

## **Chapter 3745-109 Emissions Trading Programs**

## **3745-109-01 CAIR NO<sub>x</sub> Annual, CAIR SO<sub>2</sub>, and CAIR NO<sub>x</sub> Ozone Season Trading Programs Definitions and General Provisions.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the “Incorporation by Reference” section at the end of this rule.]

### **(A) Purpose.**

Rules 3745-109-01 to [3745-109-08](#) of the Administrative Code establish the CAIR NO<sub>x</sub> annual trading program in Ohio as a means of reducing NO<sub>x</sub> emissions in the state. The director authorizes the Administrator to assist the director in implementing the state CAIR NO<sub>x</sub> annual trading program by carrying out the functions set forth for the Administrator in rules 3745-109-01 to [3745-109-08](#) of the Administrative Code.

Rules 3745-109-01 and [3745-109-09](#) to [3745-109-14](#) of the Administrative Code establish the CAIR SO<sub>2</sub> budget trading program in Ohio as a means to control fine particulate and sulfur dioxide emissions from CAIR units in the state. The director authorizes the Administrator to assist the director in implementing the state CAIR SO<sub>2</sub> budget trading program as a participant in the federal CAIR SO<sub>2</sub> budget trading program by carrying out the functions set forth for the Administrator in these rules.

Rules 3745-109-01 and [3745-109-15](#) to [3745-109-21](#) of the Administrative Code establish the provisions and requirements to implement a CAIR NO<sub>x</sub> ozone season trading program in Ohio as a means of control and reductions of NO<sub>x</sub> emissions. The director authorizes the Administrator to assist the director in implementing the state CAIR NO<sub>x</sub> ozone season trading program as a participant in the federal CAIR NO<sub>x</sub> ozone season trading program by carrying out the functions set forth for the Administrator in these rules.

### **(B) Definitions.**

The terms used in this rule and rules [3745-109-02](#) to [3745-109-21](#) of the Administrative Code shall have the meanings set forth in this paragraph as follows:

- (1) “Account number” means the identification number given by the Administrator to each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance tracking system account.
- (2) “Acid rain emissions limitation” means a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program.
- (3) “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 40 CFR Parts 72 to 78.
- (4) “Administrator” means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.
- (5) “Allocate” or “allocation” means:

(a) With regard to CAIR NO<sub>x</sub> allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO<sub>x</sub> allowances to be initially credited to a CAIR NO<sub>x</sub> unit, a new unit set-aside, or other entity;

(b) With regard to CAIR SO<sub>2</sub> allowances issued under the acid rain program, the determination by the Administrator of the amount of such CAIR SO<sub>2</sub> allowances to be initially credited to a CAIR SO<sub>2</sub> unit or other entity and, with regard to CAIR SO<sub>2</sub> allowances issued under provisions of a state implementation plan that are approved under 40 CFR 51.124(o)(1) or 40 CFR 51.124(o)(2) or 40 CFR 51.124(r) or 40 CFR 97.288 the determination by a permitting authority of the amount of such CAIR SO<sub>2</sub> allowances to be initially credited to a CAIR SO<sub>2</sub> unit or other entity; and

(c) With regard to CAIR NO<sub>x</sub> ozone season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO<sub>x</sub> ozone season allowances to be initially credited to a CAIR NO<sub>x</sub> ozone season unit, a new unit set-aside, or other entity.

(6) “Allowance transfer deadline” means:

(a) For a control period, midnight of March first (if it is a business day), or midnight of the first business day thereafter (if March first is not a business day), immediately following the control period and is the deadline by which a CAIR NO<sub>x</sub> or SO<sub>2</sub> allowance transfer must be submitted for recordation in a CAIR NO<sub>x</sub> or SO<sub>2</sub> source’s compliance account in order to be used to meet the source’s CAIR NO<sub>x</sub> or SO<sub>2</sub> emissions limitation for such control period in accordance with paragraph (D) of rule [3745-109-05](#) or paragraph (D) of rule [3745-109-11](#), respectively, of the Administrative Code;

(b) For a control period, midnight of November thirtieth (if it is a business day), or midnight of the first business day thereafter (if November thirtieth is not a business day), immediately following the control period and is the deadline by which a CAIR NO<sub>x</sub> ozone season allowance transfer must be submitted for recordation in a CAIR NO<sub>x</sub> ozone season source’s compliance account in order to be used to meet the source’s CAIR NO<sub>x</sub> ozone season emissions limitation for such control period in accordance with paragraph (D) of rule [3745-109-18](#) of the Administrative Code.

(7) “Alternate CAIR designated representative” means:

(a) For a CAIR NO<sub>x</sub> source and each CAIR NO<sub>x</sub> 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 rules [3745-109-02](#) and [3745-109-08](#) of the Administrative Code, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO<sub>x</sub> annual trading program. If the CAIR NO<sub>x</sub> source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO<sub>2</sub> trading program. If the CAIR NO<sub>x</sub> source is also a CAIR NO<sub>x</sub> ozone season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> ozone season trading program. If the CAIR NO<sub>x</sub> 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<sub>x</sub> 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;

(b) For a CAIR SO<sub>2</sub> source and each CAIR SO<sub>2</sub> 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 rules [3745-109-09](#) and [3745-109-14](#) of the Administrative Code, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO<sub>2</sub> trading program. If the CAIR SO<sub>2</sub> source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> annual trading program. If the CAIR SO<sub>2</sub> source is also a CAIR NO<sub>x</sub> ozone season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> ozone season trading program. If the CAIR SO<sub>2</sub> source is also subject to the acid rain program, then this natural person shall be the same person as the alternate designated representative under the acid rain program. If the CAIR SO<sub>2</sub> 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;

(c) For a CAIR NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub> 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 rules [3745-109-15](#) and [3745-109-21](#) of the Administrative Code, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO<sub>x</sub> ozone season trading program. If the CAIR NO<sub>x</sub> ozone season source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> annual trading program. If the CAIR NO<sub>x</sub> ozone season source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO<sub>2</sub> trading program. If the CAIR NO<sub>x</sub> 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<sub>x</sub> 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.

(8) “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 rules [3745-109-07](#), [3745-109-13](#) and [3745-109-20](#) of the Administrative Code, 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 rules [3745-109-07](#), [3745-109-13](#) and [3745-109-20](#) of the Administrative Code.

(9) “Biomass” means:

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

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

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

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

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

(10) “Boiler” means an enclosed fossil-fuel-fired or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium, excluding CO boilers associated with the combusting CO from fluidized catalytic crackers at petroleum refineries. The exclusion of CO boilers applies only to those units applicable to the CAIR NO<sub>x</sub> ozone season trading program under paragraph (C)(4) of this rule (non-EGUs).

(11) “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.

(12) “Btu” means British thermal unit.

(13) “CAIR” means the clean air interstate rule.

(14) “CAIR authorized account representative” means, with regard to a general account, a responsible natural person who is authorized, in accordance with rules [3745-109-02](#), [3745-109-05](#), [3745-109-08](#), [3745-109-09](#), [3745-109-11](#), [3745-109-14](#), [3745-109-15](#), [3745-109-18](#), and [3745-109-21](#) of the Administrative Code, to transfer and otherwise dispose of CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(15) “CAIR designated representative” means:

(a) For a CAIR NO<sub>x</sub> source and each CAIR NO<sub>x</sub> 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 rules [3745-109-02](#) and [3745-109-08](#) of the Administrative Code, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO<sub>x</sub> annual trading program. If the CAIR NO<sub>x</sub> source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO<sub>2</sub> trading program. If the CAIR NO<sub>x</sub> source is also a CAIR NO<sub>x</sub> ozone season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> ozone season trading program. If the CAIR NO<sub>x</sub> 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<sub>x</sub> 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;

(b) For a CAIR SO<sub>2</sub> source and each CAIR SO<sub>2</sub> 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 rules [3745-109-09](#) and [3745-109-14](#) of the Administrative Code, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO<sub>2</sub> trading program. If the CAIR SO<sub>2</sub> source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> annual trading program. If the CAIR SO<sub>2</sub> source is also a CAIR NO<sub>x</sub> ozone season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub>

ozone season trading program. If the CAIR SO<sub>2</sub> source is also subject to the acid rain program, then this natural person shall be the same person as the designated representative under the acid rain program. If the CAIR SO<sub>2</sub> 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;

(c) For a CAIR NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub> 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 rules [3745-109-15](#) to [3745-109-21](#) of the Administrative Code, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO<sub>x</sub> ozone season trading program. If the CAIR NO<sub>x</sub> ozone season source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> annual trading program. If the CAIR NO<sub>x</sub> ozone season source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO<sub>2</sub> trading program. If the CAIR NO<sub>x</sub> 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<sub>x</sub> 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.

(16) “CAIR NO<sub>x</sub> allowance” means a limited authorization issued by a permitting authority or the Administrator under provisions of a state implementation plan that are approved under 40 CFR 51.123(o)(1) or 40 CFR 51.123(o)(2) or 40 CFR 51.123(p) or 40 CFR Part 97 Subpart EE or 40 CFR 97.188, to emit one ton of NO<sub>x</sub> 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<sub>x</sub> annual trading program. An authorization to emit NO<sub>x</sub> that is not issued under provisions of a state implementation plan that are approved under 40 CFR 51.123(o)(1) or 40 CFR 51.123(o)(2) 40 CFR 51.123(p) or 40 CFR Part 97 Subpart EE or 40 CFR 97.188 shall not be a CAIR NO<sub>x</sub> allowance.

(17) “CAIR NO<sub>x</sub> allowance deduction” or “deduct CAIR NO<sub>x</sub> allowances” means the permanent withdrawal of CAIR NO<sub>x</sub> allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total NO<sub>x</sub> emissions from all CAIR NO<sub>x</sub> units at a CAIR NO<sub>x</sub> source for a control period, determined in accordance with rule [3745-109-07](#) of the Administrative Code, or to account for excess emissions.

(18) “CAIR NO<sub>x</sub> allowance tracking system” means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO<sub>x</sub> allowances under the CAIR NO<sub>x</sub> annual trading program. Such allowances shall be allocated, held, deducted, or transferred only as whole allowances.

(19) “CAIR NO<sub>x</sub> allowance tracking system account” means an account in the CAIR NO<sub>x</sub> allowance tracking system established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO<sub>x</sub> allowances.

(20) “CAIR NO<sub>x</sub> allowances held” or “hold CAIR NO<sub>x</sub> allowances” means the CAIR NO<sub>x</sub> allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rules [3745-109-05](#), [3745-109-06](#) and [3745-109-08](#) of the Administrative Code, in a CAIR NO<sub>x</sub> allowance tracking system account.



(21) “CAIR NO<sub>x</sub> 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 40 CFR Part 96, Subparts AA to II, and 40 CFR 51.123(o)(1) or 40 CFR 51.123(o)(2) established by the Administrator in accordance with 40 CFR Part 97, Subparts AA to II and 40 CFR 51.123(p) and 40 CFR 52.35 as a means of mitigating interstate transport of fine particulates and NO<sub>x</sub>.

(22) “CAIR NO<sub>x</sub> emissions limitation” means, for a CAIR NO<sub>x</sub> source, the tonnage equivalent, in NO<sub>x</sub> emissions in a control period, of the CAIR NO<sub>x</sub> allowances available for deduction for the source under paragraphs (D)(1) and (D)(2) of rule [3745-109-05](#) of the Administrative Code for the control period.

(23) “CAIR NO<sub>x</sub> 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 40 CFR 51.123(aa)(1) or (aa)(2) (and (bb)(1)), (bb)(2), (dd), or (ee), or under 40 CFR Part 97, Subpart EEEE or 40 CFR 97.388, to emit one ton of NO<sub>x</sub> 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<sub>x</sub> ozone season trading program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO<sub>x</sub> budget trading program in accordance with 40 CFR 51.121(p) to emit one ton of NO<sub>x</sub> during a control period, provided that the provision in 40 CFR 51.121(b)(2)(ii)(E) 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<sub>x</sub> budget trading program. An authorization to emit NO<sub>x</sub> that is not issued under provisions of a state implementation plan approved under 40 CFR 51.123(aa)(1) or (aa)(2) (and (bb)(1)), (bb)(2), (dd), or (ee) or 40 CFR Part 97, Subpart EEEE or 40 CFR 97.388 or under the NO<sub>x</sub> budget trading program as described in the prior sentence shall not be a CAIR NO<sub>x</sub> ozone season allowance.

(24) “CAIR NO<sub>x</sub> ozone season allowance deduction” or “deduct CAIR NO<sub>x</sub> ozone season allowances” means the permanent withdrawal of CAIR NO<sub>x</sub> ozone season allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total NO<sub>x</sub> emissions from all CAIR NO<sub>x</sub> ozone season units at a CAIR NO<sub>x</sub> ozone season source for a control period, determined in accordance with rule [3745-109-20](#) of the Administrative Code, or to account for excess emissions.

(25) “CAIR NO<sub>x</sub> ozone season allowance tracking system” means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO<sub>x</sub> ozone season allowances under the CAIR NO<sub>x</sub> ozone season trading program. Such allowances shall be allocated, held, deducted, or transferred only as whole allowances.

(26) “CAIR NO<sub>x</sub> ozone season allowance tracking system account” means an account in the CAIR NO<sub>x</sub> ozone season allowance tracking system established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO<sub>x</sub> ozone season allowances.

(27) “CAIR NO<sub>x</sub> ozone season allowances held” or “hold CAIR NO<sub>x</sub> ozone season allowances” means the CAIR NO<sub>x</sub> ozone season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rules [3745-109-18](#), [3745-109-19](#) and [3745-](#)

[109-21](#) of the Administrative Code, in a CAIR NO<sub>x</sub> ozone season allowance tracking system account.

(28) “CAIR NO<sub>x</sub> ozone season emissions limitation” means, for a CAIR NO<sub>x</sub> ozone season source, the tonnage equivalent, in NO<sub>x</sub> emissions in a control period, of the CAIR NO<sub>x</sub> ozone season allowances available for deduction for the source under paragraphs (D)(1) and (D)(2) of rule [3745-109-18](#) of the Administrative Code for a control period.

(29) “CAIR NO<sub>x</sub> ozone season source” means, in regard to the CAIR NO<sub>x</sub> annual and SO<sub>2</sub> trading programs, a source that is subject to the CAIR NO<sub>x</sub> ozone season trading program; in regard to the CAIR NO<sub>x</sub> ozone season program it means a source that includes one or more CAIR NO<sub>x</sub> ozone season units.

(30) “CAIR NO<sub>x</sub> 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 40 CFR Part 96 Subparts, AAAA to IIII and 40 CFR 51.123(aa)(1) or 40 CFR 51.123(aa)(2) (and 40 CFR 51.123(bb)(1) ), 40 CFR 51.123(bb)(2), or 40 CFR 51.123(dd) or established by the Administrator in accordance with 40 CFR Part 97 Subparts AAAA to IIII and 40 CFR 51.123(ee) and 40 CFR 52.35 as a means of mitigating interstate transport of ozone and NO<sub>x</sub>.

(31) “CAIR NO<sub>x</sub> ozone season unit” means a unit that is subject to the CAIR NO<sub>x</sub> ozone season trading program under paragraph (C) this rule and, except for the purposes of paragraph (D) of this rule and rule [3745-109-17](#) of the Administrative Code, a CAIR NO<sub>x</sub> ozone season opt-in unit under rule [3745-109-21](#) of the Administrative Code.

(32) “CAIR NO<sub>x</sub> source” means, in regard to the CAIR NO<sub>x</sub> annual trading program, a source that includes one or more CAIR NO<sub>x</sub> units; in regard to the CAIR NO<sub>x</sub> ozone season and SO<sub>2</sub> trading programs it means a source that is subject to the CAIR NO<sub>x</sub> annual trading program.

(33) “CAIR NO<sub>x</sub> unit” means a unit that is subject to the CAIR NO<sub>x</sub> annual trading program under paragraph (C) this rule and, except for the purposes of paragraph (D) of this rule and rule [3745-109-04](#) of the Administrative Code, a CAIR NO<sub>x</sub> opt-in unit under rule [3745-109-08](#) of the Administrative Code.

(34) “CAIR permit” means the legally binding and federally enforceable written document, or portion of such document, issued by the director under rules [3745-109-03](#), [3745-109-10](#) and [3745-109-16](#) of the Administrative Code, including any permit revisions, specifying the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program requirements applicable to a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source, to each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(35) “CAIR SO<sub>2</sub> allowance” means a limited authorization issued by the Administrator under the acid rain program, or by a permitting authority under provisions of a state implementation plan that are approved under 40 CFR 51.124(o)(1) or 40 CFR 51.124(2) or 40 CFR 51.124(r) or 40 CFR 97.288 to emit SO<sub>2</sub> during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO<sub>2</sub> trading program as follows:



(a) For one CAIR SO<sub>2</sub> allowance allocated for a control period in a year before 2010, one ton of SO<sub>2</sub>, except as provided in paragraph (D)(2) of rule [3745-109-11](#) of the Administrative Code;

(b) For one CAIR SO<sub>2</sub> allowance allocated for a control period in 2010 through 2014, 0.50 ton of SO<sub>2</sub>, except as provided in paragraph (D)(2) of rule [3745-109-11](#) of the Administrative Code;

(c) For one CAIR SO<sub>2</sub> allowance allocated for a control period in 2015 or later, 0.35 ton of SO<sub>2</sub>, except as provided in paragraph (D)(2) of rule [3745-109-11](#) of the Administrative Code; and

(d) An authorization to emit SO<sub>2</sub> that is not issued under the acid rain program, under the provisions of a state implementation plan that are approved under 40 CFR 51.124(o)(1) or 40 CFR 51.124(o)(2) or 40 CFR 51.124(r), or under 40 CFR 97.288 shall not be a CAIR SO<sub>2</sub> allowance.

(36) “CAIR SO<sub>2</sub> allowance deduction” or “deduct CAIR SO<sub>2</sub> allowances” means the permanent withdrawal of CAIR SO<sub>2</sub> allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total SO<sub>2</sub> emissions from all CAIR SO<sub>2</sub> units at a CAIR SO<sub>2</sub> source for a control period, determined in accordance with rule [3745-109-13](#) of the Administrative Code, or to account for excess emissions.

(37) “CAIR SO<sub>2</sub> allowance tracking system” means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO<sub>2</sub> allowances under the CAIR SO<sub>2</sub> trading program. This is the same system as the allowance tracking system under 40 CFR 72.2 by which the Administrator records allocations, deduction, and transfers of acid rain SO<sub>2</sub> allowances under the acid rain program.

(38) “CAIR SO<sub>2</sub> allowance tracking system account” means an account in the CAIR SO<sub>2</sub> allowance tracking system established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO<sub>2</sub> allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(39) “CAIR SO<sub>2</sub> allowances held” or “hold CAIR SO<sub>2</sub> allowances” means the CAIR SO<sub>2</sub> allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with rules [3745-109-11](#), [3745-109-12](#) and [3745-109-14](#) of the Administrative Code or 40 CFR Part 73, in a CAIR SO<sub>2</sub> allowance tracking system account.

(40) “CAIR SO<sub>2</sub> emissions limitation” means, for a CAIR SO<sub>2</sub> source, the tonnage equivalent, in SO<sub>2</sub> emissions in a control period, of the CAIR SO<sub>2</sub> allowances available for deduction for the source under paragraphs (D)(2) and (D)(3) of rule [3745-109-11](#) of the Administrative Code for the control period.

(41) “CAIR SO<sub>2</sub> source” means, in regard to the CAIR NO<sub>x</sub> annual and ozone season trading programs, a source that is subject to the CAIR SO<sub>2</sub> trading program; in regard to the CAIR SO<sub>2</sub> trading program its means a source that includes one or more CAIR SO<sub>2</sub> units.

(42) “CAIR SO<sub>2</sub> trading program” means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAA to III and 40 CFR 51.124(o)(1) or 40 CFR 51.124(o)(2) established by the Administrator in accordance with 40 CFR Part 97, Subparts AAA to III and 40

CFR 51.124(r) and 40 CFR 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(43) “CAIR SO<sub>2</sub> unit” means a unit that is subject to the CAIR SO<sub>2</sub> trading program under paragraph (C) of this rule and, except for purposes of paragraph (D) of this rule, a CAIR SO<sub>2</sub> opt-in unit under rule [3745-109-14](#) of the Administrative Code.

(44) “Clean Air Act” or “CAA” means the Clean Air Act, 42 USC 7401 to 42 USC 7671q.

(45) “Coal” means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

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

(47) “Coal-fired” means:

(a) Except for purposes of rules [3745-109-04](#) and [3745-109-17](#) of the Administrative Code, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(b) For purposes of rule [3745-109-04](#) and [3745-109-17](#) of the Administrative Code, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

(c) For the purposes of rules [3745-109-09](#) to [3745-109-14](#) of the Administrative Code, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel.

(48) “Cogeneration unit” means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

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

(b) Except for units meeting the applicability requirements under paragraph (C)(4) of this rule, producing during the twelve-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 five per cent of total energy output; and

(b) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 per cent of total energy input, if useful thermal energy produced is fifteen per cent or more of total energy output, or not less than forty-five per cent of total energy input, if useful thermal energy produced is less than fifteen per cent of total energy output;

(ii) For a bottoming-cycle cogeneration unit, useful power not less than forty-five per cent of total energy input.

(c) Provided that the total energy input under paragraphs (B)(48)(b)(i)(b) and (B)(48)(b)(ii) of this rule shall equal the unit’s total energy input from all fuel except biomass if the unit is a boiler.

(49) “Combustion turbine” means:

(a) 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

(b) If the enclosed device under paragraph (B)(49)(a) of this rule is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

(50) “Commence commercial operation” means, with regard to a unit:

(a) 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 paragraph (D) of this rule and paragraphs (E)(8) of rule [3745-109-08](#) of the Administrative Code, paragraph (E)(8) of rule [3745-109-14](#) of the Administrative Code, and paragraph (E)(8) of rule [3745-109-21](#) of the Administrative Code.

(i) For a unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit under paragraph (C) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (B)(50)(a) of this rule 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 of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit under paragraph (C) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (B)(50)(a) of this rule 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 (B)(50)(a) or (B)(50)(b) of this rule as appropriate.

(b) Notwithstanding paragraph (B)(50)(a) of this rule and except as provided in paragraph (D) of this rule, for a unit that is not a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit under paragraph (C) of this rule on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (B)(50)(a) of this rule, the unit’s date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit under paragraph (C) of this rule.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (B)(50)(b) of this rule 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 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 (B)(50)(b) of this rule 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 (B)(50)(a) or (B)(50)(b) of this rule as appropriate.

(c) Notwithstanding paragraphs (B)(50)(a) and (B)(50)(b) of this rule, 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.

(51) "Commence operation" means:

(a) 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 paragraph (E)(8) of rule [3745-109-08](#) of the Administrative Code, paragraph (E)(8) of rule [3745-109-14](#) of the Administrative Code, and paragraph (E)(8) of rule [3745-109-21](#) of the Administrative Code.

(i) For a unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season 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 (B)(51)(a) of this rule, such date shall remain the unit's date of commencement of operation, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season 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 (B)(51)(a) of this rule, 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 (B)(51)(a), (B)(51)(a)(i), or (B)(51)(a)(ii) of this rule as appropriate, except as provided in paragraph (E)(8) of rule [3745-109-08](#) of the Administrative Code for CAIR NO<sub>x</sub> units, paragraph (E)(8) of rule [3745-109-14](#) of the Administrative Code for CAIR SO<sub>2</sub> units and paragraph (E)(8) of rule [3745-109-21](#) of the Administrative Code for CAIR NO<sub>x</sub> ozone season units.

(b) Notwithstanding paragraph (B)(51)(a) of this rule, and solely for purposes of rule [3745-109-20](#) of the Administrative Code, for a unit that is not a CAIR NO<sub>x</sub> ozone season unit under paragraph (C)(4) of rule 3745-109-01 of the Administrative Code (non-EGUs) on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (B)(51)(a) of this rule and that subsequently becomes such a CAIR NO<sub>x</sub> ozone season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C)(4) of rule 3745-109-01 of the Administrative Code (non-EGUs).

(i) For a unit with a date of commencement of operation as defined in paragraph (B)(51)(b) of this rule and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of operation as defined in paragraph (B)(51)(b) of this rule and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (B)(51)(a) or (B)(51)(b) of this rule as appropriate.

(52) "Common stack" means a single flue through which emissions from two or more units are exhausted.

