines (Federal Register/Vol. 69, No. 77/April 21, 2004, Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules).

(f) "Past NOx Emission Rate" means the emission rate of an Affected Engine in grams per brake horsepower-hour (g/bhp-hr) as determined by performance testing consistent with the requirements of 40 CFR part 60, Appendix A. Where such performance test data are not available, the Past NOx Emission Rate may be determined by the Technical Secretary on a case-by-case basis using, for example, appropriate emission factors or data from the NOx SIP Call Engine Inventory. For Large NOx SIP Call Engines, the Past NOx Emission Rate is the uncontrolled emission rate.

(g) "Projected Operating Hours" means the projected actual number of hours of operation per ozone season for an Affected Engine.

(h) "Projected NOx Emission Rate" means the projected emission rate in g/bhp-hr after installation of controls on an Affected Engine.

(i) "Stationary internal combustion engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

(j) "Ozone season" means the period from May 1 through September 30.

(2) The requirements of this rule apply to the owner or operator of any Large NOx SIP Call Engine.

(3) (a) After May 1, 2007, an owner or operator of a Large NOx SIP Call Engine shall not operate the engine in the period May 1 through September 30 of 2007 and any subsequent year unless the owner or operator complies with the requirements of a compliance plan which meets the provisions listed below.

1. The compliance plan must be approved by the Technical Secretary.

2. The compliance plan must demonstrate enforceable emission reductions from one or more stationary internal combustion engines equal to or higher than the Facility Seasonal NOx 2007 Tonnage Reduction.

3. The compliance plan may cover some or all engines at an individual facility or at several facilities or at all facilities in Tennessee that are in control of the same owner/operator.

4. The compliance plan must be submitted to the Technical Secretary by May 1, 2006.

5. The compliance plan may include credit for decreases in NOx emissions from Large NOx SIP Call Engines in Tennessee due to NOx control equipment. Credit may also be included for decreases in NOx emissions from other engines in Tennessee due to NOx control equipment not reflected in the 2007 Ozone Season Base NOx Emissions in the NOx SIP Call Engine Inventory.

(Rule 1200-03-27-.09, continued)

6. The compliance plan must include the following items:

(i) List of engines subject to the plan, including the engine's manufacturer, model, facility location address, and facility identification number.

(ii) The projected ozone season hours of operation for each engine and supporting documentation.

(iii) A description of the NOx emissions control installed, or to be installed, on each engine and documentation to support the Projected NOx Emission Rates.

(iv) The Past and Projected NOx Emission Rates for each Affected Engine in g/bhp-hr.

(v) A numerical demonstration that the emission reductions obtained from all engines included under the plan will be equivalent to or greater than the owner/operator's Facility Seasonal NOx 2007 Tonnage Reduction, based on the difference between the Past NOx Emission Rate and the Projected NOx Emission Rate multiplied by the Projected Operating Hours for each Affected Engine, and taking into account any credit under Part (3)(a)5. of this paragraph.

(vi) Provisions for monitoring, reporting and recordkeeping for each Affected Engine.

(b) The Projected NOx Emission Rate in g/bhp-hr or lb/hr for each Affected Engine must be included in a federally enforceable permit.

(4) Any owner or operator subject to the requirements of Paragraph (3) shall comply with the following reporting, monitoring, and recordkeeping requirements:

(a) Monitoring requirements. Each Affected Engine subject to this rule shall comply with the following requirements.

1. Complete an initial performance test consistent with the requirements of 40 CFR part 60, Appendix A, following installation of emission controls required to achieve the emission rate limit specified in Subparagraph (3)(b) of this rule.

2. Perform periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of a source's compliance with the emission rate limit specified in Subparagraph (3)(b) of this rule. Such periodic monitoring may include either:

(i) Performance tests consistent with the requirements of 40 CFR part 60, Appendix A, or portable monitors using ASTM D6522-00;

(ii) A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each engine's emissions are consistent with the requirements of Paragraph (3) of this rule;

(iii) A predictive emissions measurement system that relies on automated data collection from instruments; or

(Rule 1200-03-27-.09, continued)

(iv) A continuous emission monitoring system that complies with 40 CFR parts 60 or 75.

(b) Recordkeeping Requirements.

1. Maintain all records necessary to demonstrate compliance with the requirements of this rule for a period of 2 calendar years at the plant at which the subject engine is located. The records shall be made available to the Technical Secretary and EPA upon request.

2. For each engine subject to the requirements of this rule, the owner or operator shall maintain records of:

(i) Identification and location of each engine subject to the requirements of this rule.

(ii) Calendar date of record.

(iii) The number of hours the unit is operated during each ozone season compared to the Projected Operating Hours.

(iv) Type and quantity of fuel used.

(v) The results of all compliance tests.

(c) Reporting requirements. Any owner or operator subject to the requirements of this rule shall submit results of all compliance tests to the Technical Secretary.

Authority: *T.C.A. §§4-5-201 et. seq. and 68-201-105.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005.*

1200-03-27-.10 CAIR NO_X ANNUAL TRADING PROGRAM

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

(a) The provisions of Sec. 96.143 as adopted for Tennessee are revised to read as follows:

§ 96.143 Compliance supplement pool.

1. In addition to the CAIR NO_X allowances allocated under 40 CFR Sec. 96.142, the permitting authority may allocate up to 8,944 tons of CAIR NO_X allowances for the control period in 2009.