(53) "Compliance account" means:

(a) For a CAIR NO<sub>x</sub> allowance tracking system account, established by the Administrator for a CAIR NO<sub>x</sub> source under rule [3745-109-05](#) or [3745-109-08](#) of the Administrative Code, in which any CAIR NO<sub>x</sub> allowance allocations for the CAIR NO<sub>x</sub> units at the source are initially recorded and in which are held any CAIR NO<sub>x</sub> allowances available for use for a control period in order

to meet the source's CAIR NO<sub>x</sub> emissions limitation in accordance with paragraph (D) of rule [3745-109-05](#) of the Administrative Code;

(b) For a CAIR SO<sub>2</sub> allowance tracking system account, established by the Administrator for a CAIR SO<sub>2</sub> source subject to an acid rain emissions limitation under 40 CFR 73.31(a) or 40 CFR 73.31(b) for any other CAIR SO<sub>2</sub> source under rule [3745-109-11](#) or [3745-109-14](#) of the Administrative Code, in which any CAIR SO<sub>2</sub> allowance allocations for the CAIR SO<sub>2</sub> units at the source are initially recorded and in which are held any CAIR SO<sub>2</sub> allowances available for use for a control period in order to meet the source's CAIR SO<sub>2</sub> emissions limitation in accordance with paragraph (D) of rule [3745-109-11](#) of the Administrative Code;

(c) For a CAIR NO<sub>x</sub> ozone season allowance tracking system account, established by the Administrator for a CAIR NO<sub>x</sub> ozone season source under rules [3745-109-18](#) and [3745-109-21](#) of the Administrative Code, in which any CAIR NO<sub>x</sub> ozone season allowance allocations for the CAIR NO<sub>x</sub> ozone season units at the source are initially recorded and in which are held any CAIR NO<sub>x</sub> ozone season allowances available for use for a control period in order to meet the source's CAIR NO<sub>x</sub> ozone season emissions limitation in accordance with paragraph (D) of rule [3745-109-18](#) of the Administrative Code.

(54) "CSP" means compliance supplement pool.

(55) "CO<sub>2</sub>" means carbon dioxide.

(56) "Continuous emission monitoring system" or "CEMS" means the equipment required under rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code to sample, analyze, measure, and provide, by means of readings recorded at least once every fifteen minutes (using an automated data acquisition and handling system (DAHS), a permanent record of NO<sub>x</sub> or SO<sub>2</sub> emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code:

(a) 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;

(b) A NO<sub>x</sub> concentration or SO<sub>2</sub> monitoring system, consisting of a NO<sub>x</sub> or SO<sub>2</sub> pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> or SO<sub>2</sub> emissions, in parts per million;

(c) A NO<sub>x</sub> emission rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million, diluent gas concentration, in per cent CO<sub>2</sub> or O<sub>2</sub>; and NO<sub>x</sub> emission rate, in pounds per mmBtu;

(d) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in per cent H<sub>2</sub>O;

(e) A carbon dioxide monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO<sub>2</sub> emissions, in per cent CO<sub>2</sub>; and

(f) An oxygen monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O<sub>2</sub>, in per cent O<sub>2</sub>.

(57) “Control period” means:

(a) For the purposes of the CAIR annual trading program, the period beginning January first of a calendar year, except as provided in paragraph (E)(3)(b) of this rule and ending on December thirty-first of the same year, inclusive.

(b) For the purposes of the CAIR ozone season trading program, the period beginning May first of a calendar year, except as provided in paragraph (E)(3)(b) of this rule and ending on September thirtieth of the same year, inclusive.

(58) “Director” means the director of the Ohio environmental protection agency.

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

(60) “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 rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code.

(61) “Energy efficiency/renewable energy project” means any project that, during the ozone season, reduces end-use demand for electricity, including demand-side management practices, or displace electrical energy utilization through the use of wind power, solar power, biomass or landfill methane generation.

(62) “Excess emissions” means:

(a) For any ton of NO<sub>x</sub> emitted by the CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season units at a CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season source during a control period that exceeds the CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season emissions limitation for the source;

(b) For any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO<sub>2</sub> units at a CAIR SO<sub>2</sub> source during a control period that exceeds the CAIR SO<sub>2</sub> emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

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



(64) “Fossil-fuel-fired” means;

(a) For a unit meeting the applicability requirements under paragraph (C)(1) of this rule (EGUs), with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit meeting the applicability requirements under paragraph (C)(4) of this rule (non-EGUs), with regard to a unit:

(i) For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(ii) For units that commenced operation on or after January 1, 1996 and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during 1996; or

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

(a) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty per cent of the annual heat input, on a Btu basis, during any year; or

(b) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty per cent 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.

(65) “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.

(66) “General account” means a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance tracking system account, established under rule [3745-109-05](#), [3745-109-11](#), or [3745-109-18](#) of the Administrative Code, that is not a compliance account.

(67) “Generator” means a device that produces electricity.

(68) “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).

(69) “H<sub>2</sub>O” means water.

(70) “Heat input” means, with regard to a specified period of time, the product (in mmBtu per unit of time) of the gross calorific value of the fuel (in Btu per pound) divided by one million Btu per mmBtu and multiplied by the fuel feed rate into a combustion device (in pounds of fuel per unit time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(71) “Heat input rate” means the amount of heat input (in mmBtu) divided by unit operating time (in hours) 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 hours) during which the unit combusts the fuel

(72) “Hg” means mercury.

(73) “Hg budget trading program” means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator accordance with Chapter 3745-108 of the Administrative Code, or established by the Administrator under Section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

(74) “Innovative technology project” means any project utilizing technology that has not been adequately demonstrated in practice, but that would have a substantial likelihood of reducing NO<sub>x</sub> ozone season emissions compared to current practices. An innovative technology project could include technology to decrease electrical energy or fuel use either in stationary or mobile sources.

(75) “kWh” means kilowatt hour.

(76) “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:

(a) For the life of the unit;

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

(c) For a period no less than twenty-five years or seventy per cent 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.

(77) “Maximum design heat input” means the maximum amount of fuel per hour (in Btu per hour) 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.

(78) “MmBtu” means million British thermal units.

(79) “Monitoring system” means any monitoring system that meets the requirements of rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

(80) “Most stringent state or federal NO<sub>x</sub> or SO<sub>2</sub> emissions limitation” means, with regard to a unit, the lowest NO<sub>x</sub> or SO<sub>2</sub> emissions limitation (in terms of pounds per mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(81) “MWe” means mega watt electrical.

(82) “MWh” means megawatt-hour.

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

(84) “NO<sub>x</sub>” means all oxides of nitrogen which are determined to be ozone precursors, including, but not limited to, nitrogen oxide and nitrogen dioxide, but excluding nitrous oxide.

(85) “Oil-fired” means, for purposes of rule [3745-109-04](#) or [3745-109-17](#) of the Administrative Code, combusting fuel oil for more than 15.0 per cent of the annual heat input in a specified year and not qualifying as coal-fired.

(86) “Operator” means any person who operates, controls, or supervises a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit or a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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.

(87) “Owner” means any of the following persons:

(a) With regard to a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source or a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source or the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit;

(ii) Any holder of a leasehold interest in a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source or the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit; or

(iii) Any purchaser of power from a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source or the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit; or

(b) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowances.

(88) “Ozone season” means the period beginning May first of a calendar year and ending on September thirtieth of the same year, inclusive.

(89) “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<sub>x</sub> annual, CAIR SO<sub>2</sub>, and CAIR NO<sub>x</sub> ozone season trading program or, if no such agency has been so authorized, the Administrator.

(90) “Potential electrical output capacity” means thirty-three per cent of a unit’s maximum design heat input, divided by three thousand four hundred thirteen Btu per kWh, divided by one thousand kWh per MWh, and multiplied by eight thousand seven hundred sixty hours per year.

(91) “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.

(92) “Recordation,” “record,” or “recorded” means, with regard to CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowances, the movement of CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowances by the Administrator into or between CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance tracking system accounts, for purposes of allocation, transfer, or deduction.

(93) “Reference method” means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

(94) “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 shut down unit (the replaced unit).

(95) “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:

(a) Atmospheric or pressurized fluidized bed combustion;

(b) Integrated gasification combined cycle;

(c) Magnetohydrodynamics;

(d) Direct and indirect coal-fired turbines;

(e) Integrated gasification fuel cells; or

(f) As determined by the Administrator, a derivative of one or more of the technologies under paragraphs (B)(95)(a) to (B)(95)(e) of this rule 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.

(96) “Serial number” means, for a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance, the unique identification number assigned to each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance by the Administrator.

(97) “Sequential use of energy” means:

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

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

(98) “SO<sub>2</sub>” means sulfur dioxide.

(99) “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.

(100) “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.”

(101) “State” means the State of Ohio, or, where the context indicates, any of the states or the District of Columbia that adopts the CAIR NO<sub>x</sub> annual, the SO<sub>2</sub>, or the NO<sub>x</sub> ozone season trading program pursuant to 40 CFR 51.123(o)(1) or 40 CFR 51.123(o)(2) or 40 CFR 51.124(o)(1) or 40 CFR 51.124(o)(2).

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

(a) In person;

(b) By United States Postal Service; or

(c) 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.

(103) “Title V operating permit” means a permit issued under Chapter 3745-77 of the Administrative Code.

(104) “Title V operating permit regulations” means Chapters 3745-77 and 3745-78 of the Administrative Code.

(105) “Ton” means two thousand pounds. For the purpose of determining compliance with the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season emissions limitation, total tons of NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season 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 rule

[3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code, 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.

(106) “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.

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

$$\text{LHV} = \text{HHV} - 10.55 (\text{W} + 9\text{H})$$

Where:

LHV = lower heating value of fuel in Btu per pound,

HHV = higher heating value of fuel in Btu per pound,

W = Weight per cent of moisture in fuel, and

H = Weight per cent of hydrogen in fuel.

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

(109) “Unit” means;

(a) For a unit meeting the applicability requirements under paragraph (C)(1) of this rule (EGUs), a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit meeting the applicability requirements under paragraph (C)(4) of this rule (non-EGUs), a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(110) “Unit operating day” means a calendar day in which a unit combusts any fuel.

(111) “Unit operating hour” or “hour of unit operation” means an hour in which a unit combusts any fuel.

(112) “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).

(113) “Useful thermal energy” means, with regard to a cogeneration unit, thermal energy that is:

(a) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(b) Used in a heating application (e.g., space heating or domestic hot water heating); or



(c) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(114) “USEPA” means the United State Environmental Protection Agency.

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

(C) Applicability.

The following units in the state shall be CAIR NO<sub>x</sub>, SO<sub>2</sub>, and NO<sub>x</sub> ozone season units, and any source that includes one or more such units shall be a CAIR NO<sub>x</sub>, SO<sub>2</sub>, and NO<sub>x</sub> ozone season source, subject to the requirements of this rule and rules [3745-109-02](#) to [3745-109-07](#), [3745-109-09](#) to [3745-109-13](#), and [3745-109-15](#) to [3745-109-20](#), respectively, of the Administrative Code.

(1) Except as provided in paragraphs (C)(3) and (C)(5) of this rule, 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 a unit’s combustion chamber, a generator with nameplate capacity of more than twenty-five MWe producing electricity for sale (EGUs).

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (C)(1) of this rule, is not a CAIR NO<sub>x</sub>, CAIR SO<sub>2</sub>, and CAIR NO<sub>x</sub> ozone season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five MWe producing electricity for sale, the unit shall become a CAIR NO<sub>x</sub>, CAIR SO<sub>2</sub>, and CAIR NO<sub>x</sub> ozone season unit as provided in paragraph (C)(1) of this rule on the first date on which it both combusts fossil fuel and serves such generator.

The units in the state that meet the requirements set forth in paragraph (C)(3) or (C)(5) of this rule shall not be CAIR NO<sub>x</sub>, SO<sub>2</sub> or NO<sub>x</sub> ozone season units.

(3) Any unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, and NO<sub>x</sub> ozone season unit under paragraph (C)(1) or (C)(2) of this rule:

(a) Qualifying as a cogeneration unit during the twelve-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 twenty-five MWe and supplying in any calendar year more than one-third of the unit’s potential electric output capacity or two hundred nineteen thousand MWh, whichever is greater, to any utility power distribution system for sale.

(c) If a unit qualifies as a cogeneration unit during the twelve-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (C)(3)(a) and (C)(3)(b) of this rule for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become CAIR NO<sub>x</sub>, SO<sub>2</sub>, and NO<sub>x</sub> ozone season unit under paragraph (C)(1) of this rule starting on the earlier of January first after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January first after the first calendar year during which the unit no longer meets the requirements of paragraph (C)(3)(b) of this rule.

(4) The following units that are subject to the applicability requirements of the NO<sub>x</sub> SIP call in paragraph (C) of rule [3745-14-01](#) of the Administrative Code and that are not CAIR NO<sub>x</sub> ozone season units under paragraphs (C)(1) and (C)(2) of this rule (non-EGUs) shall be subject to the requirements of this rule and rules [3745-109-15](#) to [3745-109-20](#) of the Administrative Code (non-EGUs):

(a) For units, other than cogeneration units:

(i) For units commencing operation before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid;

(ii) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid;

(iii) For units commencing operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty mmBtu per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid;

(iv) For units commencing operation on or after January 1, 1997 and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than twenty-five MWe and produced electricity for sale under a firm contract to the electric grid;

(v) For units commencing operation on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour that:

(a) At no time serves a generator producing electricity for sale; or

(b) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five MWe or less and has the potential to use no more than fifty per cent of the potential electrical output capacity of the unit;

(vi) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than twenty-five MWe and produces electricity for sale.

(b) For cogeneration units:

(i) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for 1995 and 1996;

(ii) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the “Acid Rain Program;”

(iii) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for 1997 and 1998;

(iv) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the “Acid Rain Program;”

(v) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty mmBtu per hour and qualifying as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for each year;

(vi) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than twenty-five MWe and failing to qualify as an unaffected unit under 40 CFR 72.6(b)(4) under the “Acid Rain Program” for any year.

(5) Any unit that is a CAIR NO<sub>x</sub>, SO<sub>2</sub>, and NO<sub>x</sub> ozone season unit under paragraph (C)(1) or (C)(2) of this rule that:

(a) Commences operation before January 1, 1985 and qualifies as a solid waste incineration unit; and

(i) With an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding eighty per cent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding eighty per cent (on a Btu basis).

(b) Commences operation after January 1, 1985 and qualifies as a solid waste incineration unit; and

(i) With an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding eighty per cent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding eighty per cent (on a Btu basis).

(c) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (C)(5)(a) or (C)(5)(b) of this rule for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub>, SO<sub>2</sub>, and CAIR NO<sub>x</sub> ozone season unit starting on the earlier of January first after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January first after the first three consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty per cent or more.

(D) Retired unit exemption.

(1) This paragraph applies to any CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit, other than a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season opt-in unit, that is permanently retired.

(a) Any CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit that is permanently retired and is not a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season opt-in unit under rule [3745-109-08](#), [3745-109-14](#), or [3745-109-21](#) of the Administrative Code shall be exempt from the CAIR NO<sub>x</sub> annual, the SO<sub>2</sub>, or the NO<sub>x</sub> ozone season trading program, except for the provisions of paragraphs (B), (C), (D), (E)(3)(d) to (E)(3)(g), (F) and (G) of this rule and rules [3745-109-02](#), [3745-109-04](#) to [3745-109-06](#), [3745-109-09](#), [3745-109-11](#), [3745-109-12](#), [3745-109-15](#) and [3745-109-17](#) to [3745-109-19](#), respectively of the Administrative Code.

(b) The exemption under paragraph (D)(1)(a) of this rule shall become effective the day on which the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit is permanently retired. Within thirty days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the director 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 director, that the unit was permanently retired on a specific date and shall comply with the requirements of paragraph (D)(2) of this rule.

(c) After receipt of the statement under paragraph (D)(1)(b) of this rule, the director shall amend any permit under rule [3745-109-03](#), [3745-109-10](#), or [3745-109-16](#) of the Administrative Code covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (D)(1)(a) and (D)(1)(b) of this rule.

(2) Special provisions.

(a) A unit exempt under paragraph (D)(1) of this rule shall not emit any NO<sub>x</sub> or SO<sub>2</sub> starting on the date that the exemption takes effect.

(b) The director shall allocate CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season allowances under rule [3745-109-04](#) or [3745-109-17](#) of the Administrative Code to a unit exempt under paragraph (D)(1) of this rule.

(c) For a period of five years from the date the records are created, the owners and operators of a unit exempt under paragraph (D)(1) of this rule shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the director or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(d) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (D)(1) of this rule shall comply with the requirements of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> 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.

(e) A unit exempt under paragraph (D)(1) of this rule 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 paragraph (C) of rule [3745-109-03](#) of the Administrative Code or rule [3745-109-16](#) of the Administrative Code for the unit not less than eighteen months (or such lesser time provided by the director) before the later of January 1, 2009 or the date on which the unit resumes operation.

(f) A unit exempt under paragraph (D)(1) of this rule 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 paragraph (C) of rule [3745-109-10](#) of the Administrative Code for the unit not less than eighteen months (or such lesser time provided by the director) before the later of January 1, 2010 or the date on which the unit resumes operation.

(g) On the earlier of the following dates, a unit exempt under paragraph (D)(1) of this rule shall lose its exemption:

- (i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (D)(2)(e) or (D)(2)(f) of this rule;
- (ii) The date on which the CAIR designated representative is required under paragraph (D)(2)(e) or (D)(2)(f) of this rule 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.

(h) For the purpose of applying monitoring, reporting, and record keeping requirements under rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code, a unit that loses its

exemption under paragraph (D)(1) of this rule shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

(E) Standard requirements.

(1) Permit Requirements.

(a) The CAIR designated representative of each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source required to have a Title V operating permit and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit required to have a Title V operating permit at the source shall:

(i) Submit to the director a complete CAIR permit application under paragraph (C) of rule [3745-109-03](#) of the Administrative Code, rule [3745-109-10](#) of the Administrative Code, or rule [3745-109-16](#) of the Administrative Code in accordance with the deadlines specified in rule [3745-109-03](#) of the Administrative Code, rule [3745-109-10](#) of the Administrative Code, or rule [3745-109-16](#) of the Administrative Code; and

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

(b) The owners and operators of each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source required to have a Title V operating permit and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit required to have a Title V operating permit at the source shall have a CAIR permit issued by the director under rule [3745-109-03](#), [3745-109-10](#), or [3745-109-16](#) of the Administrative Code for the source and operate the source and the unit in compliance with such CAIR permit.

(c) Except as provided in rule [3745-109-08](#), [3745-109-14](#), or [3745-109-21](#) of the Administrative Code, the owners and operators of a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source that is not otherwise required to have a Title V operating permit and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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 rule [3745-109-03](#), [3745-109-10](#), or [3745-109-16](#) of the Administrative Code for such CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source and such CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit.

(2) Monitoring, reporting, and record keeping requirements.

(a) The owners and operators, and the CAIR designated representative, of each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source shall comply with the monitoring, reporting, and record keeping requirements of rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code.

(b) The emissions measurements recorded and reported in accordance with rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code shall be used to determine compliance by each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source with the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season emissions limitation under paragraph (E)(3) of this rule.

(3) NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season emission requirements.

(a) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season unit at the source shall hold, in the source's compliance account, CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season



allowances available for compliance deductions for the control period under paragraph (D)(1) of rule [3745-109-05](#) of the Administrative Code or rule [3745-109-18](#) of the Administrative Code in an amount not less than the tons of total NO<sub>x</sub> emissions for the control period from all CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season units at the source, as determined in accordance with rule [3745-109-07](#) or rule [3745-109-20](#) of the Administrative Code.

As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO<sub>2</sub> source and each CAIR SO<sub>2</sub> unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO<sub>2</sub> allowances available for compliance deductions for the control period, as determined in accordance with paragraphs (D)(1) and (D)(2) of rule [3745-109-11](#) of the Administrative Code, not less than the tons of total SO<sub>2</sub> emissions for the control period from all CAIR SO<sub>2</sub> units at the source, as determined in accordance with rule [3745-109-13](#) of the Administrative Code.

(b) A CAIR NO<sub>x</sub> unit shall be subject to the requirements under paragraph (E)(3)(a) of this rule for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under paragraph (A)(2)(a), (A)(2)(b) or (A)(2)(e) of rule [3745-109-07](#) of the Administrative Code and for each control period thereafter.

A CAIR SO<sub>2</sub> unit shall be subject to the requirements under paragraph (E)(3)(a) of this rule for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under paragraph (A)(2)(a), (A)(2)(b) or (A)(2)(e) of rule [3745-109-13](#) of the Administrative Code and for each control period thereafter.

A CAIR NO<sub>x</sub> ozone season unit shall be subject to the requirements under paragraph (E)(3)(a) of this rule for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under paragraph (A)(2)(a), (A)(2)(b), (A)(2)(c) or (A)(2)(g) of rule [3745-109-20](#) of the Administrative Code and for each control period thereafter.

(c) A CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance shall not be deducted, for compliance with the requirements under paragraph (E)(3)(a) of this rule, for a control period in a calendar year before the year for which the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance was allocated.

(d) CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowances shall be held in, deducted from, or transferred into or among CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance tracking system accounts in accordance with rule [3745-109-04](#), [3745-109-05](#), [3745-109-06](#), [3745-109-08](#), [3745-109-11](#), [3745-109-12](#), [3745-109-14](#), [3745-109-17](#), [3745-109-18](#), [3745-109-19](#), or [3745-109-21](#) of the Administrative Code.

(e) A CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season allowance is a limited authorization to emit one ton of NO<sub>x</sub> in accordance with the CAIR NO<sub>x</sub> annual or ozone season trading program. No provision of the CAIR NO<sub>x</sub> annual or ozone season trading program, the CAIR permit application, the CAIR permit, or an exemption under paragraph (D) of this rule and no provision of law shall be construed to limit the authority of the United States or the state of Ohio to terminate or limit such authorization.

A CAIR SO<sub>2</sub> allowance is a limited authorization to emit SO<sub>2</sub> in accordance with the CAIR SO<sub>2</sub> trading program. No provision of the CAIR SO<sub>2</sub> trading program, the CAIR permit application,



the CAIR permit, or an exemption under paragraph (D) of this rule and no provision of law shall be construed to limit the authority of the United States or the state of Ohio to terminate or limit such authorization.

(f) A CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season allowance does not constitute a property right.

(g) Upon recordation by the Administrator under rule [3745-109-05](#), [3745-109-06](#), or [3745-109-08](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> allowance to or from a CAIR NO<sub>x</sub> source's compliance account is incorporated automatically in any CAIR permit of the source.

Upon recordation by the Administrator under rule [3745-109-11](#), [3745-109-12](#) or [3745-109-14](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR SO<sub>2</sub> allowance to or from a CAIR SO<sub>2</sub> source's compliance account is incorporated automatically in any CAIR permit of the source.

Upon recordation by the Administrator under rules [3745-109-18](#), [3745-109-19](#) and [3745-109-21](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> ozone season allowance to or from a CAIR NO<sub>x</sub> ozone season sources compliance account is incorporated automatically in any CAIR permit of the source.

#### (4) Excess emissions requirements.

(a) If a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source emits NO<sub>x</sub> or SO<sub>2</sub> during any control period in excess of the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season emissions limitation, then:

- (i) The owners and operators of the source and each CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season unit at the source shall surrender the CAIR NO<sub>x</sub> or NO<sub>x</sub> ozone season allowances required for deduction under paragraph (D)(4)(a) of rule [3745-109-05](#) of the Administrative Code or rule [3745-109-18](#) of the Administrative Code 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; The owners and operators of the source and each CAIR SO<sub>2</sub> unit at the source shall surrender the CAIR SO<sub>2</sub> allowances required for deduction under paragraph (D)(4)(a) of rule [3745-109-11](#) of the Administrative Code 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
- (ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this rule, the Clean Air Act, and applicable state law.

#### (5) Record keeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the director or the Administrator.

- (i) The certificate of representation under paragraph (D) of rule [3745-109-02](#) of the Administrative Code, rule [3745-109-09](#) of the Administrative Code, or rule [3745-109-15](#) of the Administrative Code for the CAIR designated representative for the source and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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 five-year period until such documents are superseded because of the submission of a new certificate of representation under paragraph (D) of rule [3745-109-02](#) of the Administrative Code, rule [3745-109-09](#) of the Administrative Code, or rule [3745-109-15](#) of the Administrative Code changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code, provided that to the extent that rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code provides for a three-year period for record keeping, the three-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program or to demonstrate compliance with the requirements of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program.

(b) The CAIR designated representative of a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit at the source shall submit the reports required under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program, including those under rule [3745-109-07](#), [3745-109-13](#), or [3745-109-20](#) of the Administrative Code.

#### (6) Liability.

(a) Each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source and each CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit shall meet the requirements of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program.

(b) Any provision of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program that applies to a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source or the CAIR designated representative of a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source shall also apply to the owners and operators of such source and of the CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season units at the source.

(c) Any provision of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program that applies to a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit or the CAIR designated representative of a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season unit shall also apply to the owners and operators of such unit.

(7) Effect on other authorities. No provision of the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program, a CAIR permit application, a CAIR permit, or an exemption under paragraph (D) of this rule shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> ozone season source or CAIR NO<sub>x</sub>, SO<sub>2</sub>, or NO<sub>x</sub> 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.

#### (F) Computation of time.

(1) Unless otherwise stated, any time period scheduled, under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> ozone season trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(2) Unless otherwise stated, any time period scheduled, under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> 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.

(3) Unless otherwise stated, if the final day of any time period, under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub>, or NO<sub>x</sub> 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.

(G) Appeal procedures.

(1) The appeal procedures for decisions of the Administrator under the CAIR NO<sub>x</sub> annual, SO<sub>2</sub> and CAIR NO<sub>x</sub> ozone season trading programs are set forth in 40 CFR Part 78.

(2) Final decisions of the director made pursuant to these rules may be appealed to the environmental review appeals commission pursuant to section 3745.04 of the Revised Code. Environmental review appeals commission appeal procedures are set forth in agency 3746 of the Administrative Code.

(H) Incorporation by reference. This chapter includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations contained in this chapter. The materials are hereby made a part of the regulations in this chapter. For materials subject to change, only the specific version specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates.

(1) Availability. The materials incorporated by reference are available as follows:

(a) Clean Air Act as defined in this rule. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1990 is also available in electronic format at [www.epa.gov/oar/caa/](http://www.epa.gov/oar/caa/). A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."

(b) Code of Federal Regulations. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at [www.access.gpo.gov/nara/cfr/](http://www.access.gpo.gov/nara/cfr/). The CFR compilations are also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(c) Federal Register. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." Text of the Federal Register is also available in electronic format at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html). The Federal Register is also available for inspection and copying at most Ohio public libraries and "The State Library of Ohio."

(d) United States Code. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of

the United States Code is also available in electronic format at <http://www4.law.cornell.edu/uscode/>. The CFR compilations are also available for inspection and copying at most public libraries and “The State Library of Ohio.”

(2) Incorporated materials.

(a) 40 CFR 51.121 ; Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen;” 63 FR 57491, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998; 64 FR 26305, May 14, 1999; 65 FR 11230, Mar. 2, 2000; 65 FR 56251, Sept. 18, 2000; 69 FR 21642, Apr. 21, 2004; 70 FR 25317, May 12, 2005; 70 FR 51597, Aug. 31, 2005, 73 FR 21538, Apr. 22, 2008.

(b) 40 CFR 51.123 ; “Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule;” 70 FR 25319, May 12, 2005, as amended at 71 FR 25301, 25370, Apr. 28, 2006; 71 FR 74793, Dec. 13, 2006, 72 FR 59203, Oct. 19, 2007.

(c) 40 CFR 51.124; “Findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide pursuant to the Clean Air Interstate Rule;” 70 FR 25328, May 12, 2005, as amended at 71 FR 25302, 25372, Apr. 28, 2006; 71 FR 74793, Dec. 13, 2006, 72 FR 59204, Oct. 19, 2007.

(d) 40 CFR 72.2; “Definitions;” 58 FR 3650, Jan. 11, 1993; as amended at 58 FR 15647, Mar. 23, 1993; 58 FR 33770, June 21, 1993; 58 FR 40747, July 30, 1993; 60 FR 17111, Apr. 4, 1995; 60 FR 18468, Apr. 11, 1995; 60 FR 26514, May 17, 1995; 62 FR 55475, Oct. 24, 1997; 63 FR 57498, Oct. 27, 1998; 63 FR 68404, Dec. 11, 1998; 64 FR 25842, May 13, 1999; 64 FR 28586, May 26, 1999; 67 FR 40420, June 12, 2002; 67 FR 53504, Aug. 16, 2002; 70 FR 25333, May 12, 2005; 70 FR 28690, May 18, 2005, 72 FR 51527, September 7, 2007.

(e) 40 CFR 72.6; “Applicability;” 58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15648, Mar. 23, 1993; 62 FR 55475, Oct. 24, 1997; 64 FR 28588, May 26, 1999; 66 FR 12978, Mar. 1, 2001.

(f) 40 CFR 72.8; “Retired units exemption;” 62 FR 55477, Oct. 24, 1997; 62 FR 66279, Dec. 18, 1997, as amended at 71 FR 25377, Apr. 28, 2006.

(g) 40 CFR 73.31; “Establishment of accounts;” 58 FR 3687, Jan. 11, 1993; 58 FR 40747, July 30, 1993, as amended at 71 FR 25378, Apr. 28, 2006; 70 FR 25335, May 12, 2005.

(h) 40 CFR 73.35; “Compliance;” 58 FR 3691, Jan. 11, 1993, as amended at 60 FR 17114, Apr. 4, 1995; 64 FR 25842, May 13, 1999; 70 FR 25335, May 12, 2005.

(i) 40 CFR 74.42; “Limitation on transfers;” 70 FR 25336, May 12, 2005.

(j) 40 CFR 74.47 ; “Transfer of allowances from the replacement of thermal energy — combustion sources;” 60 FR 17115, Apr. 4, 1995, as amended at 63 FR 18841, 18842, Apr. 16, 1998; 70 FR 25337, May 12, 2005.

(k) 40 CFR 75.11; “Specific provisions for monitoring SO<sub>2</sub> emissions (SO<sub>2</sub> and flow monitors);” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26520, 26566, May 17, 1995; 61 FR 59157,

Nov. 20, 1996; 63 FR 57499, Oct. 27, 1998; 64 FR 28590, May 26, 1999; 67 FR 40423, June 12, 2002, 73 FR 4342, Jan. 24, 2008.

(l) 40 CFR 75.12 ; “Specific provisions for monitoring NO<sub>x</sub> emission rate (NO<sub>x</sub>-diluent monitoring systems);” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26520, May 17, 1995; 63 FR 57499, Oct. 27, 1998; 64 FR 28591, May 26, 1999; 67 FR 40423, June 12, 2002, 73 FR 4342, Jan. 24, 2008.

(m) 40 CFR 75.16; “Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO<sub>2</sub> emissions and heat input determinations;” 60 FR 26522, May 17, 1995; as amended at 61 FR 25582, May 22, 1996; 61 FR 59158, Nov. 20, 1996; 64 FR 28591, May 26, 1999; 67 FR 40423, June 12, 2002; 67 FR 53504, Aug. 16, 2002, 73 FR 4343, Jan. 24, 2008.

(n) 40 CFR 75.17; “Specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO<sub>x</sub> emission rate;” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26523, May 17, 1995; 63 FR 57499, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40424, June 12, 2002, 73 FR 4343, Jan. 24, 2008.

(o) 40 CFR 75.19; “Optional SO<sub>2</sub>, NO, and CO<sub>2</sub> emissions calculation for low mass emissions (LME) units;” 63 FR 57500, Oct. 27, 1998; as amended at 64 FR 28592, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40424, 40425, June 12, 2002; 67 FR 53504, Aug. 16, 2002, 73 FR 4344, Jan. 24, 2008.

(p) 40 CFR 75.20; “Initial certification and recertification procedures;” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26524, May 17, 1995; 60 FR 40296, Aug. 8, 1995; 61 FR 59158, Nov. 20, 1996; 63 FR 57506, Oct. 27, 1998; 64 FR 28592, May 26, 1999; 67 FR 40431, June 12, 2002, 70 FR 28678, May 18, 2005; 72 FR 51527, Sept. 7, 2007; 73 FR 4345, Jan. 24, 2008.

(q) 40 CFR 75.21; “Quality assurance and quality control requirements;” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26527, 26566, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59159, Nov. 20, 1996; 64 FR 28599, May 26, 1999; 67 FR 40433, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 70 FR 28679, May 18, 2005, 73 FR 4345, Jan. 24, 2008.

(r) 40 CFR 75.22; “Reference test methods;” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26528, May 17, 1995; 64 FR 28600, May 26, 1999; 67 FR 40433, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 70 FR 28679, May 18, 2005, 73 FR 4345, Jan. 24, 2008.

(s) 40 CFR 75.31; “Initial missing data procedures;” 64 FR 28601, May 26, 1999; as amended at 67 FR 40433, June 12, 2002; 70 FR 28679, May 18, 2005, 73 FR 4346, Jan. 24, 2008.

(t) 40 CFR 75.34; “Units with add-on emission controls;” 60 FR 26567, May 17, 1995; as amended at 61 FR 59160, Nov. 20, 1996; 64 FR 28604, May 26, 1999; 67 FR 40438, June 12, 2002, 73 FR 4348, Jan. 24, 2008.

(u) 40 CFR 75.61; “Notifications;” 60 FR 26538, May 17, 1995; as amended at 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 22, 1996; 64 FR 28620, May 26, 1999; 67 FR 40442, 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008.

(v) 40 CFR 75.62; “Monitoring plan submittals;” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26539, May 17, 1995; 64 FR 28621, May 26, 1999; 67 FR 40443, June 12, 2002, 73 FR 4356, Jan. 24, 2008.

(w) 40 CFR 75.63; “Initial certification or recertification application;” 64 FR 28621, May 26, 1999; as amended at 67 FR 40443, June 12, 2002, 73 FR 4357, Jan. 24, 2008.

(x) 40 CFR 75.64; “Quarterly reports;” 64 FR 28622, May 26, 1999; as amended at 67 FR 40444, June 12, 2002, 73 FR 4357, Jan. 24, 2008.

(y) 40 CFR 75.66; “Petitions to the Administrator;” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26540, 26569, May 17, 1995; 61 FR 59162, Nov. 20, 1996; 64 FR 28623, May 26, 1999; 67 FR 40444, June 12, 2002, 73 FR 4358, Jan. 24, 2008.

(z) 40 CFR 75.71; “Specific provisions for monitoring NO<sub>x</sub> and heat input for the purpose of calculating NO<sub>x</sub> mass emissions;” 63 FR 57508, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, 40445, June 12, 2002; 67 FR 53505, Aug. 16, 2002, 73 FR 4358, Jan. 24, 2008.

(aa) 40 CFR 75.72; “Determination of NO<sub>x</sub> mass emissions;” 63 FR 57507, Oct. 27, 1998, as amended at 67 FR 40445, June 12, 2002, 73 FR 4358, Jan. 24, 2008.

(bb) 40 CFR 75.73; “Recordkeeping and reporting;” 64 FR 28624, May 26, 1999, as amended at 67 FR 40446, June 12, 2002, 73 FR 4359, Jan. 24, 2008.

(cc) 40 CFR 77.5; “Deduction of allowances to offset excess emissions of sulfur dioxide”; 70 FR 25337, May 12, 2005.

(dd) 40 CFR 96.115; “Delegation by CAIR designated representative and alternate CAIR designated representative”; 71 FR 25382, Apr. 28, 2006, as amended by 71 FR 74794, Dec. 13, 2006.

(ee) 40 CFR 97.115; “Delegation by CAIR designated representative and alternate CAIR designated representative”; 65 FR 2727, Jan. 18, 2000, unless otherwise noted. 71 FR 25396, 25422, and 25443, Apr. 28, 2006.

(ff) 40 CFR Part 70; “State Operating Permit Programs”; as published in the July 1, 2007 Code of Federal Regulations.

(gg) 40 CFR Part 71; “Federal Operating Permit Programs”; as published in the July 1, 2007 Code of Federal Regulations.

(hh) 40 CFR Part 72; “Permits Regulation”; as published in the July 1, 2007 Code of Federal Regulations.

(ii) 40 CFR Part 73; “Sulfur Dioxide Allowance System”; as published in the July 1, 2007 Code of Federal Regulations.



(jj) 40 CFR Part 73, Subpart D; “Allowance Transfers”; as published in the July 1, 2007 Code of Federal Regulations.

(kk) 40 CFR Part 74; “Sulfur Dioxide Opt-ins”; as published in the July 1, 2007 Code of Federal Regulations.

(ll) 40 CFR Part 75; “Continuous Emission Monitoring”; as published in the July 1, 2007 Code of Federal Regulations.

(mm) 40 CFR Part 75, Appendix A; “Specifications and Test Procedures,” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26541, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 20, 1996; 63 FR 57512, Oct. 27, 1998; 64 FR 28631, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40448, 40449, 40452, 40453, 40455, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 70 FR 28690, May 18, 2005.

(nn) 40 CFR Part 75, Appendix B; “Quality Assurance and Quality Control Procedures,” 58 FR 3701, Jan. 11, 1993; as amended at 60 FR 26546, 26571, May 17, 1995; 61 FR 59165, Nov. 20, 1996; 64 FR 28644, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40456, 40457, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 67 FR 57274, Sept. 9, 2002; 70 FR 28690, May 18, 2005.

(oo) 40 CFR Part 75, Appendix D; “Optional SO<sub>2</sub> Emissions Data Protocol for Gas-Fired and Oil-Fired Units,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26548, 26551, May 17, 1995; 61 FR 25585, May 22, 1996; 61 FR 59166, Nov. 20, 1996; 63 FR 57513, Oct. 27, 1998; 64 FR 28652, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40460, 40472, June 12, 2002; 67 FR 53505, Aug. 16, 2002.

(pp) 40 CFR Part 75, Appendix E; “Optional NO<sub>x</sub> Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26551-26553, May 17, 1995; 64 FR 28665, May 26, 1999; 67 FR 40473, 40474, June 12, 2002; 67 FR 53505, Aug. 16, 2002

(qq) 40 CFR Part 75, Subpart D; “Missing Data Substitution Procedures,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26529, May 17, 1995; 61 FR 59160, Nov. 20, 1996; 61 FR 25582, May 22, 1996; 61 FR 59160, Nov. 20, 1996; 64 FR 28600, May 26, 1999; 67 FR 40433, June 12, 2002; 67 FR 53505, Aug. 16, 2002; 67 FR 57274, Sept. 9, 2002; 70 FR 28679, May 18, 2005.

(rr) 40 CFR Part 75, Subpart E; “Alternative Monitoring Systems,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26530, May 17, 1995; 60 FR 40296, Aug. 8, 1995; 64 28605, May 26, 1999; 67 FR 40440, June 12, 2002.

(ss) 40 CFR Part 75, Subpart F; “Recordkeeping Requirements,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 26532, May 17, 1995; 61 FR 59161, Nov. 20, 1996; 64 FR 28605, May 26, 1999; 64 FR 37582, July 12, 1999; 67 FR 40440, June 12, 2002; 70 FR 28682, May 18, 2005.

(tt) 40 CFR Part 75, Subpart G; “Reporting Requirements,” 58 FR 3701, Jan. 11, 1993, as amended at 60 FR 17131, Apr. 4, 1995; 60 FR 26538, May 17, 1995; 61 FR 25582, May 22, 1996; 61 FR 59162, Nov. 20, 1996; 62 FR 55487, Oct. 24, 1997; 64 FR 28620, May 26, 1999; 67 FR 40442, June 12, 2002.

(uu) 40 CFR Part 75, Subpart H; “NO<sub>x</sub> Mass Emissions Provisions;” 63 FR 57507, Oct. 27, 1998, as amended at 64 FR 28624, May 26, 1999; 67 FR 40444, June 12, 2002; 67 FR 53505, Aug. 16, 2002.

(vv) 40 CFR Part 76; “Acid Rain Nitrogen Oxides Emission Reduction Program”; as published in the July 1, 2007 Code of Federal Regulations.

(ww) 40 CFR Part 77; “Excess Emissions”; as published in the July 1, 2007 Code of Federal Regulations.

(xx) 40 CFR Part 78; “Appeal Procedures for Acid Rain Program”; as published in the July 1, 2007 Code of Federal Regulations.

(yy) 42 USC 7401 to 42 USC 7671q; “The Public Health and Welfare -Air Pollution Prevention and Control;” published January 3, 2005 in Supplement IV of the 2000 Edition of the United States Code.

(zz) Section 111 of the Clean Air Act; contained in 42 USC 7411;” Standards of Performance for New Stationary Sources”; published January 3, 2005 in Supplement IV of the 2000 Edition of the United States Code.

(aaa) Section 129 of the Clean Air Act; contained in 42 USC 7429; “Solid Waste Combustion”; published January 3, 2005 in Supplement IV of the 2000 Edition of the United States Code.

(bbb) Section 502(c) of the Clean Air Act; contained in 42 USC 7661;” Permit Programs”; published January 3, 2005 in Supplement IV of the 2000 Edition of the United States Code.

(ccc) Title IV of the Clean Air Act; contained in 42 USC 7651 to 42 USC 7651o ; “Acid Deposition Control;” published January 3, 2005 in Supplement IV of the 2000 Edition of the United States Code.

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Prior Effective Dates: 09/27/2007

## **3745-109-02 CAIR Designated Representative for CAIR NO<sub>x</sub> Sources.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by reference."]

(A) Authorization and responsibilities of CAIR designated representative.

(1) Except as provided under paragraph (B) of this rule, each CAIR NO<sub>x</sub> source, including all CAIR NO<sub>x</sub> units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO<sub>x</sub> annual trading program concerning the source or any CAIR NO<sub>x</sub> unit at the source.

(2) The CAIR designated representative of the CAIR NO<sub>x</sub> source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO<sub>x</sub> units at the source and shall act in accordance with the certification statement in paragraph (D)(1)(d)(iv) of this rule.

(3) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, 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<sub>x</sub> source represented and each CAIR NO<sub>x</sub> unit at the source in all matters pertaining to the CAIR NO<sub>x</sub> 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 director, the Administrator, or a court regarding the source or unit.

(4) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO<sub>x</sub> allowance tracking system account will be established for a CAIR NO<sub>x</sub> unit at a source, until the Administrator has received a complete certificate of representation under paragraph (D) of this rule for a CAIR designated representative of the source and the CAIR NO<sub>x</sub> units at the source.

(5) CAIR NO<sub>x</sub> annual trading program submissions.

(a) Each submission under the CAIR NO<sub>x</sub> annual trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO<sub>x</sub> 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."

(b) The director and the Administrator shall accept or act on a submission made on behalf of owner or operators of a CAIR NO<sub>x</sub> source or a CAIR NO<sub>x</sub> unit only if the submission has been made, signed, and certified in accordance with paragraph (A)(5)(a) of this rule.

(B) Alternate CAIR designated representative.

(1) A certificate of representation under paragraph (D) of this rule 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.

(2) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, 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.

(3) Except in paragraph (B) of this rule and paragraph (B) of rule [3745-109-01](#) of the Administrative Code, paragraphs (A)(1) and (A)(4), (C), (D), (F) of this rule, paragraph (A) of rule [3745-109-05](#) of the Administrative Code and paragraph (C) of rule [3745-109-08](#) of the Administrative Code, whenever the term “CAIR designated representative” is used in rules [3745-109-01](#) to [3745-109-08](#) of the Administrative Code, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(C) Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(1) 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 paragraph (D) of this rule. 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<sub>x</sub> source and the CAIR NO<sub>x</sub> units at the source.

(2) 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 paragraph (D) of this rule. 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<sub>x</sub> source and the CAIR NO<sub>x</sub> units at the source.

(3) Changes in owners and operators.

(a) In the event an owner or operator of a CAIR NO<sub>x</sub> source or a CAIR NO<sub>x</sub> unit is not included in the list of owners and operators in the certificate of representation under paragraph (D) of this rule, such owner or operator shall be deemed to be subject to and bound by the certificate of

representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(b) Within thirty days following any change in the owners and operators of a CAIR NO<sub>x</sub> source or a CAIR NO<sub>x</sub> 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 paragraph (D) of this rule amending the list of owners and operators to include the change.

(D) Certificate of representation.

(1) 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:

(a) Identification of the CAIR NO<sub>x</sub> source, and each CAIR NO<sub>x</sub> 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;

(b) 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;

(c) A list of the owners and operators of the CAIR NO<sub>x</sub> source and of each CAIR NO<sub>x</sub> unit at the source;

(d) 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<sub>x</sub> 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<sub>x</sub> Annual trading program on behalf of the owners and operators of the source and of each CAIR NO<sub>x</sub> 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<sub>x</sub> unit at the source shall be bound by any order issued to me by the Administrator, the director, 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<sub>x</sub> unit, or where a utility or industrial customer purchases power from a CAIR NO<sub>x</sub> 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<sub>x</sub> unit at the source; and CAIR NO<sub>x</sub> allowances and proceeds of transactions involving CAIR NO<sub>x</sub> allowances shall 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<sub>x</sub> allowances by contract, CAIR NO<sub>x</sub> allowances and proceeds of transactions involving CAIR NO<sub>x</sub> allowances shall be deemed to be held or distributed in accordance with the contract.”

(e) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(2) Unless otherwise required by the director or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(E) Objections concerning CAIR designated representative.

(1) Once a complete certificate of representation under paragraph (D) of this rule has been submitted and received, the director and the Administrator shall rely on the certificate of representation unless and until a superseding complete certificate of representation under paragraph (D) of this rule is received by the Administrator.

(2) Except as provided in paragraph (C)(1) or (C)(2) of this rule, no objection or other communication submitted to the director 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 director or the Administrator under the CAIR NO<sub>x</sub> annual trading program.

(3) 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<sub>x</sub> allowance transfers.

(F) Delegation by CAIR designated representative and alternate CAIR designated representative.

(1) 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 rule.

(2) 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 rule.

(3) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (F)(1) or (F)(2) of this rule, 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:

(a) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated 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 (F)(1) or (F)(2) of this rule for which authority is delegated to him or her; and

(d) 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 96.115(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.115 is terminated.”

(4) A notice of delegation submitted under paragraph (F)(3) of this rule 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.

(5) Any electronic submission covered by the certification in paragraph (3)(d)(i) of this rule and made in accordance with a notice of delegation effective under paragraph (F)(4) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

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Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

### **3745-109-03 Permits.**

#### **(A) General CAIR annual trading program permit requirements.**

(1) For each CAIR NO<sub>x</sub> source required to have a Title V operating permit or required, under rule [3745-109-08](#) of the Administrative Code, to have a Title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the director 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 director's Title V operating permits regulations or the director's regulations for other federally enforceable permits as applicable, except as provided otherwise by paragraph (D) of rule [3745-109-01](#) of the Administrative Code, this rule and rule [3745-109-08](#) of the Administrative Code.

(2) Each CAIR permit shall contain, with regard to the CAIR NO<sub>x</sub> source and the CAIR NO<sub>x</sub> units at the source covered by the CAIR permit, all applicable CAIR NO<sub>x</sub> annual trading program, CAIR NO<sub>x</sub> ozone season trading program, and CAIR SO<sub>2</sub> 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)(1) of this rule.

#### **(B) Submission of CAIR permit applications.**

(1) Duty to apply. The CAIR designated representative of any CAIR NO<sub>x</sub> source required to have a Title V operating permit shall submit to the director a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR NO<sub>x</sub> unit at the source at least twelve months (or such lesser time provided by the director) before the later of January 1, 2009 or the date on which the CAIR NO<sub>x</sub> unit commences commercial operation, except as provided in paragraph (D)(1) of rule [3745-109-08](#) of the Administrative Code.

(2) Duty to Reapply. For a CAIR NO<sub>x</sub> source required to have a Title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR NO<sub>x</sub> unit at the source to renew the CAIR permit in accordance with the director's Title V operating permits regulations addressing permit renewal, except as provided in paragraph (D)(2) of rule [3745-109-08](#) of the Administrative Code.

(C) Information requirements for CAIR permit applications. A complete CAIR permit application shall include the following elements concerning the CAIR NO<sub>x</sub> source for which the application is submitted, in a format prescribed by the director:

(1) Identification of the CAIR NO<sub>x</sub> source;

(2) Identification of each CAIR NO<sub>x</sub> unit at the CAIR NO<sub>x</sub> source; and

(3) The standard requirements under paragraph (E) of rule [3745-109-01](#) of the Administrative Code.

(D) CAIR permit contents and term.

(1) Each CAIR permit shall contain, in a format prescribed by the director, all elements required for a complete CAIR permit application under paragraph (C) of this rule.

(2) Each CAIR permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rules [3745-109-04](#), [3745-109-05](#), [3745-109-06](#) or [3745-109-08](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> allowance to or from the compliance account of the CAIR NO<sub>x</sub> source covered by the permit.

(3) The term of the CAIR permit shall be set by the director, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO<sub>x</sub> source's Title V operating permit or other federally enforceable permit as applicable.

(E) CAIR permit revisions.

Except as provided in paragraph (D)(2) of this rule, the director shall revise the CAIR permit, as necessary, in accordance with the director's Title V operating permits regulations or the director's regulations for other federally enforceable permits as applicable addressing permit revisions.

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## **3745-109-04 CAIR NO<sub>x</sub> Allowance Allocations.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

(A) State trading budget. The state trading budget in Ohio for the CAIR NO<sub>x</sub> annual trading program for 2009 through 2014 is one hundred eight thousand six hundred sixty-seven tons and in 2015 and thereafter is ninety thousand five hundred fifty-six tons.

(B) Timing requirements for CAIR NO<sub>x</sub> allowance allocations.

(1) No later than September 30, 2007, the director shall submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1) and (C)(2) of this rule, for the control periods in 2009 through 2014.

(2) Existing units.