2. For any CAIR NO_X unit in the State that achieves NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, 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 part 1. of this subparagraph for such early reduction credits, in accordance with the following:

(i) 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 40

CFR 96 subpart HH in each control period for which early reduction credit is requested.

(ii) The CAIR designated representative of such CAIR NO_X unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with 40 CFR 96 subpart HH. NO_X emission reductions shall be calculated as follows:

(I) The unit's heat input in mmBtu for the control period shall be multiplied by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_X averaging plan under 40 CFR 76.11, the highest annual NO_X emission rate for the unit that will result in group compliance under the NO_X averaging plan) and the unit's actual NO_X emission rate for such control period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton; or,

(II) For units with post combustion NO_X controls (selective catalytic reduction, selective noncatalytic reduction, or other post-combustion NO_X control as approved by the Technical Secretary), NO_X emission reductions shall be calculated by multiplying the unit's heat input during any period in which the control equipment is operated, excluding any period regulated by rule 1200-03-27-.06 (NO_X Budget Trading Program for State Implementation Plans), by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_X averaging plan under 40 CFR 76.11, the highest annual NO_X emission rate for the unit that will result in group compliance under the NO_X averaging plan) and the unit's actual NO_X emission rate for such operating period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton.

3. For any CAIR NO_X unit in the State whose compliance with 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 part 1. of this subparagraph, in accordance with the following:

(i) The CAIR designated representative of such CAIR NO_X unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, 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.

(ii) In the request under subpart (i) of this part, 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 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 parts 2. and 4. of this subparagraph, or otherwise obtain, a sufficient amount of CAIR NO_X allowances to prevent such undue risk.

4. The permitting authority will review each request under parts 2. or 3. of this subparagraph submitted by July 1, 2009 and will allocate CAIR NO_X allowances for the control period in 2009 to CAIR NO_X units in the State and covered by such request as follows:

(i) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_X allowances requested meets the requirements of parts 2. or 3. of this subparagraph.

(ii) If the State's compliance supplement pool under part 1. of this subparagraph 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 subpart (i) of this part), the permitting authority will allocate to each CAIR NO_X unit covered by such requests the amount of CAIR NO_X allowances requested (as adjusted under subpart (i) of this part).

(iii) If the State's compliance supplement pool under part 1. of this subparagraph 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 subpart (i) of this part), the permitting authority 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) x (State's compliance supplement pool) / (Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number 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 parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

"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 parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

(iv) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under subparts (ii) or (iii) of this part.

(v) By January 1, 2010, the Administrator will record the allocations under subpart (iv) of this part.

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

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Subpart AA – CAIR NO_X Annual Trading Program General Provisions

§ 96.101 Purpose.

This subpart and subparts BB through II establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Annual Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BB through II as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_X Annual Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.102 Definitions.

(Rule 1200-03-27-.10, continued)

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

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

Allocate or allocation means, with regard to CAIR NO_X allowances issued under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit or a new unit set-aside and, with regard to CAIR NO_X allowances issued under § 96.188, the determination by the permitting authority of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit.

Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR 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 § 96.154.

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.

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.

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 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.

CAIR NO_X allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EE of this part or § 96.188 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 provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) 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 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 approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_X emissions limitation means, for a CAIR NO_X source, the tonnage equivalent of the CAIR NO_X allowances available for deduction for the source under § 96.154(a) and (b) for a control period.

(Rule 1200-03-27-.10, continued)

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

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

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

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

CAIR NO_X unit means a unit that is subject to the CAIR NO_X Annual Trading Program under § 96.104 and, except for purposes of § 96.105 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 includes one or more CAIR SO_2 units.

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

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

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

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

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

Coal-fired means:

(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

(Rule 1200-03-27-.10, continued)

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

(i) For a topping-cycle cogeneration unit,

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

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

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

Combustion turbine means:

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

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

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

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.105.

(i) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_X unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under § 96.104.

(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 unit's date of commencement of commercial operation.

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

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

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

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

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

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.105.

(i) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_X unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_X unit under § 96.104.

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

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

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_X emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

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

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

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

Compliance account means a CAIR 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 § 96.154.

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 (CO2 or O2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO2 or O2; and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(Rule 1200-03-27-.10, continued)

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H2O;

(5) A carbon dioxide monitoring system, consisting of a CO2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO2 emissions, in percent CO2; and

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

Control period means the period beginning January 1 of a calendar year 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.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified

amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

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

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

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

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

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.

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

(Rule 1200-03-27-.10, continued)

(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 in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

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

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

Recordation, record, or recorded means, with regard to CAIR 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.

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

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

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

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

Sequential use of energy means:

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

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

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

State means one of the States or the District of Columbia that adopts the CAIR NO_X Annual Trading Program pursuant to § 51.123(o)(1) or (2) of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR 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.

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

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

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

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

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

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

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

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

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

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

§ 96.103 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.
CO2-carbon dioxide.
NO_X-nitrogen oxides.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O2-oxygen.
ppm-parts per million.
lb-pound.
scfh-standard cubic feet per hour.
SO_2-sulfur dioxide.
H2O-water.
yr-year.

§ 96.104 Applicability.

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:

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

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25

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

§ 96.105 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, § 96.102, § 96.103, § 96.104, § 96.106(c)(4) through (8), § 96.107, and subparts 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 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 § 96.122 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 operation and commercial operation on the first date on which the unit resumes operation.

§ 96.106 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 § 96.122 in accordance with the deadlines specified in § 96.121(a) and (b); 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 § 96.154(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 § 96.170(b)(1),(2), or (5).