(a) By October 31, 2009 and by October thirty-first every six years thereafter, the director shall submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1) and (C)(2) of this rule, for the control periods six years, seven years, eight years, nine years, ten years and eleven years after the year of the applicable deadline for submission under this paragraph.

(3) New units.

(a) By October 31, 2009 and by October thirty-first of each year thereafter, the director shall submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1), (C)(3) and (C)(4) of this rule, for the control period in the year of the applicable deadline for submission under this paragraph.

(C) CAIR NO<sub>x</sub> allowance allocations.

(1) Existing units.

(a) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> allowance allocations under paragraph (C)(2) of this rule for each CAIR NO<sub>x</sub> unit shall be:

(i) For units commencing operation before January 1, 2001 the average of the three highest amounts of the unit's adjusted control period heat input for 1998 through 2005, 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 one hundred per cent;

(b) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by sixty per cent; and (c) If the unit is not subject to paragraph (C)(1)(a)(i)(a) or (C)(1)(a)(i)(b) of this rule, the unit's control period heat input for such year is multiplied by forty per cent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of three or more consecutive calendar years, the average of the three highest amounts of the unit's total converted control period heat input.

(b) Adjusted heat inputs.

(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 (C)(1)(a)(i) of this rule, and a unit's total tons of NO<sub>x</sub> emissions during a calendar year under paragraph (C)(3)(c) of this rule, shall 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 shall be based on the best available data reported to the director for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (C)(1)(a)(ii) of this rule equals:

(a) Except as provided in paragraph (C)(1)(b)(ii)(b) or (C)(1)(b)(ii)(c) of this rule, the control period gross electrical output of the generator or generators served by the unit multiplied by seven thousand nine hundred Btu per kWh, if the unit is coal-fired for the year, or six thousand six hundred seventy-five Btu per kWh, if the unit is not coal-fired for the year, and divided by one million Btu per mmBtu, provided that if a generator is served by two or more units, then the gross electrical output of the generator shall 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 of the steam produced by the boiler during the control period, divided by 0.8 and by one million Btu per 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, combustion, and turbine multiplied by three thousand four hundred thirteen Btu per kWh, plus the total heat energy 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 one million Btu per mmBtu.

(2) Adjusted allocations.

(a) For each control period in 2009 and thereafter, the director shall allocate to all CAIR NO<sub>x</sub> units in the state that have a baseline heat input (as determined under paragraph (C)(1) of this rule) a total amount of CAIR NO<sub>x</sub> allowances equal to ninety-five per cent for a control period during 2009 through 2014, and ninety-seven per cent for a control period during 2015 and thereafter, of the tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule (except as provided in paragraph (C)(4) of this rule).

(b) The director shall allocate CAIR NO<sub>x</sub> allowances to each CAIR NO<sub>x</sub> unit under paragraph (C)(2)(a) of this rule in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> allowances allocated under paragraph (C)(2)(a) of this rule by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> units in the state and rounding to the nearest whole allowance as appropriate.

(3) For each control period in 2009 and thereafter, the director shall allocate CAIR NO<sub>x</sub> allowances to CAIR NO<sub>x</sub> units in the state that are not allocated CAIR NO<sub>x</sub> allowances under paragraph (C)(2)(a) of this rule because the units do not yet have a baseline heat input under paragraph (C)(1)(a) of this rule or because the units have a baseline heat input but all CAIR NO<sub>x</sub>

allowances available under paragraph (C)(2)(a) of this rule for the control period are already allocated, in accordance with the following procedures:

(a) The director shall establish a separate new unit set-aside for each control period. Each new unit set-aside shall be allocated CAIR NO<sub>x</sub> allowances equal to five per cent for a control period in 2009 through 2014, and three per cent for a control period in 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule.

(b) The CAIR designated representative of such a CAIR NO<sub>x</sub> unit may submit to the director a request, in a format specified by the director, to be allocated CAIR NO<sub>x</sub> 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<sub>x</sub> unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> allowances under paragraph (C)(2) of this rule. A separate CAIR NO<sub>x</sub> allowance allocation request for each control period for which CAIR NO<sub>x</sub> allowances are sought must be submitted on or before May first of such control period and after the date on which the CAIR NO<sub>x</sub> unit commences commercial operation.

(c) In a CAIR NO<sub>x</sub> allowance allocation request under paragraph (C)(3)(b) of this rule, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> allowances in an amount not exceeding the CAIR NO<sub>x</sub> unit's total tons of NO<sub>x</sub> emissions during the calendar year immediately before such control period.

(d) The director shall review each CAIR NO<sub>x</sub> allowance allocation request under paragraph (C)(3)(b) of this rule and shall allocate CAIR NO<sub>x</sub> allowances for each control period pursuant to such request as follows:

(i) The director shall accept an allowance allocation request only if the request meets, or is adjusted by the director as necessary to meet, the requirements of paragraphs (C)(3)(b) and (C)(3)(c) of this rule.

(ii) For each control period on or after May first, the director shall determine the sum of the CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule) in all allowance allocation requests accepted under paragraph (C)(3)(d)(i) of this rule for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (C)(3)(d)(ii) of this rule, then the director shall allocate the amount of CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule) to each CAIR NO<sub>x</sub> unit covered by an allowance allocation request accepted under paragraph (C)(3)(d)(i) of this rule.

(iv) If the amount of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period is less than the sum under paragraph (C)(3)(d)(ii) of this rule, then the director shall allocate to each CAIR NO<sub>x</sub> unit covered by an allowance allocation request accepted under paragraph (C)(3)(d)(i) of this rule the amount of the CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule), multiplied by the number of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (C)(3)(d)(ii) of this rule, and rounded to the nearest whole allowance as appropriate.

(v) The director shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> unit covered by the request.



[Comment; As stated in paragraph (C)(3) of this rule, units commencing operation on or after January 1, 2001 and lacking a baseline heat input because of insufficient heat input data availability, as stated in paragraph (C)(1)(a)(ii) of this rule, shall be allocated allowances from the new unit set-aside. The unit will continue to be allocated allowances from the new unit set-aside, even if the unit has sufficient heat input data for determination of a baseline until such time as the director has determined new allowance allocations from the state trading budget under paragraph (A) of this rule, for all units in the state with a baseline heat input based on the timing requirements in paragraph (B) of this rule.]

(4) If, after completion of the procedures under paragraph (C)(3)(d) of this rule for a control period, any unallocated CAIR NO<sub>x</sub> allowances remain in the new unit set-aside for the control period, the director shall allocate to each CAIR NO<sub>x</sub> unit that was allocated CAIR NO<sub>x</sub> allowances under paragraph (C)(2) of this rule an amount of CAIR NO<sub>x</sub> allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> allowances, multiplied by the unit's allocation under paragraph (C)(2) of this rule, divided by ninety-five per cent for a control period during 2009 through 2014, and ninety-seven per cent for a control period during 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule, and rounded to the nearest whole allowance as appropriate.

(D) Early reduction credit.

(1) The director will create a compliance supplemental pool (CSP) of twenty-five thousand thirty-seven early reduction credits. Each CAIR NO<sub>x</sub> unit for which the designated representative requests any early reduction credit under this rule shall monitor and report NO<sub>x</sub> emissions in accordance with 40 CFR Part 75 in the 2005 control period and for each control period for which any early reduction credit is requested. The unit's percent monitor data availability shall be not less than ninety per cent during the 2005 control period, and the unit shall be in compliance with any applicable state or federal NO<sub>x</sub> emission control requirements during 2005 through 2008.

(2) The NO<sub>x</sub> emission rate and heat input under paragraphs (D)(3) and (D)(4) of this rule shall be determined in accordance with 40 CFR Part 75.

(3) Each CAIR NO<sub>x</sub> unit for which the designated representative requests early reduction credit under paragraph (D)(4) of this rule shall:

(a) Reduce its NO<sub>x</sub> emission rate for each control period for which early reduction credit is requested to less than the unit's NO<sub>x</sub> emission rate in the 2005 control period.

(b) Reduce its NO<sub>x</sub> emission rate for each control period below any applicable state implementation plan limitation or the applicable NO<sub>x</sub> emission rate contained in any permit issued to the unit. Early reduction credits shall not be earned if the unit is required to achieve NO<sub>x</sub> emission reductions that are necessary to comply with any state or federal emissions limitation applicable during each control period.

(c) Be an existing coal-fired unit in operation during the 2007 or 2008 control periods and will be required to comply with CAIR annual NO<sub>x</sub> emission limitations beginning January 1, 2009.

(4) A CAIR designated representative, for one or more CAIR NO<sub>x</sub> units that meet the requirements of paragraphs (D)(1) to (D)(3) of this rule, is only eligible for the units' collective proportional share of the CSP, except as specified in paragraph (D)(6). The CAIR designated

representative may submit to the director a request for early reduction credit based on NO<sub>x</sub> emission rate reductions for one or more CAIR NO<sub>x</sub> units in either or both of the control periods in 2007 and 2008.

(a) The collective proportional share of the CSP for a CAIR designated representative shall be equal to the product twenty-five thousand thirty-seven times the percentage calculated by dividing the sum of the baseline heat input for all CAIR NO<sub>x</sub> units represented by the designated representative by the sum of the baseline heat input for all CAIR NO<sub>x</sub> units subject to this rule.

(b) By November 26, 2007, the director shall calculate and publish the collective proportional share of the CSP for each CAIR designated representative eligible for CAIR early reduction credits. The director will also make available the data used to calculate the collective proportional shares of the CSP.

(c) The CAIR designated representative may request early reduction credits for NO<sub>x</sub> reductions made at one or more CAIR NO<sub>x</sub> units in the 2007 and/or 2008 control periods in an amount equal to the following: the unit's heat input for such control period multiplied by the difference between the unit's NO<sub>x</sub> emission rate (in pounds per mmBtu) during the 2005 control period and the NO<sub>x</sub> emission rate (in pounds per mmBtu) for each control period for which early reduction credits are requested, divided by two thousand pounds per ton and rounded to the nearest whole number of tons as appropriate. The total number of early reduction credits requested by a designated representative may exceed that representative's collective proportional share, and serve as a basis for additional CAIR NO<sub>x</sub> allocations from the CSP pursuant to paragraph (D)(6) of this rule.

(d) Requests for early reduction credits for reductions made in 2007 or 2008 shall be submitted, in a format specified by the director, by February 1, 2009.

(5) The director shall allocate CAIR NO<sub>x</sub> allowances from the CSP to the designated representative for CAIR NO<sub>x</sub> units meeting the requirements of paragraphs (D)(1) to (D)(3) of this rule and for which early reduction credit requests meeting the requirements of paragraph (D)(4)(c) of this rule were submitted, up to the collective proportional share of the CSP available to the CAIR designated representative as defined in paragraphs (D)(4)(a) and (D)(4)(b) of this rule.

(6) If the total number of early reduction credits allocated per paragraph (D)(5) of this rule is less than twenty-five thousand thirty-seven, the director shall allocate the remaining available NO<sub>x</sub> allowances to those CAIR designated representatives who submitted early reduction credit requests for one or more CAIR NO<sub>x</sub> units that exceeded his or her collective proportional share. The director shall allocate the remaining available NO<sub>x</sub> allowances from the CSP to each CAIR NO<sub>x</sub> unit that meets the requirements of this paragraph according to the following formula rounded to the nearest whole number of CAIR NO<sub>x</sub> allowances as appropriate:

[Twenty-five thousand thirty seven minus the CSP NO<sub>x</sub> allowances allocated under paragraph (D)(5) of this rule] multiplied by the [number of early reduction credits requested for a CAIR NO<sub>x</sub> unit under paragraph (D)(4)(c) of this rule minus the number of early reduction credits awarded to a CAIR NO<sub>x</sub> unit under paragraph (D)(5) of this rule] divided by the [(total number of early reduction credits requested for all CAIR NO<sub>x</sub> units under paragraph (D)(4)(c) minus the total number of early reduction credits awarded to all CAIR NO<sub>x</sub> units under paragraph (D)(5)]

(7) A CAIR NO<sub>x</sub> unit's total early reduction credits allocated shall equal the sum of the early reduction credits determined under paragraphs (D)(5) and paragraph (D)(6) of this rule.

(8) The director shall notify each CAIR authorized account representative who requested early reduction credits according to paragraph (D)(4) of this rule of the number of early reduction credit the Administrator will record as CAIR NO<sub>x</sub> allowances for each CAIR NO<sub>x</sub> unit that made early reductions during the control periods in 2007 and 2008 by June 1, 2009, or at such time that sufficient 2008 unit's emissions data has been available by the Administrator for the determination of the early reduction credits.

(9) The director shall submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations determined in accordance with paragraphs (D)(5) and (D)(6) of this rule by November 30, 2009, or at such time based on the emissions data availability as described in paragraph (D)(8) of this rule.

(10) The Administrator will record the submitted allocations in paragraph (D)(9) of this rule by January 1, 2010.

(11) CAIR NO<sub>x</sub> allowances available for reductions made in the 2007 and 2008 control periods and not allocated or recorded by the director in accordance with paragraphs (D)(5) and (D)(6) of this rule shall be retired.

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## **3745-109-05 CAIR NO<sub>x</sub> Allowance Tracking System.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by Reference.”]

### **(A) Establishment of accounts.**

(1) Compliance accounts. Except as provided in paragraph (E)(5) of rule [3745-109-08](#) of the Administrative Code, upon receipt of a complete certificate of representation under paragraph (D) of rule [3745-109-02](#) of the Administrative Code, the Administrator shall establish a compliance account for the CAIR NO<sub>x</sub> source for which the certificate of representation was submitted unless the source already has a compliance account.

### **(2) General accounts.**

#### **(a) Application for general account.**

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO<sub>x</sub> 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 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 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<sub>x</sub> 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 director or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(b) 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 (A)(2)(a) of this rule:

(a) The Administrator shall 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<sub>x</sub> allowances held in the general account in all matters pertaining to the CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (A)(2)(b)(ii) of this rule.

(c) 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 (A)(2)(a) of this rule. 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<sub>x</sub> 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 (A)(2)(a) of this rule. 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<sub>x</sub> allowances in the general account.

(iii) Ownership changes.

(a) In the event a person having an ownership interest with respect to CAIR NO<sub>x</sub> 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 thirty days following any change in the persons having an ownership interest with respect to CAIR NO<sub>x</sub> 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<sub>x</sub> allowances in the general account to include the change.

(d) Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (A)(2)(a) of this rule has been submitted and received, the Administrator shall rely on the application unless and until a superseding complete application for a general account under paragraph (A)(2)(a) of this rule is received by the Administrator.

(ii) Except as provided in paragraph (A)(2)(c)(i) or (A)(2)(c)(ii) of this rule, 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<sub>x</sub> annual trading program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO<sub>x</sub> allowance transfers.

(e) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under rules 3745-109-05 and [3745-109-06](#) of the Administrative Code.

(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 rules 3745-109-05 and [3745-109-06](#) of the Administrative Code.



(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (A)(2)(e)(i) or (A)(2)(e)(ii) of this rule, 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 (A)(2)(e)(i) or (A)(2)(e)(ii) of this rule 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 paragraph (A)(2)(e)(iv) of rule 3745-109-05 of the Administrative Code 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 paragraph (A)(2)(e)(iv) of rule 3745-109-05 of the Administrative Code , I agree to maintain an email account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under paragraph (A)(2)(e) of rule 3745-109-05 of the Administrative Code is terminated.”

(iv) A notice of delegation submitted under paragraph (A)(2)(e)(iii) of this rule 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 (A)(2)(e)(iii)(d) of this rule and made in accordance with a notice of delegation effective under paragraph (A)(2)(e)(iv) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(3) Account identification. The Administrator shall assign a unique identifying number to each account established under paragraph (A)(1) or (A)(2) of this rule.

(B) Responsibilities of CAIR authorized account representative. Following the establishment of a CAIR NO<sub>x</sub> 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<sub>x</sub> allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(C) Recordation of CAIR NO<sub>x</sub> allowance allocations.

(1) By September 30, 2007, the Administrator shall record in the CAIR NO<sub>x</sub> source's compliance account the CAIR NO<sub>x</sub> allowances allocated for the CAIR NO<sub>x</sub> units at the source, as submitted by the director in accordance with paragraph (B)(1) of rule [3745-109-04](#) of the Administrative Code, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014..

(2) By December 1, 2009, and December first every six years thereafter, the Administrator shall record in the CAIR NO<sub>x</sub> source's compliance account the CAIR NO<sub>x</sub> allowances allocated for the CAIR NO<sub>x</sub> units at the source, as submitted by the director in accordance with paragraph (B)(2)(a) of rule [3745-109-04](#) of the Administrative Code, for the control periods in the six years, seven years, eight years, nine years, ten years and eleven years after the year of the applicable deadline for recordation under this paragraph.

(3) Serial numbers for allocated CAIR NO<sub>x</sub> allowances. When recording the allocation of CAIR NO<sub>x</sub> allowances for a CAIR NO<sub>x</sub> unit in a compliance account, the Administrator shall assign each CAIR NO<sub>x</sub> allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR NO<sub>x</sub> allowance is allocated.

(D) Compliance with CAIR NO<sub>x</sub> emissions limitation.

(1) Allowance transfer deadline. The CAIR NO<sub>x</sub> allowances are available to be deducted for compliance with a source's CAIR NO<sub>x</sub> emissions limitation for a control period in a given calendar year only if the CAIR NO<sub>x</sub> allowances:

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

(b) 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<sub>x</sub> allowance transfer correctly submitted for recordation under paragraph (A) and (B) of rule [3745-109-06](#) of the Administrative Code by the allowance transfer deadline for the control period.

(2) Deductions for compliance. Following the recordation, in accordance with paragraph (B) of rule [3745-109-06](#) of the Administrative Code, of CAIR NO<sub>x</sub> 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<sub>x</sub> allowances available under paragraph (D)(1) of this rule in order to determine whether the source meets the CAIR NO<sub>x</sub> emissions limitation for the control period, as follows:

(a) Until the amount of CAIR NO<sub>x</sub> allowances deducted equals the number of tons of total NO<sub>x</sub> emissions, determined in accordance with rule [3745-109-07](#) of the Administrative Code, from all CAIR NO<sub>x</sub> units at the source for the control period; or

(b) If there are insufficient CAIR NO<sub>x</sub> allowances to complete the deductions in paragraph (D)(2)(a) of this rule, until no more CAIR NO<sub>x</sub> allowances available under paragraph (D)(1) of this rule remain in the compliance account.

(3) Identification of allowances deducted.

(a) Identification of CAIR NO<sub>x</sub> allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO<sub>x</sub> allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (D)(2) or (D)(4) of this rule. 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<sub>x</sub> source and the appropriate serial numbers.

(b) First-in, first-out. The Administrator will deduct CAIR NO<sub>x</sub> allowances under paragraph (D)(2) or (D)(4) of this rule from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO<sub>x</sub> allowances by serial number under paragraph (D)(3)(a) of this rule, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO<sub>x</sub> allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO<sub>x</sub> allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to rule [3745-109-06](#) of the Administrative Code, in the order of recordation.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under paragraph (D)(2) of this rule for a control period in a calendar year in which the CAIR NO<sub>x</sub> source has excess emissions, the Administrator shall deduct from the source's compliance account an amount of CAIR NO<sub>x</sub> allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

(b) Any allowance deduction required under paragraph (D)(4)(a) of this rule shall not affect the liability of the owners and operators of the CAIR NO<sub>x</sub> source or the CAIR NO<sub>x</sub> 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.

(5) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (D)(2) or (D)(4) of this rule and rule [3745-109-08](#) of the Administrative Code.

(6) Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO<sub>x</sub> annual trading program and make appropriate adjustments of the information in the submissions.

(b) The Administrator may deduct CAIR NO<sub>x</sub> allowances from or transfer CAIR NO<sub>x</sub> allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (D)(6)(a) of this rule, and record such deductions and transfers.

(E) Banking.

(1) CAIR NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (E)(2) of this rule.

(2) Any CAIR NO<sub>x</sub> allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR NO<sub>x</sub> allowance is deducted or transferred under paragraphs (D) and (F) of rule 3745-109-05 of the Administrative Code or rule [3745-109-06](#) or rule [3745-109-08](#) of the Administrative Code.

(F) 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<sub>x</sub> allowance tracking system account. Within ten business days of making such correction, the Administrator shall notify the CAIR authorized account representative for the account.

(G) Closing of general accounts.

(1) 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 paragraphs (A) and (B) of rule [3745-109-06](#) of the Administrative Code for any CAIR NO<sub>x</sub> allowances in the account to one or more other CAIR NO<sub>x</sub> allowance tracking system accounts.

(2) If a general account has no allowance transfers in or out of the account for a twelve-month period or longer and does not contain any CAIR NO<sub>x</sub> allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following twenty business days after the notice is sent. The account will be closed after the twenty-day period unless, before the end of the twenty-day period, the Administrator receives a correctly submitted transfer of CAIR NO<sub>x</sub> allowances into the account under paragraphs (A) and (B) of rule [3745-109-06](#) of the Administrative Code 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.

Effective: 09/27/2007

R.C. [119.032](#) review dates: 09/27/2012

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

## **3745-109-06 CAIR NO<sub>x</sub> Allowance Transfers.**

### **(A) Submission of CAIR NO<sub>x</sub> allowance transfers.**

A CAIR authorized account representative seeking recordation of a CAIR NO<sub>x</sub> allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO<sub>x</sub> allowance transfer shall include the following elements, in a format specified by the Administrator:

- (1) The account numbers for both the transferor and transferee accounts;
- (2) The serial number of each CAIR NO<sub>x</sub> allowance that is in the transferor account and is to be transferred; and
- (3) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

### **(B) Recordation.**

(1) Within five business days (except as provided in paragraph (B)(2) of this rule) of receiving a CAIR NO<sub>x</sub> allowance transfer, the Administrator shall record a CAIR NO<sub>x</sub> allowance transfer by moving each CAIR NO<sub>x</sub> allowance from the transferor account to the transferee account as specified by the request, provided that:

- (a) The transfer is correctly submitted under paragraph (A) of this rule; and
  - (b) The transferor account includes each CAIR NO<sub>x</sub> allowance identified by serial number in the transfer.
- (2) A CAIR NO<sub>x</sub> allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO<sub>x</sub> allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under paragraph (D) of rule [3745-109-05](#) of the Administrative Code for the control period immediately before such allowance transfer deadline.
- (3) Where a CAIR NO<sub>x</sub> allowance transfer submitted for recordation fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall not record such transfer.

### **(C) Notification.**

- (1) Notification of recordation. Within five business days of recordation of a CAIR NO<sub>x</sub> allowance transfer under paragraph (B) of this rule, the Administrator shall notify the CAIR authorized account representatives of both the transferor and transferee accounts.
- (2) Notification of non-recordation. Within ten business days of receipt of a CAIR NO<sub>x</sub> allowance transfer that fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(a) A decision not to record the transfer, and

(b) The reasons for such non-recording.

(3) Nothing in this rule shall preclude the submission of a CAIR NO<sub>x</sub> allowance transfer for recording following notification of non-recording.

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## **3745-109-07 Monitoring and Reporting.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

(A) General requirements. The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO<sub>x</sub> unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR Part 75, Subpart H. For purposes of complying with such requirements, the definitions in paragraph (B) of rule [3745-109-01](#) of the Administrative Code and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be deemed to refer to the terms "CAIR NO<sub>x</sub> unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in paragraph (B) of rule [3745-109-01](#) of the Administrative Code. The owner or operator of a unit that is not a CAIR NO<sub>x</sub> unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR NO<sub>x</sub> unit.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO<sub>x</sub> unit shall:

(a) Install all monitoring systems required under this rule for monitoring NO<sub>x</sub> mass emissions and individual unit heat input (including all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, stack gas moisture content, stack gas flow rate, CO<sub>2</sub> or O<sub>2</sub> concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71 and 40 CFR 75.72 );

(b) Successfully complete all certification tests required under paragraph (B) of this rule and meet all other requirements of this rule and 40 CFR Part 75 applicable to the monitoring systems under paragraph (A)(1)(a) of this rule; and

(c) Record, report, and quality-assure the data from the monitoring systems under paragraph (A)(1)(a) of this rule.

(2) Compliance deadlines. Except as provided in paragraph (A)(5) of this rule, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (A)(1)(a) and (A)(1)(b) of this rule 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)(a) of this rule on and after the following dates:

(a) For the owner or operator of a CAIR NO<sub>x</sub> unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(b) For the owner or operator of a CAIR NO<sub>x</sub> unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) Ninety unit operating days or one hundred eighty calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(c) For the owner or operator of a CAIR NO<sub>x</sub> unit for which construction of a new stack or flue or installation of add-on NO<sub>x</sub> emission controls is completed after the applicable deadline under paragraph (A)(2)(a), (A)(2)(b), (A)(2)(d) or (A)(2)(e) of this rule, by ninety unit operating days or one hundred eighty 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<sub>x</sub> emissions controls.