(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 subpart EE 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 § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

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

(7) Upon recordation by the Administrator under subpart 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 unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_X unit.

(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 § 96.154(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.

(Rule 1200-03-27-.10, continued)

(i) The certificate of representation under § 96.113 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 § 96.113 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 § 96.105 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.

§ 96.107 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.

(Rule 1200-03-27-.10, continued)

(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.

§ 96.108 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

§ 96.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.111, 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 § 96.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, 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 § 96.113 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.

§ 96.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.113 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 § 96.113, 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 §§ 96.102, 96.110(a) and (d), 96.112, 96.113, 96.151 and 96.182, 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.

§ 96.112 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 § 96.113. 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 § 96.113. 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 a new 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 § 96.113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR 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 § 96.113 amending the list of owners and operators to include the change.

§ 96.113 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.

(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 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.

§ 96.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.113 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 § 96.113 is received by the Administrator.

(b) Except as provided in § 96.112(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.

Subpart CC – Permits

§ 96.120 General CAIR 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 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.

§ 96.121 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 § 96.122 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 operation.

(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 § 96.122 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.

§ 96.122 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 § 96.106.

§ 96.123 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 § 96.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart 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.

§ 96.124 CAIR permit revisions.

Except as provided in § 96.123(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

§ 96.140 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
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

(Rule 1200-03-27-.10, continued)

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 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

§ 96.141 Timing requirements for CAIR NO_X allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (b)(1), the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.

(c) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a),(c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_X allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_X allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_X unit that would otherwise be allocated CAIR NO_X allowances under § 96.142(a) and (b), as well as under § 96.142(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_X allowances under § 96.142(a), (c), and (d) for the applicable control period.

§ 96.142 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 permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period

gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget under § 96.140 (except as provided in paragraph (d) of this section).

(2) The permitting authority 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 permitting authority will allocate CAIR NO_X allowances to CAIR NO_X units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.140.

(2) The CAIR designated representative of such a CAIR NO_X unit may submit to the permitting authority a request, in a format specified by the permitting authority, 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. The CAIR NO_X allowance allocation request must be submitted on or before July 1 of the first control period for which the CAIR NO_X allowances are requested 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 permitting authority 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 permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(Rule 1200-03-27-.10, continued)

(ii) On or after July 1 of the control period, the permitting authority 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 permitting authority 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 permitting authority 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 permitting authority 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 for the control period, the permitting authority will allocate to each CAIR NO_X unit that was allocated CAIR NO_X allowances under paragraph (b) of this section 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 State trading budget under § 96.140, and rounded to the nearest whole allowance as appropriate.

§ 96.143 Compliance supplement pool.

(a) In addition to the CAIR NO_X allowances allocated under § 96.142, the permitting authority 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
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935

(Rule 1200-03-27-.10, continued)

Louisiana	2,251
Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
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) For any CAIR NO_X unit in the State that achieves NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, 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 permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_X allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_X emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with subpart HH of this part.

(c) For any CAIR NO_X unit in the State whose compliance with 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 permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, 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 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 permitting authority will review each request under paragraph (b) or (c) of this section submitted by July 1, 2009 and will allocate CAIR NO_X allowances for the control period in 2009 to CAIR NO_X units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the permitting authority 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 permitting authority 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 permitting authority 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 x (State's compliance supplement pool + Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number 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 November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(Rule 1200-03-27-.10, continued)

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF – CAIR NO_X Allowance Tracking System

§ 96.150 [Reserved]

§ 96.151 Establishment of accounts.

(a) Compliance accounts. Except as provided in § 96.184(e), upon receipt of a complete certificate of representation under § 96.113, 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.

(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 new 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 new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

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

(4) Objections concerning CAIR authorized account representative.

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

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any

alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR 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 alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR 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.

§ 96.152 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.

§ 96.153 Recordation of CAIR NO_X allowance allocations.

(a) By December 1, 2006, 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 a source, as submitted by the permitting authority in accordance with § 96.141(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_X source's compliance account the CAIR NO_X allowances allocated for the CAIR NO_X units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.141(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a CAIR NO_X source's compliance account under § 96.154, 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, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) 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, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) Serial numbers for allocated CAIR NO_X 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.

§ 96.154 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:

(Rule 1200-03-27-.10, continued)

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

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X allowance transfer correctly submitted for recordation under § 96.160 by the allowance transfer deadline for the control period; and

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

(b) Deductions for compliance. Following the recordation, in accordance with § 96.161, 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.

(Rule 1200-03-27-.10, continued)

(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 paragraph (b) or (d) of this section.

(f) Administrator's action on submissions.

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR 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.

§ 96.155 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 § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 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.

§ 96.157 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 § 96.160 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 § 96.160 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

§ 96.160 Submission of CAIR NO_X allowance transfers.

(Rule 1200-03-27-.10, continued)

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.

§ 96.161 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 § 96.160; 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 § 96.154 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.

§ 96.162 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_X allowance transfer under § 96.161, 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 § 96.161(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

§ 96.170 General Requirements.

(Rule 1200-03-27-.10, continued)

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 § 96.102 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 § 96.102. 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, CO2 or O2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 96.171 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. 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 § 96.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), 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 § 96.184(g).

(c) Reporting data.

(1) Except as provided in paragraph (c)(2) of this section, 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.

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

(d) Prohibitions

(1) No owner or operator of a CAIR 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 § 96.175.