(d) Notwithstanding the dates in paragraphs (A)(2)(a) and (A)(2)(b) of this rule, 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 rule [3745-109-08](#) of the Administrative Code, by the date specified in paragraph (E)(2) of rule [3745-109-08](#) of the Administrative Code.

(e) Notwithstanding the dates in paragraphs (A)(2)(a) and (A)(2)(b) of this rule, for the owner or operator of a CAIR NO<sub>x</sub> opt-in unit under rule [3745-109-08](#) of the Administrative Code, by the date on which the CAIR NO<sub>x</sub> opt-in unit enters the CAIR NO<sub>x</sub> annual trading program as provided in paragraph (E)(7) of rule [3745-109-08](#) of the Administrative Code.

(3) Reporting data. The owner or operator of a CAIR NO<sub>x</sub> unit that does not meet the applicable compliance date set forth in paragraph (A)(2) of this rule for any monitoring system under paragraph (A)(1)(a) of this rule shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO<sub>x</sub> concentration, NO<sub>x</sub> emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO<sub>x</sub> mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3) 40 CFR Part 75, Appendix D, Section 2.4, or 40 CFR Part 75, Appendix E, Section 2.5 as applicable.

#### (4) Prohibitions.

(a) No owner or operator of a CAIR NO<sub>x</sub> unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this rule without having obtained prior written approval in accordance with paragraph (F) of this rule.

(b) No owner or operator of a CAIR NO<sub>x</sub> unit shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this rule and 40 CFR Part 75.

(c) No owner or operator of a CAIR NO<sub>x</sub> 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<sub>x</sub> 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 rule and 40 CFR Part 75.

(d) No owner or operator of a CAIR NO<sub>x</sub> unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this rule, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code 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 rule and 40 CFR Part 75, by the director 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 paragraph (B)(4)(c)(i) of this rule.

(5) Long term cold storage. The owner or operator of a CAIR NO<sub>x</sub> unit is subject to the applicable provisions of 40 CFR Part 75 of this rule concerning units in long-term cold storage.

(B) Initial certification and recertification procedures.

(1) The owner or operator of a CAIR NO<sub>x</sub> unit shall be exempt from the initial certification requirements of this rule for a monitoring system under paragraph (A)(1)(a) of this rule if the following conditions are met:

- (a) The monitoring system has been previously certified in accordance with 40 CFR Part 75; and
- (b) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and 40 CFR Part 75, Appendices B, D, and E are fully met for the certified monitoring system described in paragraph (B)(1)(a) of this rule.

(2) The recertification provisions of this rule shall apply to a monitoring system under paragraph (A)(1)(a) of this rule exempt from initial certification requirements under paragraph (B)(1) of this rule.

(3) If the Administrator has previously approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.12 or 40 CFR 75.17 the CAIR designated representative shall resubmit the petition to the Administrator under paragraph (F)(1) of this rule to determine whether the approval applies under the CAIR NO<sub>x</sub> annual trading program.

(4) Except as provided in paragraph (B)(1) of this rule, the owner or operator of a CAIR NO<sub>x</sub> 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 40 CFR Part 75, Appendices D and E) under paragraph (A)(1)(a) of this rule. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E shall comply with the procedures in paragraph (B)(5) or (B)(6) of this rule respectively.

(a) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under paragraph (A)(1)(a) of this rule of the Administrative Code (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in paragraph (A)(2) of this rule. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under paragraph (A)(1)(a) of this rule that may significantly affect the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75, Appendix B, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). 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 40 CFR 75.20(b). 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<sub>x</sub> monitoring system under 40 CFR Part 75, Appendix E under paragraph (A)(1)(a) of this rule are subject to the recertification requirements in 40 CFR 75.20(g)(6).

(c) Approval process for initial certification and recertification. Paragraphs (B)(4)(c)(i) to (B)(4)(c)(iv) of this rule apply to both initial certification and recertification of a continuous monitoring system under paragraph (A)(1)(a) of this rule. 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 40 CFR 75.20(b)(5) and 40 CFR 75.20(g)(7) in lieu of the procedures in paragraph (B)(4)(c)(v) of this rule.

(i) Notification of certification. The CAIR designated representative shall submit to the director, the USEPA Region V office, and the Administrator written notice of the dates of certification testing, in accordance with paragraph (D) of this rule.

(ii) Certification application. The CAIR designated representative shall submit to the director a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR NO<sub>x</sub> annual trading program for a period not to exceed one hundred twenty days after receipt by the director of the complete certification application for the monitoring system under paragraph (B)(4)(c)(ii) of this rule. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty days of the date of receipt of the complete certification application by the director.

(iv) Certification application approval process. The director shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty days of receipt of the complete certification application under paragraph (B)(4)(c)(ii) of this rule. In the event the director does not issue such a notice within such one hundred twenty-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the CAIR NO<sub>x</sub> annual trading program.

(a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75,

then the director shall issue a written notice of approval of the certification application within one hundred twenty days of receipt.

(b) Incomplete application notice. If the certification application is not complete, then the director shall 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 director may issue a notice of disapproval under paragraph (B)(4)(c)(iv)(c) of this rule. The one hundred twenty-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 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under paragraph (B)(4)(c)(iv)(b) of this rule is met, then the director shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director 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 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in paragraph (B)(4)(c)(v) of this rule for each monitoring system that is disapproved for initial certification.

(d) Audit decertification. The director or, for a CAIR NO<sub>x</sub> 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 rule [3745-109-08](#) of the Administrative Code, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (C)(2) of this rule.

(v) Procedures for loss of certification. If the director or the Administrator issues a notice of disapproval of a certification application under paragraph (B)(4)(c)(iv)(c) of this rule or a notice of disapproval of certification status under paragraph (B)(4)(c)(iv)(d) of this rule, 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 40 CFR 75.20(a)(4) (iii), 40 CFR 75.20(g)(7), or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7):

(i) For a disapproved NO<sub>x</sub> emission rate (i.e., NO<sub>x</sub>-diluent) system, the maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR 72.2;

(ii) For a disapproved NO<sub>x</sub> pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 2.1 and 2.1. 4.1;

(iii) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 3.1, 32.1. 3.2, and 2.1.5;

(iv) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR Part 75, Appendix D, Section 2.4. 2.1; and

(v) For a disapproved excepted NO<sub>x</sub> monitoring system under 40 CFR Part 75, Appendix E, the fuel-specific maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR 72.2.

(b) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (B)(4)(c)(i) and (B)(4)(c)(ii) of this rule.

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

(5) Initial certification and recertification procedures for units using the low mass emission excepted methodology under 40 CFR 75.19. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19 shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2) and 40 CFR 75.20(h). 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 40 CFR 75.20(g).

(6) 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 director under 40 CFR Part 75, Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

(C) Out of control periods.

(1) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR Part 75, Subparts D or H, or 40 CFR Part 75, Appendices D or E.

(2) 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 paragraph (B) of this rule or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director or, for a CAIR NO<sub>x</sub> 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 rule [3745-109-08](#) of the Administrative Code, the Administrator shall 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 director or the Administrator. By issuing the notice of disapproval, the director 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 paragraph (B) of this rule for each disapproved monitoring system.



(D) Notifications. The CAIR designated representative for a CAIR NO<sub>x</sub> unit shall submit written notice to the director and the Administrator in accordance with 40 CFR 75.61.

(E) Record keeping and reporting.

(1) General provisions. The CAIR designated representative shall comply with all record keeping and reporting requirements in this paragraph, the applicable record keeping and reporting requirements under 40 CFR 75.73, and the requirements of paragraph (A)(5)(a) of rule [3745-109-02](#) of the Administrative Code.

(2) Monitoring plans. The owner or operator of a CAIR NO<sub>x</sub> unit shall comply with requirements of 40 CFR 75.73(c) and (e) 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 paragraphs (D) and (E)(1) of rule [3745-109-08](#) of the Administrative Code.

(3) Certification applications. The CAIR designated representative shall submit an application to the director within forty-five days after completing all initial certification or recertification tests required under paragraph (B) of this rule, including the information required under 40 CFR 75.63.

(4) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(a) The CAIR designated representative shall report the NO<sub>x</sub> mass emissions data and heat input data for the CAIR NO<sub>x</sub> 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 to March 31, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under paragraph (A)(2) of this rule, unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 to March 31, 2008;

(iii) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii) of this rule, 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 rule [3745-109-08](#) of the Administrative Code, the calendar quarter corresponding to the date specified in paragraph (E)(2) of rule [3745-109-08](#) of the Administrative Code; and

(iv) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii) of this rule, for a CAIR NO<sub>x</sub> opt-in unit under rule [3745-109-08](#) of the Administrative Code, the calendar quarter corresponding to the date on which the CAIR NO<sub>x</sub> opt-in unit enters the CAIR NO<sub>x</sub> annual trading program as provided in paragraph (E)(7) of rule [3745-109-08](#) of the Administrative Code.

(b) The CAIR designated representative shall submit each quarterly report to the Administrator within thirty days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f);

(c) For CAIR NO<sub>x</sub> units that are also subject to an acid rain emissions limitation or the CAIR NO<sub>x</sub> ozone season trading program, CAIR SO<sub>2</sub> trading program, or Hg budget trading program,



quarterly reports shall include the applicable data and information required by 40 CFR Part 75, Subparts F to I, as applicable, in addition to the NO<sub>x</sub> mass emission data, heat input data, and other information required by this rule.

(5) 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:

(a) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR Part 75, including the quality assurance procedures and specifications; and

(b) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where NO<sub>x</sub> data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B, and the substitute data values do not systematically underestimate NO<sub>x</sub> emissions.

(F) Petitions.

(1) Except as provided in paragraph (F)(2)(b) of this rule, the CAIR designated representative of a CAIR NO<sub>x</sub> unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this rule is in accordance with this rule only to the extent that the petition is approved in writing by the Administrator, in consultation with the director.

(2) Petition process.

(a) The CAIR designated representative of a CAIR NO<sub>x</sub> unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this rule is in accordance with this rule only to the extent that the petition is approved in writing by both the director and the Administrator.

(b) The CAIR designated representative of a CAIR NO<sub>x</sub> unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72. Application of an alternative to any such requirement is in accordance with this rule only to the extent that the petition is approved in writing by both the director and the Administrator.

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Prior Effective Dates: 9/27/2007

## **3745-109-08 CAIR NO<sub>x</sub> Opt-in Units.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by Reference.”]

### **(A) Applicability.**

A CAIR NO<sub>x</sub> opt-in unit must be a unit that:

- (1) Is located in the state;
- (2) Is not a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;
- (3) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;
- (4) Has or is required or qualified to have a Title V operating permit or other federally enforceable permit; and
- (5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of rule [3745-109-07](#) of the Administrative Code.

### **(B) General requirements.**

- (1) Except as otherwise provided in paragraphs (A) to (C) and (E) to (G) of rule [3745-109-01](#) of the Administrative Code, rules [3745-109-02](#), [3745-109-03](#), and [3745-109-05](#) to [3745-109-07](#) of the Administrative Code, a CAIR NO<sub>x</sub> opt-in unit shall be treated as a CAIR NO<sub>x</sub> unit for purposes of applying such paragraphs and rules.
- (2) Solely for purposes of applying, as provided in this rule, the requirements of rule [3745-109-07](#) of the Administrative Code 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 rule, such unit shall be treated as a CAIR NO<sub>x</sub> unit before issuance of a CAIR opt-in permit for such unit.

### **(C) CAIR designated representative.**

Any CAIR NO<sub>x</sub> 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 rule, located at the same source as one or more CAIR NO<sub>x</sub> units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO<sub>x</sub> units.

### **(D) Applying for CAIR opt-in permit.**

- (1) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO<sub>x</sub> opt-in unit in paragraph (A) of this rule may apply for an initial CAIR opt-in permit at any time, except as provided under paragraphs (G)(6) and (G)(7)

of rule 3745-109-0708 of the Administrative Code, and, in order to apply, must submit the following:

(a) A complete CAIR permit application under paragraph (C) of rule [3745-109-03](#) of the Administrative Code;

(b) A certification, in a format specified by the director, that the unit:

(i) Is not a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;

(ii) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than eight hundred seventy-six hours during the six months immediately preceding submission of the CAIR permit application under paragraph (C) of rule [3745-109-03](#) of the Administrative Code;

(c) A monitoring plan in accordance with rule [3745-109-07](#) of the Administrative Code;

(d) A complete certificate of representation under paragraph (D) of rule [3745-109-02](#) of the Administrative Code consistent with paragraph (D) of this rule, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(e) A statement, in a format specified by the director, whether the CAIR designated representative requests that the unit be allocated CAIR NO<sub>x</sub> allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule). If allocation under paragraph (I)(3) of this rule 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.

(2) Duty to reapply.

(a) The CAIR designated representative of a CAIR NO<sub>x</sub> opt-in unit shall submit a complete CAIR permit application under paragraph (C) of rule [3745-109-03](#) of the Administrative Code to renew the CAIR opt-in unit permit in accordance with the director's regulations for Title V operating permits, or the director's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(b) Unless the director issues a notification of acceptance of withdrawal of the CAIR NO<sub>x</sub> opt-in unit from the CAIR NO<sub>x</sub> annual trading program in accordance with paragraph (G) of this rule or the unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the CAIR NO<sub>x</sub> opt-in unit shall remain subject to the requirements for a CAIR NO<sub>x</sub> opt-in unit, even if the CAIR designated representative for the CAIR NO<sub>x</sub> opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (D)(2)(a) of this rule.

(E) Opt-in process.

The director shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under paragraph (D) of this rule is submitted in accordance with the following:

(1) Interim review of monitoring plan. The director and the Administrator shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under paragraph (D) of this rule. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO<sub>x</sub> emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with rule [3745-109-07](#) of the Administrative Code. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) Monitoring and reporting.

(a) Monitoring.

(i) If the director and the Administrator determine that the monitoring plan is sufficient under paragraph (E)(1) of this rule, the owner or operator shall monitor and report the NO<sub>x</sub> emissions rate and the heat input of the unit and all other applicable parameters, in accordance with rule [3745-109-07](#) of the Administrative Code, starting on the date of certification of the appropriate monitoring systems under rule [3745-109-07](#) of the Administrative Code and continuing until a CAIR opt-in permit is denied under paragraph (E)(6) of this rule or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO<sub>x</sub> annual trading program in accordance with paragraph (G) of this rule.

(ii) The monitoring and reporting under paragraph (E)(2)(a)(i) of this rule shall include the entire control period immediately before the date on which the unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule, during which period monitoring system availability must not be less than ninety per cent under rule [3745-109-07](#) of the Administrative Code and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(b) To the extent the NO<sub>x</sub> emissions rate and the heat input of the unit are monitored and reported in accordance with rule [3745-109-07](#) of the Administrative Code for one or more control periods, in addition to the control period under paragraph (E)(2)(a)(ii) of this rule, during which control periods monitoring system availability is not less than ninety per cent under rule [3745-109-07](#) of the Administrative Code 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 three years before the unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule, such information shall be used as provided in paragraphs (E)(3) and (E)(4) of this rule.

(3) Baseline heat input. The unit's baseline heat input shall equal:

(a) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule, the unit's total heat input (in mmBtu) for the control period; or

(b) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, the average of

the amounts of the unit's total heat input (in mmBtu) for the control period under paragraphs (E)(2)(a)(ii) and (E)(2)(b) of this rule.

(4) Baseline NO<sub>x</sub> emission rate. The unit's baseline NO<sub>x</sub> emission rate shall equal:

(a) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule, the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for the control period;

(b) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, and the unit does not have add-on NO<sub>x</sub> emission controls during any such control periods, the average of the amounts of the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for the control period under paragraphs (E)(2)(a)(ii) and (E)(2)(b) of this rule; or

(c) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, and the unit has add-on NO<sub>x</sub> emission controls during any such control periods, the average of the amounts of the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for such control period during which the unit has add-on NO<sub>x</sub> emission controls.

(5) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under paragraphs (E)(3) and (E)(4) of this rule and if the director determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO<sub>x</sub> opt-in unit in paragraph (A) of this rule and meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a CAIR opt-in permit. The director shall provide a copy of the CAIR opt-in permit to the Administrator, who shall then establish a compliance account for the source that includes the CAIR NO<sub>x</sub> opt-in unit unless the source already has a compliance account.

(6) Denial of CAIR opt-in permit. Notwithstanding paragraphs (E)(1) to (E)(5) of this rule, if at any time before issuance of a CAIR opt-in permit for the unit, the director determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO<sub>x</sub> opt-in unit in paragraph (A) of this rule or meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a denial of a CAIR NO<sub>x</sub> opt-in permit for the unit.

(7) Date of entry into CAIR NO<sub>x</sub> annual trading program. A unit for which an initial CAIR opt-in permit is issued by the director shall become a CAIR NO<sub>x</sub> opt-in unit, and a CAIR NO<sub>x</sub> unit, as of the later of January 1, 2009 or January first of the first control period during which such CAIR opt-in permit is issued.

(8) Repowered CAIR NO<sub>x</sub> opt-in unit.

(a) If the CAIR designated representative requests, and the director issues a CAIR opt-in permit providing for, allocation to a CAIR NO<sub>x</sub> opt-in unit of CAIR NO<sub>x</sub> allowances under paragraph (I)(3) of this rule and such unit is repowered after its date of entry into the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule, the repowered unit shall be treated as a CAIR NO<sub>x</sub> opt-in unit replacing the original CAIR NO<sub>x</sub> opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(b) Notwithstanding paragraphs (E)(3) and (E)(4) of this rule, as of the date of start-up under paragraph (E)(8)(a) of this rule, 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<sub>x</sub> emission rate as the original CAIR NO<sub>x</sub> opt-in unit, and the original CAIR NO<sub>x</sub> opt-in unit shall no longer be treated as a CAIR NO<sub>x</sub> opt-in unit or a CAIR NO<sub>x</sub> unit.

(F) CAIR opt-in permit contents.

(1) Each CAIR opt-in permit shall contain:

(a) All elements required for a complete CAIR permit application under paragraph (C) of rule [3745-109-03](#) of the Administrative Code;

(b) The certification in paragraph (D)(1)(b) of this rule;

(c) The unit's baseline heat input under paragraph (E)(3) of this rule;

(d) The unit's baseline NO<sub>x</sub> emission rate under paragraph (E)(4) of this rule;

(e) A statement whether the unit is to be allocated CAIR NO<sub>x</sub> allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule);

(f) A statement that the unit may withdraw from the CAIR NO<sub>x</sub> annual trading program only in accordance with paragraph (G) of rule; and

(g) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of paragraph (H) of this rule.

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rule [3745-109-05](#) or [3745-109-06](#) of the Administrative Code, every allocation, transfer, or deduction of CAIR NO<sub>x</sub> allowances to or from the compliance account of the source that includes a CAIR NO<sub>x</sub> opt-in unit covered by the CAIR opt-in permit.

(3) 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<sub>x</sub> opt-in unit is located and in a Title V operating permit or other federally enforceable permit for the source.

(G) Withdrawal from CAIR NO<sub>x</sub> annual trading program.

Except as provided under paragraph (G)(7) of this rule, a CAIR NO<sub>x</sub> opt-in unit may withdraw from the CAIR NO<sub>x</sub> annual trading program, but only if the director issues a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit of the acceptance of the withdrawal of the CAIR NO<sub>x</sub> opt-in unit in accordance with paragraph (G)(4) of this rule.

(1) Requesting withdrawal. In order to withdraw a CAIR NO<sub>x</sub> opt-in unit from the CAIR NO<sub>x</sub> annual trading program, the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit shall submit to the director a request to withdraw effective as of midnight of December thirty-first of a

specified calendar year, which date must be at least four years after December thirty-first of the year of entry into the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule. The request must be submitted no later than ninety days before the requested effective date of withdrawal.

(2) Conditions for withdrawal. Before a CAIR NO<sub>x</sub> opt-in unit covered by a request under paragraph (G)(1) of this rule may withdraw from the CAIR NO<sub>x</sub> annual trading program and the CAIR opt-in permit may be terminated under paragraph (G)(5) of this rule, the following conditions must be met:

(a) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO<sub>x</sub> opt-in unit must meet the requirement to hold CAIR NO<sub>x</sub> allowances under paragraph (E)(3) of rule [3745-109-01](#) of the Administrative Code and cannot have any excess emissions.

(b) After the requirement for withdrawal under paragraph (G)(2)(a) of this rule is met, the Administrator shall deduct from the compliance account of the source that includes the CAIR NO<sub>x</sub> opt-in unit CAIR NO<sub>x</sub> allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO<sub>x</sub> allowances allocated to the CAIR NO<sub>x</sub> opt-in unit under paragraph (I) of this rule for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO<sub>x</sub> units at the source, the Administrator shall close the compliance account, and the owners and operators of the CAIR NO<sub>x</sub> opt-in unit may submit a CAIR NO<sub>x</sub> allowance transfer for any remaining CAIR NO<sub>x</sub> allowances to another CAIR NO<sub>x</sub> allowance tracking system in accordance with rule [3745-109-06](#) of the Administrative Code.

(3) Notification.

(a) After the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are met (including deduction of the full amount of CAIR NO<sub>x</sub> allowances required), the director shall issue a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit of the acceptance of the withdrawal of the CAIR NO<sub>x</sub> opt-in unit as of midnight on December thirty-first of the calendar year for which the withdrawal was requested.

(b) If the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are not met, the director shall issue a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit that the CAIR NO<sub>x</sub> opt-in unit's request to withdraw is denied. Such CAIR NO<sub>x</sub> opt-in unit shall continue to be a CAIR NO<sub>x</sub> opt-in unit.

(4) Permit amendment. After the director issues a notification under paragraph (G)(3)(a) of this rule that the requirements for withdrawal have been met, the director shall revise the CAIR permit covering the CAIR NO<sub>x</sub> opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (E)(3)(a) of this rule. The unit shall continue to be a CAIR NO<sub>x</sub> opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO<sub>x</sub> annual trading program concerning any control periods for which the unit is a CAIR NO<sub>x</sub> opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.



(5) Reapplication upon failure to meet conditions of withdrawal. If the director denies the CAIR NO<sub>x</sub> opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (G)(1) and (G)(2) of this rule.

(6) Ability to reapply to the CAIR NO<sub>x</sub> annual trading program. Once a CAIR NO<sub>x</sub> opt-in unit withdraws from the CAIR NO<sub>x</sub> annual trading program and its CAIR opt-in permit is terminated under this rule, the CAIR designated representative may not submit another application for a CAIR opt-in permit under paragraph (D) of this rule for such CAIR NO<sub>x</sub> opt-in unit before the date that is four years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under paragraph (E) of this rule.

(7) Inability to withdraw. Notwithstanding paragraphs (G)(1) to (G)(6) of this rule, a CAIR NO<sub>x</sub> opt-in unit shall not be eligible to withdraw from the CAIR NO<sub>x</sub> annual trading program if the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit requests, and the director issues a CAIR NO<sub>x</sub> opt-in permit providing for, allocation to the CAIR NO<sub>x</sub> opt-in unit of CAIR NO<sub>x</sub> allowances under paragraph (I)(3) of this rule.

(H) Change in regulatory status.

(1) Notification. If a CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, then the CAIR designated representative shall notify in writing the director and the Administrator of such change in the CAIR NO<sub>x</sub> opt-in unit's regulatory status, within thirty days of such change.

(2) Director's and Administrator's actions.

(a) If a CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the director shall revise the CAIR NO<sub>x</sub> opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under paragraph (D) of rule [3745-109-03](#) of the Administrative Code, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code.

(b) Allowance deductions.

(i) The Administrator shall deduct from the compliance account of the source that includes the CAIR NO<sub>x</sub> opt-in unit that becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, CAIR NO<sub>x</sub> allowances equal in amount to and allocated for the same or a prior control period as:

(a) Any CAIR NO<sub>x</sub> allowances allocated to the CAIR NO<sub>x</sub> opt-in unit under paragraph (I) of this rule for any control period after the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code; and

(b) If the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code is not December thirty-first, the CAIR NO<sub>x</sub> allowances allocated to the CAIR NO<sub>x</sub> opt-in unit under paragraph (I) of this rule for the control period that includes the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative

Code 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<sub>x</sub> opt-in unit that becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code contains the CAIR NO<sub>x</sub> allowances necessary for completion of the deduction under paragraph (H)(2)(b)(i) of this rule.

(c) Allowance allocations.

(i) For every control period after the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the CAIR NO<sub>x</sub> opt-in unit shall be allocated CAIR NO<sub>x</sub> allowances under paragraph (C) of rule [3745-109-04](#) of the Administrative Code.

(ii) If the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code is not December thirty-first, the following amount of CAIR NO<sub>x</sub> allowances shall be allocated to the CAIR NO<sub>x</sub> opt-in unit (as a CAIR NO<sub>x</sub> unit) under paragraph (C) of rule [3745-109-04](#) of the Administrative Code for the control period that includes the date on which the CAIR NO<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code:

(a) The amount of CAIR NO<sub>x</sub> allowances otherwise allocated to the CAIR NO<sub>x</sub> opt-in unit (as a CAIR NO<sub>x</sub> unit) under paragraph (C) of rule [3745-109-04](#) of the Administrative Code 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<sub>x</sub> opt-in unit becomes a CAIR NO<sub>x</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, divided by the total number of days in the control period; and

(c) Rounded to the nearest whole allowance as appropriate.

(I) CAIR NO<sub>x</sub> allowance allocations to CAIR NO<sub>x</sub> opt-in units.

(1) Timing requirements.

(a) When the CAIR opt-in permit is issued under paragraph (E)(5) of this rule, the director shall allocate CAIR NO<sub>x</sub> allowances to the CAIR NO<sub>x</sub> opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO<sub>x</sub> opt-in unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(b) By no later than October thirty-first of the control period after the control period in which a CAIR opt-in unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule, and October thirty-first of each year thereafter, the director shall allocate CAIR NO<sub>x</sub> allowances to the CAIR NO<sub>x</sub> 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<sub>x</sub> opt-in unit, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(2) Calculation of allocation. For each control period for which a CAIR NO<sub>x</sub> opt-in unit is to be allocated CAIR NO<sub>x</sub> allowances, the director shall allocate in accordance with the following procedures:

(a) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> allowance allocation shall be the lesser of:

(i) The CAIR NO<sub>x</sub> opt-in unit's baseline heat input determined under paragraph (E)(3) of this rule; or

(ii) The CAIR NO<sub>x</sub> opt-in unit's heat input, as determined in accordance with rule [3745-109-07](#) of the Administrative Code, for immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO<sub>x</sub> opt-in unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule.

(b) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating CAIR NO<sub>x</sub> allowance allocations shall be the lesser of:

(i) The CAIR NO<sub>x</sub> opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule and multiplied by seventy per cent; or

(ii) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> allowances are to be allocated.

(c) The director shall allocate CAIR NO<sub>x</sub> allowances to the CAIR NO<sub>x</sub> opt-in unit in an amount equaling the heat input under paragraph (I)(2)(a) of this rule, multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(2)(b) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate.

(3) Notwithstanding paragraph (I)(2) of this rule and if the CAIR designated representative requests, and the director issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under paragraph (D)(1)(e) of this rule) providing for, allocation to a CAIR NO<sub>x</sub> opt-in unit of CAIR NO<sub>x</sub> allowances under this paragraph (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule), the director shall allocate to the CAIR NO<sub>x</sub> opt-in unit as follows:

(a) For each control period in 2009 to 2014 for which the CAIR NO<sub>x</sub> opt-in unit is to be allocated CAIR NO<sub>x</sub> allowances:

(i) The heat input (in mmBtu) used for calculating CAIR NO<sub>x</sub> allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule; and

(ii) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating CAIR NO<sub>x</sub> allowance allocations shall be the lesser of:

(a) The CAIR NO<sub>x</sub> opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule; or

(b) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> opt-in unit at any time during the control period in which the CAIR NO<sub>x</sub> opt-in unit enters the CAIR NO<sub>x</sub> annual trading program under paragraph (E)(7) of this rule.

(iii) The director shall allocate CAIR NO<sub>x</sub> allowances to the CAIR NO<sub>x</sub> opt-in unit in an amount equaling the heat input under paragraph (I)(3)(a)(i) of this rule, multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(3)(a)(ii) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate.

(b) For each control period in 2015 and thereafter for which the CAIR NO<sub>x</sub> opt-in unit is to be allocated CAIR NO<sub>x</sub> allowances:

(i) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule; and

(ii) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating the CAIR NO<sub>x</sub> allowance allocation shall be the lesser of:

(a) 0.15 pounds per mmBtu;

(b) The CAIR NO<sub>x</sub> opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule; or

(c) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> allowances are to be allocated.

(iii) The director shall allocate CAIR NO<sub>x</sub> allowances to the CAIR NO<sub>x</sub> opt-in unit in an amount equaling the heat input under paragraph (I)(3)(b)(i) of this rule multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(3)(b)(ii) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate.

(4) Recordation.

(a) The Administrator shall record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> opt-in unit, the CAIR NO<sub>x</sub> allowances allocated by the director to the CAIR NO<sub>x</sub> opt-in unit under paragraph (I)(1)(a) of this rule.

(b) By December first, of the control period in which a CAIR opt-in unit enters the CAIR NO<sub>x</sub> annual trading program under (E)(7) of this rule, and December first of each year thereafter, the Administrator shall record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> opt-in unit, the CAIR NO<sub>x</sub> allowances allocated by the director to the CAIR NO<sub>x</sub> opt-in unit under paragraph (I)(1)(b) of this rule.

Effective: 07/16/2009

R.C. [119.032](#) review dates: 09/27/2012

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Prior Effective Dates: 9/27/2007

## **3745-109-09 CAIR Designated Representative for CAIR SO<sub>2</sub> Sources.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by reference."]

### **(A) Authorization and responsibilities of CAIR designated representative.**

(1) Except as provided under paragraph (B) of this rule, each CAIR SO<sub>2</sub> source, including all CAIR SO<sub>2</sub> units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO<sub>2</sub> trading program concerning the source or any CAIR SO<sub>2</sub> unit at the source.

(2) The CAIR designated representative of the CAIR SO<sub>2</sub> source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO<sub>2</sub> units at the source and shall act in accordance with the certification statement in paragraph (D)(1)(d) of this rule.

(3) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO<sub>2</sub> source represented and each CAIR SO<sub>2</sub> unit at the source in all matters pertaining to the CAIR SO<sub>2</sub> 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 director, the Administrator, or a court regarding the source or unit.

(4) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO<sub>2</sub> allowance tracking system account will be established for a CAIR SO<sub>2</sub> unit at a source, until the Administrator has received a complete certificate of representation under paragraph (D) of this rule for a CAIR designated representative of the source and the CAIR SO<sub>2</sub> units at the source.

### **(5) Submissions under the CAIR SO<sub>2</sub> trading program.**

(a) Each submission under the CAIR SO<sub>2</sub> trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO<sub>2</sub> 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."

(b) The director and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO<sub>2</sub> source or a CAIR SO<sub>2</sub> unit only if the submission has been made, signed, and certified in accordance with paragraph (A)(5)(a) of this rule.

(B) Alternate CAIR designated representative.

(1) A certificate of representation under paragraph (D) of this rule 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.

(2) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, 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.

(3) Except in paragraph (B) of this rule and paragraph (B) of rule [3745-109-01](#) of the Administrative Code, paragraphs (A)(1) and (A)(4), (C), (D), (F) of this rule, paragraph (A) of rule [3745-109-11](#) of the Administrative Code and paragraph (C) of rule [3745-109-14](#) of the Administrative Code, whenever the term CAIR designated representative is used in rules [3745-109-01](#) and 3745-109-09 to [3745-109-14](#) of the Administrative Code, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(C) Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(1) 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 paragraph (D) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO<sub>2</sub> source and the CAIR SO<sub>2</sub> units at the source.

(2) 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 paragraph (D) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO<sub>2</sub> source and the CAIR SO<sub>2</sub> units at the source.

(3) Changes in owners and operators.

(a) In the event an owner or operator of a CAIR SO<sub>2</sub> source or a CAIR SO<sub>2</sub> unit is not included in the list of owners and operators in the certificate of representation under paragraph (D) of this rule, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the director, the Administrator, or a court, as if the owner or operator were included in such list.



(b) Within thirty days following any change in the owners and operators of a CAIR SO<sub>2</sub> source or a CAIR SO<sub>2</sub> 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 paragraph (D) of this rule amending the list of owners and operators to include the change.

(D) Certificate of representation.

(1) 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:

(a) Identification of the CAIR SO<sub>2</sub> source, and each CAIR SO<sub>2</sub> 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;

(b) 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;

(c) A list of the owners and operators of the CAIR SO<sub>2</sub> source and of each CAIR SO<sub>2</sub> unit at the source;

(d) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative:

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO<sub>2</sub> unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO<sub>2</sub> trading program on behalf of the owners and operators of the source and of each CAIR SO<sub>2</sub> unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR SO<sub>2</sub> unit at the source shall be bound by any order issued to me by the Administrator, the director, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO<sub>2</sub> unit, or where a utility or industrial customer purchases power from a CAIR SO<sub>2</sub> unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO<sub>2</sub> unit at the source; and CAIR SO<sub>2</sub> allowances and proceeds of transactions involving CAIR SO<sub>2</sub> allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO<sub>2</sub> allowances by contract, CAIR SO<sub>2</sub> allowances and proceeds of transactions involving CAIR SO<sub>2</sub> allowances will be deemed to be held or distributed in accordance with the contract."



(e) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(2) Unless otherwise required by the director or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(E) Objections concerning CAIR designated representative.

(1) Once a complete certificate of representation under paragraph (D) of this rule has been submitted and received, the director and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under paragraph (D) of this rule is received by the Administrator.

(2) Except as provided in paragraph (C)(1) or (C)(2) of this rule, no objection or other communication submitted to the director 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 director or the Administrator under the CAIR SO<sub>2</sub> trading program.

(3) Neither the director nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO<sub>2</sub> allowance transfers.

(F) Delegation by CAIR designated representative and alternative CAIR designated representative.

(1) 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.

(2) 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.

(3) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (F)(1) or (F)(2) of this rule, 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:

(a) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated 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 (F)(1) or (F)(2) of this rule for which authority is delegated to him or her; and

(d) 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 96.215(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.215(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.215 is terminated.”

(4) A notice of delegation submitted under paragraph (F)(3) of this rule 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.

(5) Any electronic submission covered by the certification in paragraph (3)(d)(i) of this rule and made in accordance with a notice of delegation effective under paragraph (F)(4) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Effective: 09/27/2007

R.C. [119.032](#) review dates: 09/27/2012

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

## **3745-109-10 Permits.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by reference.”]

### **(A) General CAIR trading program permit requirements.**

(1) For each CAIR SO<sub>2</sub> source required to have a Title V operating permit or required, under rule [3745-109-14](#) of the Administrative Code, to have a Title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the director 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 director’s Title V operating permits regulations promulgated under 40 CFR Parts 70 or 71 or the director’s regulations for other federally enforceable permits as applicable, except as provided otherwise by paragraph (D) of rule [3745-109-01](#) of the Administrative Code, this rule and rule [3745-109-14](#) of the Administrative Code.

(2) Each CAIR permit shall contain, with regard to the CAIR SO<sub>2</sub> source and the CAIR SO<sub>2</sub> units at the source covered by the CAIR permit, all applicable CAIR SO<sub>2</sub> trading program, CAIR NO<sub>x</sub> annual trading program, and CAIR NO<sub>x</sub> ozone season trading program requirements and shall be a complete and separable portion of the Title V operating permit or other federally enforceable permit under paragraph (A)(1) of this rule.

### **(B) Submission of CAIR permit applications.**

(1) Duty to apply. The CAIR designated representative of any CAIR SO<sub>2</sub> source required to have a Title V operating permit shall submit to the director a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR SO<sub>2</sub> unit at the source at least eighteen months (or such lesser time provided by the director) before the later of January 1, 2010 or the date on which the CAIR SO<sub>2</sub> unit commences commercial operation, except as provided in paragraph (D)(1) of rule [3745-109-14](#) of the Administrative Code.

(2) Duty to Reapply. For a CAIR SO<sub>2</sub> source required to have a Title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR SO<sub>2</sub> unit at the source to renew the CAIR permit in accordance with the director’s Title V operating permits regulations addressing permit renewal, except as provided in paragraph (D)(2) of rule [3745-109-14](#) of the Administrative Code.

(C) Information requirements for CAIR permit applications. A complete CAIR permit application shall include the following elements concerning the CAIR SO<sub>2</sub> source for which the application is submitted, in a format prescribed by the director:

(1) Identification of the CAIR SO<sub>2</sub> source;

(2) Identification of each CAIR SO<sub>2</sub> unit at the CAIR SO<sub>2</sub> source; and

(3) The standard requirements under paragraph (E) of rule [3745-109-01](#) of the Administrative Code.

(D) CAIR permit contents and term.

(1) Each CAIR permit shall contain, in a format prescribed by the director, all elements required for a complete CAIR permit application under paragraph (C) of this rule.

(2) Each CAIR permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rules [3745-109-11](#), [3745-109-12](#) or [3745-109-14](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR SO<sub>2</sub> allowance to or from the compliance account of the CAIR SO<sub>2</sub> source covered by the permit.

(3) The term of the CAIR permit shall be set by the director, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO<sub>2</sub> source's Title V operating permit or other federally enforceable permit as applicable.

(E) CAIR permit revisions. Except as provided in paragraph (D)(2) of this rule, the director shall revise the CAIR permit, as necessary, in accordance with the director's Title V operating permits regulations or the director's regulations for other federally enforceable permits as applicable addressing permit revisions.

Effective: 09/27/2007

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Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

## **3745-109-11 CAIR SO<sub>2</sub> Allowance Tracking System.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

### **(A) Establishment of accounts.**

(1) Compliance accounts. Except as provided in paragraph (E)(5) of rule [3745-109-14](#) of the Administrative Code, upon receipt of a complete certificate of representation under paragraph (D) of rule [3745-109-09](#) of the Administrative Code, the Administrator shall establish a compliance account for the CAIR SO<sub>2</sub> source for which the certificate of representation was submitted, unless the source already has a compliance account.

### **(2) General accounts.**

#### **(a) Application for general account.**

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO<sub>2</sub> allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

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

(b) Organization name and type of organization, if applicable;

(c) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO<sub>2</sub> allowances held in the general account;

(d) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO<sub>2</sub> allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO<sub>2</sub> 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 director or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the director or the

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

(iv) Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.

(a) Upon receipt by the Administrator of a complete application for a general account under paragraph (A)(2)(a) of this rule:

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

(ii) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO<sub>2</sub> allowances held in the general account in all matters pertaining to the CAIR SO<sub>2</sub> 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.

(iii) 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.

(b) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO<sub>2</sub> allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO<sub>2</sub> 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."

(c) The Administrator shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (A)(2)(b)(ii) of this rule.

(v) Changing CAIR authorized account representative, alternate CAIR authorized account representative, and changes in persons with ownership interest.

(a) 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 (A)(2)(a) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO<sub>2</sub> allowances in the general account.

(b) 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 (A)(2)(a) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO<sub>2</sub> allowances in the general account.

(c) For changes in ownership interests:

(i) In the event a person having an ownership interest with respect to CAIR SO<sub>2</sub> 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.

(ii) Within thirty days following any change in the persons having an ownership interest with respect to CAIR SO<sub>2</sub> allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO<sub>2</sub> allowances in the general account to include the change.

(vi) Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.

(a) Once a complete application for a general account under paragraph (A)(2)(a) of this rule has been submitted and received, the Administrator shall rely on the application unless and until a superseding complete application for a general account under paragraph (A)(2)(a) of this rule is received by the Administrator.

(b) Except as provided in paragraph (A)(2)(c)(i) or (A)(2)(c)(ii) of this rule, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO<sub>2</sub> trading program.

(c) The Administrator shall not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO<sub>2</sub> allowance transfers.

(vii) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(a) 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 rules 3745-109-11 and [3745-109-12](#) of the Administrative Code.

(b) 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 rules 3745-109-11 and [3745-109-12](#) of the Administrative Code

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (A)(2)(a)(vii)(a) or (A)(2)(a)(vii)(b) of this rule, 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:

(i) 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;

(ii) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(iii) For each such natural person, a list of the type or types of electronic submissions under paragraph (A)(2)(a)(vii)(a) or (A)(2)(a)(vii)(b) of this rule for which authority is delegated to him or her;

(iv) 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 paragraph (A)(2)(vii)(d) of rule 3745-109-11 of the Administrative Code rule shall be deemed to be an electronic submission by me.”; and

(v) 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 paragraph (A)(2)(vii)(d) of rule 3745-109-11 of the Administrative Code, 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 paragraph (A)(2)(vii) of rule 3745-109-11 of the Administrative Code is terminated.”.

(d) A notice of delegation submitted under paragraph (A)(2)(vii)(c) of this rule 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.

(e) Any electronic submission covered by the certification in paragraph (A)(2)(vii)(c)(iv) of this rule and made in accordance with a notice of delegation effective under paragraph (A)(2)(vii)(d) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(3) Account identification. The Administrator shall assign a unique identifying number to each account established under paragraph (A)(1) or (A)(2) of this rule.

(B) Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO<sub>2</sub> allowance tracking system account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO<sub>2</sub> allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(C) Recordation of CAIR SO<sub>2</sub> allowances.

(1) Recordation for compliance accounts.

(a) After a compliance account is established under paragraph (A)(1) of this rule or 40 CFR 73.31(a) or (b), the Administrator shall record in the compliance account any CAIR SO<sub>2</sub> allowance allocated to any CAIR SO<sub>2</sub> unit at the source for each of the thirty years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO<sub>2</sub> allowance allocated for each of the thirty years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73.

(b) In 2011 and each year thereafter, after Administrator has completed all deductions under paragraph (C)(2) of this rule, the Administrator shall record in the compliance account any CAIR SO<sub>2</sub> allowance allocated to any CAIR SO<sub>2</sub> unit at the source, for the new thirtieth year (i.e., the year that is thirty years after the calendar year for which such deductions are or could be made) and any CAIR SO<sub>2</sub> allowance allocated for the new thirtieth year and transferred to the source in accordance with rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D.

(2) Recordation for general accounts.

(a) After a general account is established under paragraph (A)(2) of this rule or 40 CFR 73.31(c), the Administrator shall record in the general account any CAIR SO<sub>2</sub> allowance allocated for each of the thirty years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D.

(b) In 2011 and each year thereafter, after Administrator has completed all deductions under paragraph (A)(2) of this rule, the Administrator shall record in the general account any CAIR SO<sub>2</sub> allowance allocated for the new thirtieth year (i.e., the year that is thirty years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D.

(3) Serial numbers for allocated CAIR SO<sub>2</sub> allowances. When recording the allocation of CAIR SO<sub>2</sub> allowances issued by a director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code, the Administrator shall assign each such CAIR SO<sub>2</sub> allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR SO<sub>2</sub> allowance is allocated.

(D) Compliance with CAIR SO<sub>2</sub> emissions limitation.

(1) Allowance transfer deadline. The CAIR SO<sub>2</sub> allowances are available to be deducted for compliance with a source's CAIR SO<sub>2</sub> emissions limitation for a control period in a given calendar year only if the CAIR SO<sub>2</sub> allowances:

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

(b) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO<sub>2</sub> allowance transfer correctly submitted for recordation under paragraphs (A) and (B) of rule [3745-109-12](#) of the Administrative Code by the allowance transfer deadline for the control period.

(2) Deductions for compliance. Following the recordation, in accordance with paragraph (B) of rule [3745-109-12](#) of the Administrative Code, of CAIR SO<sub>2</sub> allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator shall deduct from the compliance account CAIR SO<sub>2</sub> allowances available under paragraph (D)(1) of this rule in order to determine whether the source meets the CAIR SO<sub>2</sub> emissions limitation for the control period as follows:

(a) For a CAIR SO<sub>2</sub> source subject to an acid rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO<sub>2</sub> allowances, available under paragraph (D)(1) of this rule and not issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code, that is required under 40 CFR 73.35(b) and (c). If there are sufficient CAIR SO<sub>2</sub> allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35(b) and (c).

(ii) Deduct the amount of CAIR SO<sub>2</sub> allowances, not issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code, that is required under 40 CFR 73.35(d) and 40 CFR 77.5. If there are sufficient CAIR SO<sub>2</sub> allowances to complete this deduction, the deduction shall be treated as satisfying the requirements of 40 CFR 73.35(d) and 40 CFR 77.5.

(iii) Treating the CAIR SO<sub>2</sub> allowances deducted under paragraph (D)(2)(a)(i) of this rule as also being deducted under this paragraph (D)(2)(a)(iii) of this rule, deduct CAIR SO<sub>2</sub> allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code) in order to determine whether the source meets the CAIR SO<sub>2</sub> emissions limitation for the control period, as follows:

(a) Until the tonnage equivalent of the CAIR SO<sub>2</sub> allowances deducted equals, or exceeds in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, the number of tons of total SO<sub>2</sub> emissions, determined in accordance with rule [3745-109-13](#) of the Administrative Code, from all CAIR SO<sub>2</sub> units at the source for the control period; or

(b) If there are insufficient CAIR SO<sub>2</sub> allowances to complete the deductions in paragraph (D)(2)(a)(iii)(a) of this rule, until no more CAIR SO<sub>2</sub> allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code) remain in the compliance account.

(b) For a CAIR SO<sub>2</sub> source not subject to an acid rain emissions limitation, the Administrator shall deduct CAIR SO<sub>2</sub> allowances available under paragraph (D)(1) of this rule (including any issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code) in order to determine whether the source meets the CAIR SO<sub>2</sub> emissions limitation for the control period, as follows:

- (i) Until the tonnage equivalent of the CAIR SO<sub>2</sub> allowances deducted equals, or exceeds in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, the number of tons of total SO<sub>2</sub> emissions, determined in accordance with rule [3745-109-13](#) of the Administrative Code, from all CAIR SO<sub>2</sub> units at the source for the control period; or
- (ii) If there are insufficient CAIR SO<sub>2</sub> allowances to complete the deductions in paragraph (D)(2)(b)(i) of this rule, until no more CAIR SO<sub>2</sub> allowances available under paragraph (D)(1) of this rule (including those issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code) remain in the compliance account.

(3) Identification of CAIR SO<sub>2</sub> allowances by serial number.

(a) Identification of CAIR SO<sub>2</sub> allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO<sub>2</sub> allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (D)(2) or (D)(4) of this rule. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO<sub>2</sub> source and the appropriate serial numbers.

(b) First-in, first-out. The Administrator shall deduct CAIR SO<sub>2</sub> allowances under paragraph (D)(2) or (D)(4) of this rule from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO<sub>2</sub> allowances by serial number under paragraph (D)(3)(a) of rule 3745-109-11 of the Administrative Code, on a first-in, first-out (FIFO) accounting basis in the following order:

- (i) Any CAIR SO<sub>2</sub> allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;
- (ii) Any CAIR SO<sub>2</sub> allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation;
- (iii) Any CAIR SO<sub>2</sub> allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;
- (iv) Any CAIR SO<sub>2</sub> allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation;
- (v) Any CAIR SO<sub>2</sub> allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and
- (vi) Any CAIR SO<sub>2</sub> allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to rule [3745-109-12](#) of the Administrative Code or 40 CFR Part 73, Subpart D, in the order of recordation.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under paragraph (D)(2) of rule 3745-109-11 of the Administrative Code for a control period in a calendar year in which the CAIR SO<sub>2</sub> source has excess emissions, the Administrator shall deduct from the source's compliance account the tonnage equivalent in CAIR SO<sub>2</sub> allowances, allocated for the control period in the immediately following calendar year (including any issued by the director under paragraph (I) of rule [3745-109-14](#) of the Administrative Code), equal to, or exceeding in accordance with paragraphs (D)(3)(a) and (D)(3)(b) of this rule, three times the following amount: the number of tons of the

source's excess emissions minus, if the source is subject to an acid rain emissions limitation, the amount of the CAIR SO<sub>2</sub> allowances required to be deducted under paragraph (D)(2)(a)(ii) of this rule.

(b) Any allowance deduction required under paragraph (D)(4)(a) of this rule shall not affect the liability of the owners and operators of the CAIR SO<sub>2</sub> source or the CAIR SO<sub>2</sub> 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.

(5) Recordation of deductions. The Administrator shall record in the appropriate compliance account all deductions from such an account under paragraphs (D)(2) and (D)(4) of this rule and rule [3745-109-14](#) of the Administrative Code.

(6) Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO<sub>2</sub> trading program and make appropriate adjustments of the information in the submissions.

(b) The Administrator may deduct CAIR SO<sub>2</sub> allowances from or transfer CAIR SO<sub>2</sub> allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (D)(5)(a) of this rule, and record such deductions and transfers.

(E) Banking.

(1) CAIR SO<sub>2</sub> allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (E)(2) of rule [3745-109-12](#) of the Administrative Code.

(2) Any CAIR SO<sub>2</sub> allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR SO<sub>2</sub> allowance is deducted or transferred under paragraph (D) or (F) of this rule, or rule [3745-109-12](#) or [3745-109-14](#) of the Administrative Code.

(F) Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO<sub>2</sub> allowance tracking system account. Within ten business days of making such correction, the Administrator shall notify the CAIR authorized account representative for the account.

(G) Closing of general accounts.

(1) 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 paragraphs (A) and (B) of rule [3745-109-12](#) of the Administrative Code for any CAIR SO<sub>2</sub> allowances in the account to one or more other CAIR SO<sub>2</sub> allowance tracking system accounts.