(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, except 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 emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.105 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 permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.171(d)(3)(i).

§ 96.171 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 § 96.170(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 § 96.170(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, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) 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 § 96.170(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 § 96.170(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 § 96.170(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 § 96.170(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 § 96.170(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 § 96.170(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 permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.173.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

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

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

(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) Audit decertification. The permitting authority or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).

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

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

(1) For a disapproved NO_X emission rate (i.e., NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO2 concentration or the minimum potential O2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel 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 permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

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

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

§ 96.172 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 § 96.171 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 permitting authority or, for a CAIR NO_X opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes

of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved monitoring system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR NO_X unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.174 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 § 96.110(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, §§ 96.183 and 96.184(a).

(c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, 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; or

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.170(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.

(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.

(Rule 1200-03-27-.10, continued)

(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 or CAIR SO_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.

(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.

§ 96.175 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_X unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b) (1) The CAIR designated representative of a CAIR NO_X unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_X unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_X 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 II - CAIR NO_X Opt-in Units

§ 96.180 Applicability.

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

(a) Is located in the State;

(b) Is not a CAIR NO_X unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 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.

§ 96.181 General.

(a) Except as otherwise provided in §§ 96.101 through 96.104, §§ 96.106 through 96.108, 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.

§ 96.182 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.

§ 96.183 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 § 96.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.122;

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

(i) Is not a CAIR NO_X unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 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

(Rule 1200-03-27-.10, continued)

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.122;

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

(4) A complete certificate of representation under § 96.113 consistent with § 96.182, 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 § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)).

(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 § 96.122 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 opt-in unit from the CAIR NO_X Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_X unit under § 96.104, 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.

§ 96.184 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 § 96.183 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.183. 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 § 96.184(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 § 96.186.

(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 § 96.184(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 § 96.184(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 rate shall equal:

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

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

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

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

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

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

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X opt-in unit in § 96.180 and meets the elements certified in § 96.183(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.

(Rule 1200-03-27-.10, continued)

(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 § 96.180 or meets the elements certified in § 96.183(a)(2), the permitting authority will issue a denial of a CAIR NO_X 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 § 96.188(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 opt-in unit or a CAIR NO_X unit.

§ 96.185 CAIR opt-in permit contents.

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

(1) All elements required for a complete CAIR permit application under § 96.122;

(2) The certification in § 96.183(a)(2);

(3) The unit's baseline heat input under § 96.184(c);

(4) The unit's baseline NO_X emission rate under § 96.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_X allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Annual Trading Program only in accordance with § 96.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.102 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.

(Rule 1200-03-27-.10, continued)

§ 96.186 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 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 § 96.184(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 § 96.106(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 § 96.188 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 § 96.183 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 § 96.184.

(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 § 96.188(c).

§ 96.187 Change in regulatory status.

(a) Notification. If a CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, 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 § 96.104, 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 § 96.123 as of the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104.

(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 § 96.104, 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 § 96.188 for any control period after the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104; and

(B) If the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 is not December 31, the CAIR NO_X allowances allocated to the CAIR NO_X opt-in unit under § 96.188 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104, 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 § 96.104 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 unit that becomes a CAIR NO_X unit under

§ 96.104 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 § 96.104, the CAIR NO_X opt-in unit will be treated, solely for purposes of CAIR NO_X allowance allocations under § 96.142, as a unit that commences operation on the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 and will be allocated CAIR NO_X allowances under § 96.142.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104 is not January 1, 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 § 96.142 for the control period that includes the date on which the CAIR NO_X opt-in unit becomes a CAIR NO_X unit under § 96.104:

(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 § 96.142 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 § 96.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.188 NO_X allowance allocations to CAIR NO_X opt-in units.

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.184(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 § 96.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(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:

(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 § 96.184(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 § 96.184(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 § 96.184(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 providing for, allocation to a CAIR NO_X opt-in unit of CAIR NO_X allowances under this paragraph (subject to the conditions in §§ 96.184(h) and 96.186(g)), the permitting authority will allocate to the CAIR NO_X opt-in unit as follows:

(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 § 96.184(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 § 96.184(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 § 96.184(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.

(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 opt-in unit enters the CAIR NO_X Annual Trading Program under § 96.184(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.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *New rule filed August 10, 2006; effective October 24, 2006.*

1200-03-27-.11 CAIR NO_X OZONE SEASON TRADING PROGRAM

(1) The provisions of this rule supersede the provisions of 1200-03-27-.06 (NO_X Budget Trading Program for State Implementation Programs) as follows:

(a) The provisions of this rule supersede all requirements of 1200-03-27-.06 for the control period beginning in 2009, and for each control period thereafter.

(b) The provisions of 1200-03-27-.06 shall not apply to the control period beginning in 2009 and any control period thereafter.

(2) The provisions of 40 CFR Part 96 concerning the CAIR NO_X Ozone Season Trading Program are hereby adopted by reference with the following revisions:

(a) The provisions of Sec. 96.302 regarding the term “commence commercial operation” and “commence operation” are revised to read as follows:

§ 96.302 Definitions.

1. Commence commercial operation means, with regard to a unit:

(i) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).

(I) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in this subpart 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 § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in this subpart 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 this subpart, or in subpart (ii) of this part, as appropriate.

(ii) Notwithstanding subpart (i) of this part and except as provided in § 96.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subpart (i) of this part, 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 § 96.304.

(I) For a unit with a date for commencement of commercial operation as defined in this subpart 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 this subpart 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 subpart (i) of this part, or this part, as appropriate.

(iii) Notwithstanding subparts (i) and (ii) of this part, for a unit identified in part (2)(b)3. of this rule, the unit's date of commencement of operation shall be the unit's date of commencement of commercial operation.

2. Commence operation means:

(i) For units identified under part (2)(b)1. of this rule:

(I) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).

(II) 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 item (I) of this subpart, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(III) 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 item (I) of this subpart, 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 items (I) or (II) of this subpart, or this item, as appropriate, except as provided in § 96.384(h).

(ii) Notwithstanding subpart (i) of this part, and solely for purposes of 40 CFR Part 96, subpart HHHH, for a unit identified in part (2)(b)3. of this rule, on the later of November 15, 1990 or the date the unit commences operation as defined in subpart (i) of this part and that 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 part (2)(b)3. of this rule.

(I) For a unit with a date of commencement of operation as defined in this subpart, 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 this subpart, 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 subpart (i) of this part, or this subpart, as appropriate.

(b) The provisions of Sec. 96.304 as adopted for Tennessee are revised to read as follows:

Sec. 96.304 Applicability.

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

1. Except as provided in part 2. of this subparagraph:

(i) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that, under subpart (i) of this part, is not a CAIR NO_X Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit as provided in subpart (i) of this part on the first date on which it both combusts fossil fuel and serves such generator.

2. The units in a State that meet the requirements set forth in item 2.(i)(I), 2.(ii)(I), or 2.(ii)(II) of this part shall not be CAIR NO_X Ozone Season units:

(i) (I) Any unit that is a CAIR NO_X Ozone Season unit under subpart 1.(i) or (ii) of this part:

I. Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

II. Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(II) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of item 2.(i)(I) of this subparagraph for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subitem 2.(i)(I)II. of this subparagraph.

(ii) (I) Any unit that is a CAIR NO_X Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation before January 1, 1985:

I. Qualifying as a solid waste incineration unit; and

II. With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(II) Any unit that is a CAIR NO_X Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation on or after January 1, 1985:

I. Qualifying as a solid waste incineration unit; and

II. With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80

percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(III) If a unit qualifies as a solid waste incineration unit and meets the requirements of item 2.(ii)(I) or (II) of this subparagraph for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

3. Any stationary boiler or stationary combustion turbine that is not a unit under parts 1. and 2. of this subparagraph, as follows:

(i) The stationary boiler or stationary combustion turbine meets either requirement of item (I) or (II) of this subpart:

(I) The stationary boiler or stationary combustion turbine serves a generator with a nameplate capacity greater than 25 MWe at any time on or after January 1, 1995, and sells any amount of electricity; or

(II) The stationary boiler's or stationary combustion turbine's maximum design heat input is greater than 250 mmBtu/hr.

(ii) The stationary boiler or stationary combustion turbine combusts, or will combust during any year, fossil fuel in the following amounts:

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

(II) Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.

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

Sec. 96.340 State trading budgets.

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

2. The State trading budget for annual allocations of CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units identified in part (2)(b)3. of this rule for the control period in 2009 and thereafter is 5,666 tons/season.

(Rule 1200-03-27-.11, continued)

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

Sec. 96.342 CAIR NO_X Ozone Season allowance allocations.

1. NO_X Ozone Season allowance allocations for CAIR NO_X Ozone Season units identified in part (2)(b)1. of this rule:

(i) (I) The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under subpart (ii) of this part for each CAIR NO_X Ozone Season unit identified in part (2)(b)1. of this rule will be:

I. For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

A. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

B. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

C. If the unit is not subject to section (i)(I)I.A. or B. of this subpart, the unit's control period heat input for such year is multiplied by 40 percent.

II. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(II) I. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subitem (i)(I)I. of this part , and a unit's total tons of NO_X emissions during a control period in a calendar year under item (iii)(III) of this part, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

II. A unit's converted control period heat input for a calendar year specified under subitem (i)(I)II. of this part equals:

A. Except as provided in section (i)(II)II.B. or C. of this part, the control period gross electrical output of the generator or generators served by

the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

B. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

C. For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(ii) (I) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X Ozone Season units identified in parts (2)(b)1. and (2)(b)2. of this rule that have a baseline heat input (as determined under subpart (i) of this part) a total amount of CAIR NO_X Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget under part (b)1. of this paragraph (except as provided in subpart (iv) of this part).

(II) The permitting authority will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under item (ii)(I) of this part in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under item (ii)(I) of this part by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(Rule 1200-03-27-.11, continued)

(iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units identified in part (2)(b)1. of this rule that are not allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_X Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:

(I) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340.

(II) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X 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.

(III) In a CAIR NO_X Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

(IV) The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.

II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance

allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.

III. If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.

IV. If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under subitem (iii)(IV)II. of this part, and rounded to the nearest whole allowance as appropriate.

V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

(iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_X Ozone Season unit identified in parts (2)(b)1. and (2)(b)2. of this rule that was allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under subpart (ii) of this part, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

2. NO_X Ozone Season allowance allocations for CAIR NO_X Ozone Season units identified in part (2)(b)3. of this rule:

(i) For all CAIR NO_X Ozone Season units identified in part (2)(b)3. of this rule, the heat input used for calculating NO_X allowance allocations for each CAIR Ozone Season NO_X unit shall be:

(I) The heat input (in mmBtu) used for calculating NO_X Ozone Season allowance allocations shall be the unit's heat input for the control period that is four years before the control period for which the NO_X allocation is being calculated.