(2) If a general account has no allowance transfers in or out of the account for a twelve-month period or longer and does not contain any CAIR SO<sub>2</sub> allowances, the Administrator may notify the CAIR authorized account representative for the account that the account shall be closed following twenty business days after the notice is sent. The account shall be closed after the twenty-day period unless, before the end of the twenty-day period, the Administrator receives a correctly submitted transfer of CAIR SO<sub>2</sub> allowances into the account under paragraphs (A) and (B) of rule [3745-109-12](#) of the Administrative Code 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.

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## **3745-109-12 CAIR SO<sub>2</sub> Allowance Transfers.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

### **(A) Submission of CAIR SO<sub>2</sub> allowance transfers.**

(1) A CAIR authorized account representative seeking recordation of a CAIR SO<sub>2</sub> allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO<sub>2</sub> allowance transfer shall include the following elements, in a format specified by the Administrator:

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

(b) The serial number of each CAIR SO<sub>2</sub> allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed:

(i) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (A)(1)(c) of this rule by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(ii) The statement under paragraph (A)(1)(c)(i) of this rule shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under state or federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator."

### **(B) EPA recordation.**

(1) Within five business days (except as necessary to perform a transfer in perpetuity of CAIR SO<sub>2</sub> allowances allocated to a CAIR SO<sub>2</sub> unit or as provided in paragraph (B)(2) of this rule) of receiving a CAIR SO<sub>2</sub> allowance transfer, the Administrator shall record a CAIR SO<sub>2</sub> allowance transfer by moving each CAIR SO<sub>2</sub> allowance from the transferor account to the transferee account as specified by the request, provided that:

(a) The transfer is correctly submitted under paragraph (A) of this rule;

(b) The transferor account includes each CAIR SO<sub>2</sub> allowance identified by serial number in the transfer; and



(c) The transfer is in accordance with the limitation on transfer under 40 CFR 74.42 and 40 CFR 74.47(c) as applicable.

(2) A CAIR SO<sub>2</sub> allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO<sub>2</sub> allowances allocated for any control period before such allowance transfer deadline shall not be recorded until after the Administrator completes the deductions under paragraph (C) of rule [3745-109-11](#) of the Administrative Code for the control period immediately before such allowance transfer deadline.

(3) Where a CAIR SO<sub>2</sub> allowance transfer submitted for recordation fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall not record such transfer.

(C) Notification.

(1) Notification of recordation. Within five business days of recordation of a CAIR SO<sub>2</sub> allowance transfer under paragraph (B) of this rule, the Administrator shall notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Notification of non-recordation. Within ten business days of receipt of a CAIR SO<sub>2</sub> allowance transfer that fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(a) A decision not to record the transfer, and

(b) The reasons for such non-recordation.

(3) Nothing in this paragraph shall preclude the submission of a CAIR SO<sub>2</sub> allowance transfer for recordation following notification of non-recordation.

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## **3745-109-13 Monitoring and Reporting.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

### **(A) Monitoring and reporting general requirements.**

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO<sub>2</sub> unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR Part 75, Subparts F and G. For purposes of complying with such requirements, the definitions in paragraph (B) of rule [3745-109-01](#) of the Administrative Code and in 40 CFR 72.2 shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (or CEMS) in 40 CFR Part 75 shall be deemed to refer to the terms CAIR SO<sub>2</sub> unit, CAIR designated representative, and continuous emission monitoring system (or CEMS) respectively, as defined in paragraph (B) of rule [3745-109-01](#) of the Administrative Code. The owner or operator of a unit that is not a CAIR SO<sub>2</sub> unit but that is monitored under 40 CFR 75.16(b)(2) shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR SO<sub>2</sub> unit.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR SO<sub>2</sub> unit shall:

(a) Install all monitoring systems required under this rule for monitoring SO<sub>2</sub> mass emissions and individual unit heat input (including all systems required to monitor SO<sub>2</sub> concentration, stack gas moisture content, stack gas flow rate, CO<sub>2</sub> or O<sub>2</sub> concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.11 and 40 CFR 75.16 );

(b) Successfully complete all certification tests required under paragraph (B) of this rule and meet all other requirements of this rule and 40 CFR Part 75 applicable to the monitoring systems under paragraph (A)(1)(a) of this rule; and

(c) Record, report, and quality-assure the data from the monitoring systems under paragraph (A)(1)(a) of this rule.

(2) Compliance deadlines. Except as provided in paragraph (A)(5) of this rule, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (A)(1)(a) and (A)(1)(b) of this rule 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)(a) of this rule on and after the following dates.

(a) For the owner or operator of a CAIR SO<sub>2</sub> unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(b) For the owner or operator of a CAIR SO<sub>2</sub> unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) Ninety unit operating days or one hundred eighty calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(c) For the owner or operator of a CAIR SO<sub>2</sub> unit for which construction of a new stack or flue or installation of add-on SO<sub>2</sub> emission controls is completed after the applicable deadline under paragraphs (A)(2)(a) to (A)(2)(e) of this rule, by ninety unit operating days or one hundred eighty calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO<sub>2</sub> emissions controls.

(d) Notwithstanding the dates in paragraphs (A)(2)(a) and (A)(2)(b) of this rule, 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 rule [3745-109-14](#) of the Administrative Code, by the date specified in paragraph (E)(2) of rule [3745-109-14](#) of the Administrative Code.

(e) Notwithstanding the dates in paragraphs (A)(2)(a) and (A)(2)(b) of this rule, for the owner or operator of a CAIR SO<sub>2</sub> opt-in unit under rule [3745-109-14](#) of the Administrative Code, by the date on which the CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program as provided in paragraph (E)(8) of rule [3745-109-14](#) of the Administrative Code.

### (3) Reporting data.

The owner or operator of a CAIR SO<sub>2</sub> unit that does not meet the applicable compliance date set forth in paragraph (A)(2) of this rule for any monitoring system under paragraph (A)(1)(a) of this rule shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO<sub>2</sub> concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO<sub>2</sub> mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3) or 40 CFR Part 75, Appendix D, Section 2.4, as applicable.

### (4) Prohibitions.

(a) No owner or operator of a CAIR SO<sub>2</sub> unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this rule without having obtained prior written approval in accordance with paragraph (F) of this rule.

(b) No owner or operator of a CAIR SO<sub>2</sub> unit shall operate the unit so as to discharge, or allow to be discharged, SO<sub>2</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this rule and 40 CFR Part 75.

(c) No owner or operator of a CAIR SO<sub>2</sub> unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO<sub>2</sub> 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 rule and 40 CFR Part 75.

(d) No owner or operator of a CAIR SO<sub>2</sub> unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this rule, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code 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 rule and 40 CFR Part 75, by the director 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 paragraph (B)(4)(c)(i) of this rule.

(5) Long-term cold storage.

The owner or operator of a CAIR SO<sub>2</sub> unit is subject to the applicable provisions of 40 CFR Part 75 of this rule concerning units in long-term cold storage.

(B) Initial certification and recertification procedures.

(1) The owner or operator of a CAIR SO<sub>2</sub> unit shall be exempt from the initial certification requirements of this rule for a monitoring system under paragraph (A)(1)(a) of this rule if the following conditions are met:

- (a) The monitoring system has been previously certified in accordance with 40 CFR Part 75; and
- (b) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and 40 CFR Part 75, Appendices B and D are fully met for the certified monitoring system described in paragraph (A)(1)(a) of this rule.

(2) The recertification provisions of this rule shall apply to a monitoring system under paragraph (A)(1)(a) of this rule exempt from initial certification requirements under paragraph (A)(1) of this rule.

(3) [Reserved].

(4) Except as provided in paragraph (B)(1) of this rule, the owner or operator of a CAIR SO<sub>2</sub> 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 40 CFR Part 75, Appendix D) under paragraph (A)(1)(a) of this rule. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E shall comply with the procedures in paragraph (B)(5) or (B)(6) of this rule respectively.

(a) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under paragraph (A)(1)(a) of this rule (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in paragraph (A)(2) of this rule. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under paragraph (A)(1)(a) of this rule that may significantly affect the ability of the system to accurately measure or record SO<sub>2</sub> mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75, Appendix B, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). 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 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under paragraph (A)(1)(a) of this rule is subject to the recertification requirements in 40 CFR 75.20(g)(6).

(c) Approval process for initial certification and recertification. Paragraphs (B)(4)(c)(i) to (B)(4)(c)(iv) of this rule apply to both initial certification and recertification of a continuous monitoring system under paragraph (A)(1)(a) of this rule. 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 40 CFR 75.20(b)(5) and 40 CFR 75.20(g)(7) in lieu of the procedures in paragraph (B)(4)(c)(v) of this rule.

(i) Notification of certification. The CAIR designated representative shall submit to the director, the USEPA Region V office, and the Administrator written notice of the dates of certification testing, in accordance with paragraph (D) of this rule.

(ii) Certification application. The CAIR designated representative shall submit to the director a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR SO<sub>2</sub> trading program for a period not to exceed one hundred twenty days after receipt by the director of the complete certification application for the monitoring system under paragraph (B)(4)(c)(ii) of this rule. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty days of the date of receipt of the complete certification application by the director.

(iv) Certification application approval process. The director shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty days of receipt of the complete certification application under paragraph (B)(4)(c)(ii) of this rule. In the event the director does not issue such a notice within such one hundred twenty-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the CAIR SO<sub>2</sub> trading program.

(a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the director shall issue a written notice of approval of the certification application within one hundred twenty days of receipt.

(b) Incomplete application notice. If the certification application is not complete, then the director shall 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 director may issue a notice of disapproval under paragraph (B)(4)(c)(iv)(c) of this rule. The one hundred twenty-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 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under paragraph (B)(4)(c)(iv)(b) of this rule is met, then the director shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director 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 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in paragraph (B)(4)(c)(v) of this rule for each monitoring system that is disapproved for initial certification.

(d) Audit decertification. The director or, for a CAIR SO<sub>2</sub> 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 rule [3745-109-14](#) of the Administrative Code, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (C)(2) of this rule.

(v) Procedures for loss of certification. If the director or the Administrator issues a notice of disapproval of a certification application under paragraph (B)(4)(c)(iv)(c) of this rule or a notice of disapproval of certification status under paragraph (B)(4)(c)(iv)(d) of this rule, 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 40 CFR 75.20(a)(4) (iii), 40 CFR 75.20(g)(7), or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7):

(i) For a disapproved SO<sub>2</sub> pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO<sub>2</sub> and the maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 1.1 and 2.1. 4.1;

(ii) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 3.1, 2.1. 3.2, and 2.1.5; and

(iii) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR Part 75, Appendix D, Section 2.4. 2.1.

(b) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (B)(4)(c)(i) and (B)(4)(c)(ii) of this rule.

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

(5) Initial certification and recertification procedures for units using the low mass emission excepted methodology under 40 CFR 75.19. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19 shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2) and 40 CFR 75.20(h). 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 40 CFR 75.20(g).

(6) 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 director under 40 CFR Part 75, Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

(C) Out of control periods.

(1) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR Part 75, Subpart D, or 40 CFR Part 75, Appendix D.

(2) 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 paragraph (B) of this rule or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director or, for a CAIR SO<sub>2</sub> 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 rule [3745-109-14](#) of the Administrative Code, the Administrator shall 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 director or the Administrator. By issuing the notice of disapproval, the director 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 paragraph (B) of this rule for each disapproved monitoring system.

(D) Notifications.

The CAIR designated representative for a CAIR SO<sub>2</sub> unit shall submit written notice to the director and the Administrator in accordance with 40 CFR 75.61.

(E) Record keeping and reporting.

(1) General provisions. The CAIR designated representative shall comply with all record keeping and reporting requirements in this paragraph, the applicable record keeping and



reporting requirements in 40 CFR Part 75, Subparts F and G, and the requirements of paragraph (A)(5)(a) of rule [3745-109-09](#) of the Administrative Code.

(2) Monitoring plans. The owner or operator of a CAIR SO<sub>2</sub> unit shall comply with requirements of 40 CFR 75.62 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 rule [3745-109-14](#) of the Administrative Code paragraphs (D) and (E)(1) of rule [3745-109-14](#) of the Administrative Code.

(3) Certification applications. The CAIR designated representative shall submit an application to the director within forty-five days after completing all initial certification or recertification tests required under paragraph (B) of this rule, including the information required under 40 CFR 75.63.

(4) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(a) The CAIR designated representative shall report the SO<sub>2</sub> mass emissions data and heat input data for the CAIR SO<sub>2</sub> unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 to March 31, 2009;

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under paragraph (A)(2) of this rule, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 to March 31, 2009;

(iii) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii) of this rule, 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 rule [3745-109-14](#) of the Administrative Code, the calendar quarter corresponding to the date specified in paragraph (E)(2) of rule [3745-109-14](#) of the Administrative Code; and

(iv) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii) of this rule, for a CAIR SO<sub>2</sub> opt-in unit under rule [3745-109-14](#) of the Administrative Code, the calendar quarter corresponding to the date on which the CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program as provided in paragraph (E)(7) of rule [3745-109-14](#) of the Administrative Code.

(b) The CAIR designated representative shall submit each quarterly report to the Administrator within thirty days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.64.

(c) For CAIR SO<sub>2</sub> units that are also subject to an acid rain emissions limitation or the CAIR NO<sub>x</sub> annual trading program, CAIR NO<sub>x</sub> ozone season trading program, or Hg budget trading program, quarterly reports shall include the applicable data and information required by 40 CFR Part 75, Subparts F to I as applicable, in addition to the SO<sub>2</sub> mass emission data, heat input data, and other information required by this rule.

(5) 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:

(a) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR Part 75, including the quality assurance procedures and specifications; and

(b) For a unit with add-on SO<sub>2</sub> emission controls and for all hours where SO<sub>2</sub> data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B and the substitute data values do not systematically underestimate SO<sub>2</sub> emissions.

(F) Petitions.

(1) The CAIR designated representative of a CAIR SO<sub>2</sub> unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this rule is in accordance with this rule only to the extent that the petition is approved in writing by the Administrator, in consultation with the director.

(2) The CAIR designated representative of a CAIR SO<sub>2</sub> unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this rule is in accordance with this rule only to the extent that the petition is approved in writing by both the director and the Administrator.

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## **3745-109-14 CAIR SO<sub>2</sub> Opt-in Units.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by Reference.”]

### **(A) Opt-in unit applicability.**

A CAIR SO<sub>2</sub> opt-in unit must be a unit that:

- (1) Is located in the state;
- (2) Is not a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;
- (3) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect and is not an opt-in source under 40 CFR Part 74;
- (4) Has or is required or qualified to have a Title V operating permit or other federally enforceable permit; and
- (5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of rule [3745-109-13](#) of the Administrative Code.

### **(B) General.**

- (1) Except as otherwise provided in paragraphs (A), (B), (C), (E), (F) and (G) of rule [3745-109-01](#) of the Administrative Code, rules [3745-109-09](#), [3745-109-10](#), [3745-109-11](#), and [3745-109-13](#) of the Administrative Code, a CAIR SO<sub>2</sub> opt-in unit shall be treated as a CAIR SO<sub>2</sub> unit for purposes of applying such paragraphs and rules.
- (2) Solely for purposes of applying, as provided in this rule, the requirements of rule [3745-109-13](#) of the Administrative Code shall apply 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 rule, such unit shall be treated as a CAIR SO<sub>2</sub> unit before issuance of a CAIR opt-in permit for such unit.

### **(C) Designated representative.**

Any CAIR SO<sub>2</sub> 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 rule, located at the same source as one or more CAIR SO<sub>2</sub> units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO<sub>2</sub> units.

### **(D) Applying for CAIR opt-in permit.**

- (1) The CAIR designated representative of a unit meeting the requirements for a CAIR SO<sub>2</sub> opt-in unit in paragraph (A) of this rule may apply for an initial CAIR opt-in permit at any time,

except as provided under paragraphs (G)(6) and (G)(7) of this rule, and, in order to apply, must submit the following:

(a) A complete CAIR permit application under paragraph (C) of rule [3745-109-10](#) of the Administrative Code;

(b) A certification, in a format specified by the director, that the unit:

(i) Is not a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;

(ii) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;

(iii) Is not and, so long as the unit is a CAIR SO<sub>2</sub> opt-in unit, shall not become, an opt-in source under 40 CFR Part 74;

(iv) Vents all of its emissions to a stack; and

(v) Has documented heat input for more than eight hundred seventy-six hours during the six months immediately preceding submission of the CAIR permit application under paragraph (C) of rule [3745-109-10](#) of the Administrative Code;

(c) A monitoring plan in accordance with rule [3745-109-13](#) of the Administrative Code;

(d) A complete certificate of representation under paragraph (D) of rule [3745-109-09](#) of the Administrative Code consistent with paragraph (C) of this rule, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(e) A statement, in a format specified by the director, whether the CAIR designated representative requests that the unit be allocated CAIR SO<sub>2</sub> allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule). If allocation under paragraph (I)(3) of this rule 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.

(2) Duty to reapply.

(a) The CAIR designated representative of a CAIR SO<sub>2</sub> opt-in unit shall submit a complete CAIR permit application under paragraph (C) of rule [3745-109-10](#) of the Administrative Code to renew the CAIR opt-in unit permit in accordance with the director's regulations for Title V operating permits, or the director's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(b) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR SO<sub>2</sub> opt-in unit from the CAIR SO<sub>2</sub> trading program in accordance with paragraph (G) of this rule or the unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the CAIR SO<sub>2</sub> opt-in unit shall remain subject to the requirements for a CAIR SO<sub>2</sub> opt-in unit, even if the CAIR designated representative for the CAIR SO<sub>2</sub> opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (D)(2)(a) of this rule.

(E) Opt-in process.

The director shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under paragraph (D) of this rule is submitted in accordance with the following:

(1) Interim review of monitoring plan. The director and the Administrator shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under paragraph (D) of this rule. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO<sub>2</sub> emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with rule [3745-109-13](#) of the Administrative Code. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) Monitoring and reporting.

(a) If the director and the Administrator determine that the monitoring plan is sufficient under paragraph (E)(1) of this rule, the owner or operator shall monitor and report the SO<sub>2</sub> emissions rate and the heat input of the unit and all other applicable parameters, in accordance with rule [3745-109-13](#) of the Administrative Code, starting on the date of certification of the appropriate monitoring systems under rule [3745-109-13](#) of the Administrative Code and continuing until a CAIR opt-in permit is denied under paragraph (E)(6) of this rule or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO<sub>2</sub> trading program in accordance with paragraph (G) of this rule.

(b) The monitoring and reporting under paragraph (E)(2)(a) of this rule shall include the entire control period immediately before the date on which the unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, during which period monitoring system availability must not be less than ninety per cent under rule [3745-109-13](#) of the Administrative Code and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(c) To the extent the SO<sub>2</sub> emissions rate and the heat input of the unit are monitored and reported in accordance with rule [3745-109-13](#) of the Administrative Code for one or more control periods, in addition to the control period under paragraph (E)(2)(b) of this rule, during which control periods monitoring system availability is not less than ninety per cent under rule [3745-109-13](#) of the Administrative Code 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 three years before the unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, such information shall be used as provided in paragraphs (E)(3) and (E)(4) of this rule.

(3) The unit's baseline heat input shall equal:

(a) If the unit's SO<sub>2</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule, the unit's total heat input (in mmBtu) for the control period; or

(b) If the unit's SO<sub>2</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a), (E)(2)(b) and (E)(2)(c) of this rule, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (E)(2)(b) and (E)(2)(c) of this rule.

(4) The unit's baseline SO<sub>2</sub> emission rate shall equal:

(a) If the unit's SO<sub>2</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule, the unit's SO<sub>2</sub> emissions rate (in pounds per mmBtu) for the control period;

(b) If the unit's SO<sub>2</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(b) and (E)(2)(c) of this rule, and the unit does not have add-on SO<sub>2</sub> emission controls during any such control periods, the average of the amounts of the unit's SO<sub>2</sub> emissions rate (in pounds per mmBtu) for the control periods under paragraphs (E)(2)(b) and (E)(2)(c) of this rule; or

(c) If the unit's SO<sub>2</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, and the unit has add-on SO<sub>2</sub> emission controls during any such control periods, the average of the amounts of the unit's SO<sub>2</sub> emissions rate (in pounds per mmBtu) for such control periods during which the unit has add-on SO<sub>2</sub> emission controls.

(5) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline SO<sub>2</sub> emissions rate for the unit under paragraphs (E)(3) and (E)(4) of this rule and if the director determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO<sub>2</sub> opt-in unit in paragraph (A) of this rule and meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a CAIR opt-in permit. The director shall provide a copy of the CAIR opt-in permit to the Administrator, who shall then establish a compliance account for the source that includes the CAIR SO<sub>2</sub> opt-in unit unless the source already has a compliance account.

(6) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (E)(1) to (E)(5) of this rule, if at any time before issuance of a CAIR opt-in permit for the unit, the director determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO<sub>2</sub> opt-in unit in paragraph (A) of this rule or meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a denial of a CAIR opt-in permit for the unit.

(7) Date of entry into CAIR SO<sub>2</sub> trading program. A unit for which an initial CAIR opt-in permit is issued by the director shall become a CAIR SO<sub>2</sub> opt-in unit, and a CAIR SO<sub>2</sub> unit, as of the later of January 1, 2010 or January first of the first control period during which such CAIR opt-in permit is issued.

(8) Repowered CAIR SO<sub>2</sub> opt-in unit.

(a) If a CAIR designated representative requests, and the director issues a CAIR opt-in permit providing for, allocation to a CAIR SO<sub>2</sub> opt-in unit of CAIR SO<sub>2</sub> allowances under paragraph (I)(3) of this rule and such unit is repowered after its date of entry into the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, the repowered unit shall be treated as a CAIR SO<sub>2</sub> opt-in unit replacing the original CAIR SO<sub>2</sub> opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(b) Notwithstanding paragraphs (E)(3) and (E)(4) of this rule, as of the date of start-up under paragraph (E)(8)(a) of this rule, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO<sub>2</sub> emission rate as the original CAIR SO<sub>2</sub> opt-in unit, and the original CAIR SO<sub>2</sub> opt-in unit shall no longer be treated as a CAIR SO<sub>2</sub> opt-in unit or a CAIR SO<sub>2</sub> unit.

(F) CAIR opt-in permit contents.

(1) Each CAIR opt-in permit shall contain:

(a) All elements required for a complete CAIR permit application under paragraph (C) of rule [3745-109-10](#) of the Administrative Code;

(b) The certification in paragraph (D)(1)(b) of this rule;

(c) The unit's baseline heat input under paragraph (E)(3) of this rule;

(d) The unit's baseline SO<sub>2</sub> emission rate under paragraph (E)(4) of this rule;

(e) A statement whether the unit is to be allocated CAIR SO<sub>2</sub> allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule);

(f) A statement that the unit may withdraw from the CAIR SO<sub>2</sub> trading program only in accordance with paragraph (G) of this rule; and

(g) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of paragraph (H) of this rule.

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rule [3745-109-11](#) or [3745-109-12](#) of the Administrative Code or this rule, every allocation, transfer, or deduction of CAIR SO<sub>2</sub> allowances to or from the compliance account of the source that includes a CAIR SO<sub>2</sub> opt-in unit covered by the CAIR opt-in permit.

(3) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR SO<sub>2</sub> opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

(G) Withdrawal from CAIR SO<sub>2</sub> trading program.

Except as provided under paragraph (G)(7) of this rule, a CAIR SO<sub>2</sub> opt-in unit may withdraw from the CAIR SO<sub>2</sub> trading program, but only if the director issues a notification to the CAIR designated representative of the CAIR SO<sub>2</sub> opt-in unit of the acceptance of the withdrawal of the CAIR SO<sub>2</sub> opt-in unit in accordance with paragraph (G)(4) of this rule.

(1) Requesting withdrawal. In order to withdraw a CAIR SO<sub>2</sub> opt-in unit from the CAIR SO<sub>2</sub> trading program, the CAIR designated representative of the CAIR SO<sub>2</sub> opt-in unit shall submit to the director a request to withdraw effective as of midnight of December thirty-first of a specified calendar year, which date must be at least four years after December thirty-first of the year of



entry into the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule. The request must be submitted no later than ninety days before the requested effective date of withdrawal.

(2) Conditions for withdrawal. Before a CAIR SO<sub>2</sub> opt-in unit covered by a request under paragraph (G)(1) of this rule may withdraw from the CAIR SO<sub>2</sub> trading program and the CAIR opt-in permit may be terminated under paragraph (G)(5) of this rule, the following conditions must be met:

(a) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO<sub>2</sub> opt-in unit must meet the requirement to hold CAIR SO<sub>2</sub> allowances under paragraph (E)(3) of rule [3745-109-01](#) of the Administrative Code and cannot have any excess emissions.