(II) A unit's control period heat input and a unit's total tons of NO_X emissions during a control period in a calendar year under subpart 4.(iii) of this subparagraph, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.

(ii) For all CAIR NO_X Ozone Season units identified in part (2)(b)3. of this rule, the permitting authority will allocate CAIR NO_X Ozone Season allowances in the amounts specified in the State Implementation Plan.

(iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units identified in part (2)(b)2. of this rule that are not allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_X Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:

(I) The permitting authority will establish a separate new unit set-aside for each control period. The set-aside for CAIR NO_X Ozone Season units identified in part (2)(b)2. of this rule shall be separate from the set-aside for CAIR NO_X Ozone Season Units identified in parts (2)(b)1. and (2)(b)2. of this rule. For CAIR NO_X Ozone Season Units identified in part (2)(b)2. of this rule, the allocation set-aside for new source growth will be the NO_X allowances remaining in the state trading program budget for CAIR NO_X Ozone Season units identified in part (2)(b)2. of this rule after allocations are set for all CAIR NO_X Ozone Season units under part (b)2. of this paragraph. For CAIR NO_X Ozone Season Units identified in part (2)(b)2. of this rule, the new unit set-aside will be established as follows:

I. For each control period from 2009 until 2018, the new unit set-aside is established as the State emission budget established in subparagraph (b)2. of this rule minus the number of NO_X allowances allocated in item (ii)(I) of this part.

II. For the control periods following 2018, the new unit set-aside will be established in a state implementation plan to be submitted to EPA for approval.

(II) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

(III) In a CAIR NO_X Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding any of the following emission rates:

I. 0.15 lb/mmBtu;

II. The allowable NO_X emission rate under any state or federal construction or operating permit;

III. The allowable NO_X emission rate under any provision in Tennessee's state implementation plan.

IV. The emission rates indicated in subitems I. through III. above shall be converted to tons by multiplying the emission rate by the heat input indicated in subpart 2.(i) of this subparagraph (or, for units with less than four years of heat input data, the unit's maximum design heat input), dividing by 2,000, and rounding to the nearest whole number as appropriate.

(IV) The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.

II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.

III. If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.

IV. If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part , then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.

V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

(iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_X Ozone Season allowances using the following formula and rounding to the nearest whole NO_X allowance as appropriate:

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

where:

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

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

(Rule 1200-03-27-.11, continued)

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

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

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

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Subpart AAAA—CAIR NO_X Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_X Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

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

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

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

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

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

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

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

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

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.

(Rule 1200-03-27-.11, continued)

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 approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

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

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

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

(Rule 1200-03-27-.11, continued)

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

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

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

CAIR NO_X Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

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

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

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

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

CAIR 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 approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

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

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

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

Coal-fired means:

(Rule 1200-03-27-.11, continued)

(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.

Combustion turbine means:

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

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

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).

(i) For a unit that is a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that 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 § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as

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

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_X Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

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

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

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.384(h).

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

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

Continuous emission monitoring system or CEMS means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)),

a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

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

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

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (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 §96.306(c)(2), and ending on September 30 of the same year, inclusive.

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

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

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

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

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

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

(Rule 1200-03-27-.11, continued)

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.

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

(1) For the life of the unit;

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

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

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

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

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

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

(Rule 1200-03-27-.11, continued)

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

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

Owner means any of the following persons:

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

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

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

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

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

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

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

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

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

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

(Rule 1200-03-27-.11, continued)

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

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

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

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

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

Sequential use of energy means:

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

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

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

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

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

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

(1) In person;

(2) By United States Postal Service; or

(Rule 1200-03-27-.11, continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 96.303 Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit
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

§ 96.304 Applicability

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

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

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_X Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_X Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_X Ozone Season units:

(1) (i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(Rule 1200-03-27-.11, continued)

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2) (i) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_X Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 Retired unit exemption.

(a) (1) Any CAIR NO_X Ozone Season unit that is permanently retired and is not a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_X Ozone Season Trading Program, except for the provisions of this section, §96.302, §96.303, §96.304, § 96.306(c)(4) through (7), § 96.307, §96.308, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_X Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the

statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

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

(b) Special provisions.

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

(2) The permitting authority will allocate CAIR NO_X Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

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

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

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

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

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

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

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

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption

under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 96.306 Standard requirements.

(a) Permit requirements.

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

(i) Submit to the permitting authority a complete CAIR permit application under §96.322 in accordance with the deadlines specified in § 96.321; and

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

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

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

(b) Monitoring, reporting, and recordkeeping requirements.

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

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

(c) Nitrogen oxides ozone season emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.

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

(4) CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GGGG, and IIII of this part.

(5) A CAIR NO_X Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

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

(7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) Excess emissions requirements. 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 § 96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

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

(e) Recordkeeping and reporting requirements.

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

(i) The certificate of representation under § 96.313 for the CAIR designated representative for the source and each CAIR NO_X Ozone Season unit at the source and all documents that demonstrate the truth of the

statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.313 changing the CAIR designated representative.

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

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

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

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

(f) Liability.

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

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

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

(g) Effect on other authorities. No provision of the CAIR NO_X Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_X Ozone Season source or CAIR NO_X Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

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

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

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

§ 96.308 Appeal procedures.

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

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

§ 96.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.311, each CAIR NO_X Ozone Season source, including all CAIR NO_X Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_X Ozone Season Trading Program concerning the source or any CAIR NO_X Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_X Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X Ozone Season source represented and each CAIR NO_X Ozone Season unit at the source in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_X Ozone Season Allowance Tracking System account will be established for a CAIR NO_X Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_X Ozone Season units at the source.

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

complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

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

§ 96.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.315, 96.351, and 96.382 whenever the term ''CAIR designated representative'' is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

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

(a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

(c) Changes in owners and operators.

(1) In the event an owner or operator of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit is not included in the list of owners and operators in the certificate of representation under §96.313, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated

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representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

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

§ 96.313 Certificate of representation.

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

(1) Identification of the CAIR NO_X Ozone Season source, and each CAIR NO_X Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

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

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

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

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

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

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

(iv) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_X Ozone Season unit under a life-of the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative',

as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X Ozone Season unit at the source; and CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X Ozone Season allowances by contract, CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.''

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

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

§ 96.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.313 is received by the Administrator.

(b) Except as provided in § 96.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Ozone Season Trading Program.

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

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

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an ‘‘agent’’);

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated.”

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

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

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

permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.305, this subpart, and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_X Ozone Season Trading Program, CAIR NO_X Annual Trading Program, and CAIR 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.

§ 96.321 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR NO_X Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_X Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_X Ozone Season unit commences commercial operation, except as provided in § 96.383(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 § 96.322 for the source covering each CAIR NO_X Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in §96.383(b).

§ 96.322 Information requirements for CAIR permit applications.

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

(a) Identification of the CAIR NO_X Ozone Season source;

(b) Identification of each CAIR NO_X Ozone Season unit at the CAIR NO_X Ozone Season source; and

(c) The standard requirements under § 96.306.

§ 96.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from the compliance account of the CAIR NO_X Ozone Season source covered by the permit.

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

§ 96.324 CAIR permit revisions.

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

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_X Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

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

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

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

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

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with §96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(c), (a), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

§ 96.342 CAIR NO_X Ozone Season allowance allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_X Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_X emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(Rule 1200-03-27-.11, continued)

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_X Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_X emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units in a State that are not allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_X Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(Rule 1200-03-27-.11, continued)

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_X Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340.

(2) The CAIR designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

(3) In a CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

(4) The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_X Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_X

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Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_X emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF—CAIR NO_X Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

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

(b) General accounts—

(1) Application for general account.

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

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

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

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

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

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: ''I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_X Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

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

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

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

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

respect to the CAIR NO_X Ozone Season allowances in the general account.

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

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

(4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.

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

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

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

(5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(Rule 1200-03-27-.11, continued)

(i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an ‘‘agent’’);

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ‘‘I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv) shall be deemed to be an electronic submission by me.’’; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: ‘‘Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.351(b)(5) is terminated.’’.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator

and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

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

§ 96.352 Responsibilities of CAIR authorized account representative.

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

§ 96.353 Recordation of CAIR NO_X Ozone Season allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in 2015.

(c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

(d) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) Serial numbers for allocated CAIR NO_X Ozone Season allowances. When recording the allocation of CAIR NO_X Ozone Season allowances for a CAIR NO_X Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_X Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_X emissions limitation.

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

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

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X Ozone Season allowance transfer correctly submitted for recordation under § 96.360 and §96.361 by the allowance transfer deadline for the control period.

(b) Deductions for compliance. Following the recordation, in accordance with § 96.361, of CAIR NO_X Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_X Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_X Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_X Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_X Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_X Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_X Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

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

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

(i) Any CAIR NO_X Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

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(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.

§ 96.355 Banking.

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

(b) Any CAIR NO_X Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GG of this part.

§ 96.356 Account error.

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

§ 96.357 Closing of general accounts.

(Rule 1200-03-27-.11, continued)

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.360 and 96.361 for any CAIR NO_X Ozone Season allowances in the account to one or more other CAIR NO_X Ozone Season Allowance Tracking System accounts.

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

Subpart GGGG—CAIR NO_X Ozone Season Allowance Transfers

§ 96.360 Submission of CAIR NO_X Ozone Season allowance transfers.

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

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

(b) The serial number of each CAIR NO_X Ozone Season allowance that is in the transferor account and is to be transferred; and

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

§ 96.361 EPA recordation.

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

(1) The transfer is correctly submitted under § 96.360; and

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

(b) A CAIR NO_X Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.

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

§ 96.362 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_X Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_X Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

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

Subpart HHHH—Monitoring and Reporting

§ 96.370 General requirements.

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

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

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, 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 § 96.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

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

(b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or

operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:

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

(ii) May 1, 2008.

(3) For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:

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

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

(5) For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under §96.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_X Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 96.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_X Ozone Season opt-in unit, by the date on which the CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part enters the CAIR NO_X Ozone Season Trading Program as provided in § 96.384(g).

(c) Reporting data. The owner or operator of a CAIR NO_X Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) Prohibitions.

(1) No owner or operator of a CAIR NO_X Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.

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

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

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

(i) During the period that the unit is covered by an exemption under § 96.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §96.371(d)(3)(i).

(Rule 1200-03-27-.11, continued)

(e) Long-term cold storage. The owner or operator of a CAIR NOX Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIRNO_X Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(a)(1) if the following conditions are met:

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

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

(b) The recertification provisions of this section shall apply to a monitoring system under §96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies under the CAIR NO_X Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_X Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under §96.370(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this

chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flow meter systems, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §96.370(a)(1). For recertifications, replace the words ''certification'' and ''initial certification'' with the word ''recertification'', replace the word ''certified'' with the word ''recertified,'' and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.373.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

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

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

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

(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) Audit decertification. The permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(b).

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

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

(1) For a disapproved NO_X emission rate (i.e., NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential 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 flow meter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

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

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

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

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

§ 96.372 Out of control periods.

(Rule 1200-03-27-.11, continued)

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

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §96.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

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

§ 96.374 Recordkeeping and reporting.

(a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of § 96.310(e)(1).

(b) Monitoring plans. The owner or operator of a CAIR NO_X Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 96.383 and 96.384(a).

(c) Certification applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.371, including the information required under § 75.63 of this chapter.

(d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_X Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the

entire year and shall report the NO_X mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NOX Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in §96.384(g).

(2) If the CAIR NO_X Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in §75.74(c) of this chapter) and report NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(Rule 1200-03-27-.11, continued)

(C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_X Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in §96.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CAIR NO_X Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR 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.

§ 96.375 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_X Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance

with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b) (1) The CAIR designated representative of a CAIR NO_X Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_X Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

Subpart IIII—CAIR NO_X Ozone Season Opt-in Units

§ 96.380 Applicability.

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

(a) Is located in the State;

(b) Is not a CAIR NO_X Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

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

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

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

§ 96.381 General.

(a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306 through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_X Ozone Season opt-in unit shall be treated as a CAIR NO_X Ozone Season unit for purposes of applying such sections and subparts of this part.

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

§ 96.382 CAIR designated representative.

(Rule 1200-03-27-.11, continued)

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

§ 96.383 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.322;

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

(i) Is not a CAIR NO_X Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

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

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

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;

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

(4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g)). If allocation under §96.388(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) Duty to reapply.

(1) The CAIR designated representative of a CAIR NO_X Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program in accordance with § 96.386 or the unit becomes a CAIR NO_X Ozone Season unit under § 96.304, the CAIR NO_X Ozone Season opt-in unit

(Rule 1200-03-27-.11, continued)

shall remain subject to the requirements for a CAIR NO_X Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_X Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.383 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

(1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Ozone Season Trading Program in accordance with § 96.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_X Ozone Season Trading Program under §96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

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

(Rule 1200-03-27-.11, continued)

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

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

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

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

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

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

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_X Ozone Season opt-in unit unless the source already has a compliance account.

(f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) Date of entry into CAIR NO_X Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X Ozone Season opt-in unit, and a CAIR NO_X Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.

(h) Repowered CAIR NO_X Ozone Season opt-in unit.

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in

(Rule 1200-03-27-.11, continued)

unit of CAIR NO_X Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_X Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_X Ozone Season opt-in unit replacing the original CAIR NO_X Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

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

§ 96.385 CAIR opt-in permit contents.

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

(1) All elements required for a complete CAIR permit application under § 96.322;

(2) The certification in § 96.383(a)(2);

(3) The unit's baseline heat input under § 96.384(c);

(4) The unit's baseline NO_X emission rate under § 96.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_X Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g));

(6) A statement that the unit may withdraw from the CAIR NO_X Ozone Season Trading Program only in accordance with § 96.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_X Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_X Ozone Season opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.386 Withdrawal from CAIR NO_X Ozone Season Trading Program.

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

(a) Requesting withdrawal. In order to withdraw a CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_X Ozone Season Trading Program under §96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

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

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X Ozone Season opt-in unit must meet the requirement to hold CAIR NO_X Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_X Ozone Season opt-in unit may submit a CAIR NO_X Ozone Season allowance transfer for any remaining CAIR NO_X Ozone Season allowances to another CAIR NO_X Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_X Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

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

(d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_X Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements

under the CAIR NO_X Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_X Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

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

(f) Ability to reapply to the CAIR NO_X Ozone Season Trading Program. Once a CAIR NO_X Ozone Season opt-in unit withdraws from the CAIR NO_X Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_X Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.

(g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_X Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_X Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_X Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

(a) Notification. If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_X Ozone Season opt-in unit's regulatory status, within 30 days of such change.

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

(1) If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under §96.304, the permitting authority will revise the CAIR NO_X Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304.

(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 §96.304, CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304; and

(B) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 is not September 30, the CAIR NO_X Ozone Season allowances

allocated to the CAIR NO_X Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X Ozone Season unit that becomes a CAIR NO_X Ozone Season unit under § 96.304 contains the CAIR NO_X Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3) (i) For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under §96.304, the CAIR NO_X Ozone Season opt-in unit will be allocated CAIR NO_X Ozone Season allowances under §96.342.

(ii) If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304 is 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 § 96.342 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304:

(A) The amount of CAIR NO_X Ozone Season allowances otherwise allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under § 96.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under § 96.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

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

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than July 31 of the control period after the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the

permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X 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:

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

(i) The CAIR NO_X Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or

(ii) The CAIR NO_X Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g).

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

(i) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or

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

(3) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_X emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.383(a)(5)) providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_X Ozone Season opt-in unit as follows:

(1) For each control period in 2009 through 2014 for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

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

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

(A) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d); or

(B) The most stringent State or Federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under § 96.384(g).

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

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

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

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

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under § 96.384(d); or

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

(iii) The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_X emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) Recordation.

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

(2) By September 1, of the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under §96.384(g),

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and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under paragraph (a)(2) of this section.

Authority: *T.C.A. §§68-201-105 and 4-5-201 et. seq.* ***Administrative History:*** *New rule filed August 10, 2006; effective October 24, 2006. Amendment filed July 6, 2009; effective October 4, 2009.*