(b) After the requirement for withdrawal under paragraph (G)(2)(a) of this rule is met, the Administrator shall deduct from the compliance account of the source that includes the CAIR SO<sub>2</sub> opt-in unit CAIR SO<sub>2</sub> allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO<sub>2</sub> allowances allocated to the CAIR SO<sub>2</sub> opt-in unit under paragraph (I) of this rule for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO<sub>2</sub> units at the source, the Administrator shall close the compliance account, and the owners and operators of the CAIR SO<sub>2</sub> opt-in unit may submit a CAIR SO<sub>2</sub> allowance transfer for any remaining CAIR SO<sub>2</sub> allowances to another CAIR SO<sub>2</sub> allowance tracking system in accordance with rule [3745-109-12](#) of the Administrative Code.

(3) Notification.

(a) After the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are met (including deduction of the full amount of CAIR SO<sub>2</sub> allowances required), the director shall issue a notification to the CAIR designated representative of the CAIR SO<sub>2</sub> opt-in unit of the acceptance of the withdrawal of the CAIR SO<sub>2</sub> opt-in unit as of midnight on December thirty-first of the calendar year for which the withdrawal was requested.

(b) If the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are not met, the director shall issue a notification to the CAIR designated representative of the CAIR SO<sub>2</sub> opt-in unit that the CAIR SO<sub>2</sub> opt-in unit's request to withdraw is denied. Such CAIR SO<sub>2</sub> opt-in unit shall continue to be a CAIR SO<sub>2</sub> opt-in unit.

(4) Permit amendment. After the director issues a notification under paragraph (G)(3)(a) of this rule that the requirements for withdrawal have been met, the director shall revise the CAIR permit covering the CAIR SO<sub>2</sub> opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (G)(3)(a) of this rule. The unit shall continue to be a CAIR SO<sub>2</sub> opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO<sub>2</sub> trading program concerning any control periods for which the unit is a CAIR SO<sub>2</sub> opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(5) Reapplication upon failure to meet conditions of withdrawal. If the director denies the CAIR SO<sub>2</sub> opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (G)(1) and (G)(2) of this rule.

(6) Ability to reapply to the CAIR SO<sub>2</sub> trading program. Once a CAIR SO<sub>2</sub> opt-in unit withdraws from the CAIR SO<sub>2</sub> trading program and its CAIR opt-in permit is terminated under this rule, the CAIR designated representative may not submit another application for a CAIR opt-in permit under paragraph (D) of this rule for such CAIR SO<sub>2</sub> opt-in unit before the date that is four years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under paragraph (E) of this rule.

(7) Inability to withdraw. Notwithstanding paragraphs (G)(1) to (G)(6) of this rule, a CAIR SO<sub>2</sub> opt-in unit shall not be eligible to withdraw from the CAIR SO<sub>2</sub> trading program if the CAIR designated representative of the CAIR SO<sub>2</sub> opt-in unit requests, and the director issues a CAIR opt-in permit providing for, allocation to the CAIR SO<sub>2</sub> opt-in unit of CAIR SO<sub>2</sub> allowances under paragraph (I)(3) of this rule.

(H) Change in regulatory status.

(1) Notification. If a CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, then the CAIR designated representative shall notify in writing the director and the Administrator of such change in the CAIR SO<sub>2</sub> opt-in unit's regulatory status, within thirty days of such change.

(2) Director's and Administrator's actions.

(a) If a CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the director shall revise the CAIR SO<sub>2</sub> opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under paragraph (D) of rule [3745-109-10](#) of the Administrative Code, and remove the CAIR opt-in unit provisions, as of the date on which the CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code.

(b) Compliance deductions.

(i) The Administrator shall deduct from the compliance account of the source that includes a CAIR SO<sub>2</sub> opt-in unit that becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, CAIR SO<sub>2</sub> allowances equal in amount to and allocated for the same or a prior control period as:

(a) Any CAIR SO<sub>2</sub> allowances allocated to the CAIR SO<sub>2</sub> opt-in unit under paragraph (I) of rule [3745-109-14](#) of the Administrative Code for any control period after the date on which the CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of this rule [3745-109-01](#) of the Administrative Code; and

(b) If the date on which the CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code is not December thirty-first, the CAIR SO<sub>2</sub> allowances allocated to the CAIR SO<sub>2</sub> opt-in unit under paragraph (I) of this rule for the control period that includes the date on which the CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO<sub>2</sub> opt-in unit becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO<sub>2</sub> opt-in unit that becomes a CAIR SO<sub>2</sub> unit under paragraph (C) of this rule [3745-109-01](#) of the Administrative Code contains the CAIR SO<sub>2</sub> allowances necessary for completion of the deduction under paragraph (H)(2)(b)(i) of this rule.

(I) CAIR SO<sub>2</sub> allowance allocations to CAIR SO<sub>2</sub> opt-in units.

(1) Timing requirements.

(a) When the CAIR opt-in permit is issued under paragraph (E)(5) of this rule, the director shall allocate CAIR SO<sub>2</sub> allowances to the CAIR SO<sub>2</sub> opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(b) By no later than October thirty-first of the control period after the control period in which a CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, and October thirty-first of each year thereafter, the director shall allocate CAIR SO<sub>2</sub> allowances to the CAIR SO<sub>2</sub> opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO<sub>2</sub> opt-in unit, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(2) Calculation of allocation. For each control period for which a CAIR SO<sub>2</sub> opt-in unit is to be allocated CAIR SO<sub>2</sub> allowances, the director shall allocate in accordance with the following procedures:

(a) The heat input (in mmBtu) used for calculating the CAIR SO<sub>2</sub> allowance allocation shall be the lesser of:

(i) The CAIR SO<sub>2</sub> opt-in unit's baseline heat input determined under paragraph (E)(3) of this rule; or

(ii) The CAIR SO<sub>2</sub> opt-in unit's heat input, as determined in accordance with rule [3745-109-13](#) of the Administrative Code, for immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule.

(b) The SO<sub>2</sub> emission rate (in pounds per mmBtu) used for calculating CAIR SO<sub>2</sub> allowance allocations shall be the lesser of:

(i) The CAIR SO<sub>2</sub> opt-in unit's baseline SO<sub>2</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule and multiplied by seventy per cent; or

(ii) The most stringent state or federal SO<sub>2</sub> emissions limitation applicable to the CAIR SO<sub>2</sub> opt-in unit at any time during the control period for which CAIR SO<sub>2</sub> allowances are to be allocated.

(c) The director shall allocate CAIR SO<sub>2</sub> allowances to the CAIR SO<sub>2</sub> opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (I)(2)(a) of this rule, multiplied by the SO<sub>2</sub> emission rate under paragraph (I)(2)(b) of this rule, and divided by two thousand pounds per ton.

(3) Notwithstanding paragraph (I)(2) of this rule and if the CAIR designated representative requests, and the director issues a CAIR opt-in permit (based on a demonstration of the intent to

repower stated under paragraph (D)(1)(e) of this rule) providing for, allocation to a CAIR SO<sub>2</sub> opt-in unit of CAIR SO<sub>2</sub> allowances under this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule), the director shall allocate to the CAIR SO<sub>2</sub> opt-in unit as follows:

(a) For each control period in 2010 to 2014 for which the CAIR SO<sub>2</sub> opt-in unit is to be allocated CAIR SO<sub>2</sub> allowances;

(i) The heat input (in mmBtu) used for calculating CAIR SO<sub>2</sub> allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule;

(ii) The SO<sub>2</sub> emission rate (in pounds per mmBtu) used for calculating CAIR SO<sub>2</sub> allowance allocations shall be the lesser of:

(a) The CAIR SO<sub>2</sub> opt-in unit's baseline SO<sub>2</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule; or

(b) The most stringent state or federal SO<sub>2</sub> emissions limitation applicable to the CAIR SO<sub>2</sub> opt-in unit at any time during the control period in which the CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule;

(iii) The director shall allocate CAIR SO<sub>2</sub> allowances to the CAIR SO<sub>2</sub> opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (I)(3)(a)(i) of this rule, multiplied by the SO<sub>2</sub> emission rate under paragraph (I)(3)(a)(ii) of this rule, and divided by two thousand pounds per ton.

(b) For each control period in 2015 and thereafter for which the CAIR SO<sub>2</sub> opt-in unit is to be allocated CAIR SO<sub>2</sub> allowances;

(i) The heat input (in mmBtu) used for calculating the CAIR SO<sub>2</sub> allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule;

(ii) The SO<sub>2</sub> emission rate (in pounds per mmBtu) used for calculating the CAIR SO<sub>2</sub> allowance allocation shall be the lesser of:

(a) The CAIR SO<sub>2</sub> opt-in unit's baseline SO<sub>2</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule multiplied by ten per cent; or

(b) The most stringent state or federal SO<sub>2</sub> emissions limitation applicable to the CAIR SO<sub>2</sub> opt-in unit at any time during the control period for which CAIR SO<sub>2</sub> allowances are to be allocated;

(iii) The director shall allocate CAIR SO<sub>2</sub> allowances to the CAIR SO<sub>2</sub> opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (I)(3)(b)(i) of this rule, multiplied by the SO<sub>2</sub> emission rate under paragraph (I)(3)(b)(ii) of this rule, and divided by two thousand pounds per ton.

#### (4) Recordation.

(a) The Administrator shall record, in the compliance account of the source that includes the CAIR SO<sub>2</sub> opt-in unit, the CAIR SO<sub>2</sub> allowances allocated by the director to the CAIR SO<sub>2</sub> opt-in unit under paragraph (I)(1)(a) of this rule.

(b) By December first, after the control period in which a CAIR SO<sub>2</sub> opt-in unit enters the CAIR SO<sub>2</sub> trading program under paragraph (E)(7) of this rule, and December first of each year thereafter, the Administrator shall record, in the compliance account of the source that includes the CAIR SO<sub>2</sub> opt-in unit, the CAIR SO<sub>2</sub> allowances allocated by the director to the CAIR SO<sub>2</sub> opt-in unit under paragraph (I)(1)(b) of this rule.

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## **3745-109-15 CAIR Designated Representative for CAIR NO<sub>x</sub> Ozone Season Sources.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by reference."]

### **(A) Authorization and responsibilities of CAIR designated representative.**

(1) Except as provided under paragraph (B) of this rule, each CAIR NO<sub>x</sub> ozone season source, including all CAIR NO<sub>x</sub> ozone season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO<sub>x</sub> ozone season trading program concerning the source or any CAIR NO<sub>x</sub> ozone season unit at the source.

(2) The CAIR designated representative of the CAIR NO<sub>x</sub> ozone season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO<sub>x</sub> ozone season units at the source and shall act in accordance with the certification statement in paragraph (D)(1)(d)(iv) of this rule.

(3) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, 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<sub>x</sub> ozone season source represented and each CAIR NO<sub>x</sub> ozone season unit at the source in all matters pertaining to the CAIR NO<sub>x</sub> 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 director, the Administrator, or a court regarding the source or unit.

(4) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO<sub>x</sub> ozone season allowance tracking system account will be established for a CAIR NO<sub>x</sub> ozone season unit at a source, until the Administrator has received a complete certificate of representation under paragraph (D) of this rule for a CAIR designated representative of the source and the CAIR NO<sub>x</sub> ozone season units at the source.

### **(5) CAIR NO<sub>x</sub> ozone season trading program submissions.**

(a) Each submission under the CAIR NO<sub>x</sub> ozone season trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO<sub>x</sub> 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."

(b) The director and the Administrator shall accept or act on a submission made on behalf of owner or operators of a CAIR NO<sub>x</sub> ozone season source or a CAIR NO<sub>x</sub> ozone season unit only if the submission has been made, signed, and certified in accordance with paragraph (A)(5)(a) of this rule.

(B) Alternate CAIR designated representative.

(1) A certificate of representation under paragraph (D) of this rule 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.

(2) Upon receipt by the Administrator of a complete certificate of representation under paragraph (D) of this rule, 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.

(3) Except in paragraph (B) of this rule and paragraph (B) of rule [3745-109-01](#) of the Administrative Code, paragraphs (A)(1) and (A)(4), (C), (D), (F) of this rule, paragraph (A) of rule [3745-109-18](#) of the Administrative Code and paragraph (C) of rule [3745-109-21](#) of the Administrative Code, whenever the term CAIR designated representative is used in rules [3745-109-01](#) and 3745-109-15 to [3745-109-21](#) of the Administrative Code, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

(C) Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(1) 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 paragraph (D) of this rule. 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<sub>x</sub> ozone season source and the CAIR NO<sub>x</sub> ozone season units at the source.

(2) 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 paragraph (D) of this rule. 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<sub>x</sub> ozone season source and the CAIR NO<sub>x</sub> ozone season units at the source.

(3) Changes in owners and operators.



(a) In the event a owner or operator of a CAIR NO<sub>x</sub> ozone season source or a CAIR NO<sub>x</sub> ozone season unit is not included in the list of owners and operators in the certificate of representation under paragraph (D) of this rule, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the director, the Administrator, or a court, as if the owner or operator were included in such list.

(b) Within thirty days following any change in the owners and operators of a CAIR NO<sub>x</sub> ozone season source or a CAIR NO<sub>x</sub> 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 paragraph (D) of this rule amending the list of owners and operators to include the change.

(D) Certificate of representation.

(1) 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:

(a) Identification of the CAIR NO<sub>x</sub> ozone season source, and each CAIR NO<sub>x</sub> 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;

(b) 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;

(c) A list of the owners and operators of the CAIR NO<sub>x</sub> ozone season source and of each CAIR NO<sub>x</sub> ozone season unit at the source;

(d) 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<sub>x</sub> 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<sub>x</sub> ozone season trading program on behalf of the owners and operators of the source and of each CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season unit at the source shall be bound by any order issued to me by the Administrator, the director, 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<sub>x</sub> ozone season unit, or where a utility or industrial customer purchases power from a CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season unit

at the source; and CAIR NO<sub>x</sub> ozone season allowances and proceeds of transactions involving CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season allowances by contract, CAIR NO<sub>x</sub> ozone season allowances and proceeds of transactions involving CAIR NO<sub>x</sub> ozone season allowances will be deemed to be held or distributed in accordance with the contract."

(e) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(2) Unless otherwise required by the director or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(E) Objections concerning CAIR designated representative.

(1) Once a complete certificate of representation under paragraph (D) of this rule has been submitted and received, the director and the Administrator shall rely on the certificate of representation unless and until a superseding complete certificate of representation under paragraph (D) of this rule is received by the Administrator.

(2) Except as provided in paragraphs (C)(1) and (C)(2) of this rule, no objection or other communication submitted to the director 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 director or the Administrator under the CAIR NO<sub>x</sub> ozone season trading program.

(3) Neither the director 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<sub>x</sub> ozone season allowance transfers.

(F) Delegation by CAIR designated representative and alternate CAIR designated representative.

(1) 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 rule.

(2) 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 rule.

(3) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (F)(1) or (F)(2) of this rule, 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:

(a) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated 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 (F)(1) or (F)(2) of this rule for which authority is delegated to him or her; and

(d) 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.”

(4) A notice of delegation submitted under paragraph (F)(3) of this rule 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.

(5) Any electronic submission covered by the certification in paragraph (F)(3)(d)(i) of this rule and made in accordance with a notice of delegation effective under paragraph (F)(4) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Effective: 09/27/2007

R.C. [119.032](#) review dates: 09/27/2012

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

## **3745-109-16 Permits.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by Reference.”]

### **(A) General CAIR ozone season trading program permit requirements.**

(1) For each CAIR NO<sub>x</sub> ozone season source required to have a Title V operating permit or required, under rule [3745-109-21](#) of the Administrative Code, to have an operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the director 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 director’s Title V operating permits regulations promulgated under 40 CFR Part 70 or 71 or the director’s regulations for other federally enforceable permits as applicable, except as provided otherwise by paragraph (D) of rule [3745-109-01](#), this rule, and rule [3745-109-21](#) of the Administrative Code.

(2) Each CAIR permit shall contain, with regard to the CAIR NO<sub>x</sub> ozone season source and the CAIR NO<sub>x</sub> ozone season units at the source covered by the CAIR permit, all applicable CAIR NO<sub>x</sub> ozone season trading program, CAIR NO<sub>x</sub> annual trading program, and CAIR SO<sub>2</sub> 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)(1) of this rule.

### **(B) Submission of CAIR permit applications.**

(1) Duty to apply. The CAIR designated representative of any CAIR NO<sub>x</sub> ozone season source required to have a Title V operating permit shall submit to the director a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR NO<sub>x</sub> ozone season unit at the source at least twelve months (or such lesser time provided by the director) before the later of January 1, 2009 or the date on which the CAIR NO<sub>x</sub> ozone season unit commences commercial operation, except as provided in paragraph (D)(1) of rule [3745-109-21](#) of the Administrative Code.

(2) Duty to Reapply. For a CAIR NO<sub>x</sub> ozone season source required to have a Title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under paragraph (C) of this rule for the source covering each CAIR NO<sub>x</sub> ozone season unit at the source to renew the CAIR permit in accordance with the director’s Title V operating permits regulations addressing permit renewal, except as provided in paragraph (D)(2) of rule [3745-109-21](#) of the Administrative Code.

(C) Information requirements for CAIR permit applications. A complete CAIR permit application shall include the following elements concerning the CAIR NO<sub>x</sub> ozone season source for which the application is submitted, in a format prescribed by the director:

(1) Identification of the CAIR NO<sub>x</sub> ozone season source;

(2) Identification of each CAIR NO<sub>x</sub> ozone season unit at the CAIR NO<sub>x</sub> ozone season source;  
and

(3) The standard requirements under paragraph (E) of rule [3745-109-01](#) of the Administrative Code.

(D) CAIR permit contents and term.

(1) Each CAIR permit shall contain, in a format prescribed by the director, all elements required for a complete CAIR permit application under paragraph (C) of this rule.

(2) Each CAIR permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rules [3745-109-18](#), [3745-109-19](#) or [3745-109-21](#) of the Administrative Code, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> ozone season allowance to or from the compliance account of the CAIR NO<sub>x</sub> ozone season source covered by the permit.

(3) The term of the CAIR permit shall be set by the director, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO<sub>x</sub> ozone season source's Title V operating permit or other federally enforceable permit as applicable.

(E) CAIR permit revisions.

Except as provided in paragraph (D) of this rule, the director shall revise the CAIR permit, as necessary, in accordance with the director's Title V operating permits regulations or the director's regulations for other federally enforceable permits as applicable addressing permit revisions.

Effective: 09/27/2007

R.C. [119.032](#) review dates: 09/27/2012

Promulgated Under: [119.03](#)

Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

## **3745-109-17 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

(A) State trading budget. The state trading budget in Ohio for annual allocations of CAIR NO<sub>x</sub> ozone season allowances for the control periods in 2009 to 2014 is forty-five thousand six hundred sixty four tons and in 2015 and thereafter is thirty-nine thousand nine hundred forty-five tons for units under paragraphs (C)(1), (C)(2), (C)(3), and (C)(5) of rule [3745-109-01](#) of the Administrative Code (EGUs); for units under paragraph (C)(4) of rule [3745-109-01](#) of the Administrative Code, CAIR NO<sub>x</sub> ozone season allowances for control periods 2009 and thereafter are four thousand thirty tons(non-EGUs).

(B) Timing requirements for CAIR NO<sub>x</sub> ozone season allowance allocations.

(1) No later than September 30, 2007, the director shall submit to the Administrator the CAIR NO<sub>x</sub> ozone season allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1) and (C)(2) of this rule, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(2) Existing units.

(a) By October 31, 2009 and October thirty-first every six years thereafter, the director shall submit to the Administrator the CAIR NO<sub>x</sub> ozone season allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1) and (C)(2) of this rule, for the control periods six years, seven years, eight years, nine years, ten years and eleven years after the year of the applicable deadline for submission under this paragraph.

(3) New units.

(a) By July 31, 2009 and July thirty-first of each year thereafter, the director shall submit to the Administrator the CAIR NO<sub>x</sub> ozone season allowance allocations, in a format prescribed by the Administrator and in accordance with paragraphs (C)(1), (C)(3) and (C)(4) of this rule, for the control period in the year of the applicable deadline for submission under this paragraph.

(C) CAIR NO<sub>x</sub> ozone season allowance allocations.

(1) Heat inputs to be used for existing units.

(a) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> ozone season allowance allocations under paragraph (C)(2) of this rule for each CAIR NO<sub>x</sub> ozone season unit shall be:

(i) For units commencing operation before January 1, 2001 the average of the three highest amounts of the unit's adjusted control period heat input for 1998 to 2005, 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 one hundred per cent;

(b) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by sixty per cent; and

(c) If the unit is not subject to paragraph (C)(1)(a)(i)(a) or (C)(1)(a)(i)(b) of this rule, the unit's control period heat input for such year is multiplied by forty per cent.

(d) If the unit is a non-EGU, as applicable to units identified by paragraph (C)(4) of rule [3745-109-01](#) of the Administrative Code, the baseline heat input (in mmBtu) determination in paragraph (C)(1)(a)(i) or (C)(1)(a)(ii) shall not include any adjustments for heat inputs as described in paragraphs (C)(1)(a)(i)(a) to (C)(1)(a)(i)(c) and (C)(1)(b) of this rule.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of three or more consecutive calendar years the average of the three highest amounts of the unit's total converted control period heat input.

(b) Adjusted heat inputs.

(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 (C)(1)(a)(i) of this rule, and a unit's total tons of NO<sub>x</sub> emissions during a control period in a calendar year under paragraph (C)(3)(c) of this rule, shall 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 shall be based on the best available data reported to the director for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (C)(1)(a)(ii) of this rule equals:

(a) Except as provided in paragraph (C)(1)(b)(ii)(b) or (C)(1)(b)(ii)(c) of this rule, the control period gross electrical output of the generator or generators served by the unit multiplied by seven thousand nine hundred Btu per kWh, if the unit is coal-fired for the year, or six thousand six hundred seventy-five Btu per kWh, if the unit is not coal-fired for the year, and divided by one million Btu per mmBtu, provided that if a generator is served by two 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 one million Btu per 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 three thousand four hundred thirteen Btu per kWh, plus the total heat energy 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 one million Btu per mmBtu. 3745-109-17 3

(2) Adjusted allocations.

(a) For each control period in 2009 and thereafter, the director shall allocate to all CAIR NO<sub>x</sub> ozone season units in the state that have a baseline heat input (as determined under paragraph (C)(1) of this rule) a total amount of CAIR NO<sub>x</sub> ozone season allowances equal to ninety-three per cent for a control period during 2009 to 2014, and ninety-five per cent for a control period during 2015 and thereafter, of the tons of NO<sub>x</sub> emissions in the state trading budget under



paragraph (A) of this rule (except as provided in paragraph (C)(4) of this rule) for units under paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code(EGUs).

(b) For each control period in 2009 and thereafter, the director shall allocate to all CAIR NO<sub>x</sub> ozone season units in the state that have a baseline heat input (as determined under paragraph (C)(1) of this rule) a total amount of CAIR NO<sub>x</sub> ozone season allowances equal to ninety-five per cent for a control period during 2009 to 2014, and ninety-seven per cent for a control period during 2015 and thereafter, of the tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule (except as provided in paragraph (C)(4) of this rule) for units under paragraph (C)(4) of rule [3745-109-01](#) of the Administrative Code(non-EGUs).

The director shall allocate separately, the available allowances for the above control periods, each portion of the state trading budget under paragraph (A) of this rule for EGUs and non-EGUs.

(c) The director shall allocate CAIR NO<sub>x</sub> ozone season allowances to each CAIR NO<sub>x</sub> ozone season unit under paragraph (C)(2)(a) of this rule in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> ozone season allowances allocated under paragraph (C)(2)(a) of this rule by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> ozone season unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> ozone season units in the state and rounding to the nearest whole allowance as appropriate.

(d) The director shall allocate CAIR NO<sub>x</sub> ozone season allowances to each CAIR NO<sub>x</sub> ozone season unit under paragraph (C)(2)(b) of this rule in an amount equaling the lesser of 0.17 pound per mmBtu or the unit's most stringent state or federal NO<sub>x</sub> emission limitation multiplied by the baseline heat input of such CAIR NO<sub>x</sub> ozone season unit determined under paragraph (C)(1)(a)(i)(d) of this rule, 3745-109-17 4 divided by two thousand pounds per ton, and rounding to the nearest whole allowance as appropriate.

(e) If the initial total number of CAIR NO<sub>x</sub> ozone season allowances allocated to all CAIR NO<sub>x</sub> ozone season units under paragraph (C)(4) of rule [3745-109-01](#) of the Administrative Code(non-EGUs) for a control period under paragraph (C)(2)(b) of this rule exceeds the total amount of the CAIR NO<sub>x</sub> ozone season allowances available under paragraph (C)(2)(b) of this rule covering such units, the director shall adjust the total number of CAIR NO<sub>x</sub> ozone season allowances allocated to all such CAIR NO<sub>x</sub> ozone season units for the control period under paragraph (C)(2)(b) of this rule so that the total number of CAIR NO<sub>x</sub> ozone season allowances allocated equals the total amount of the CAIR NO<sub>x</sub> ozone season allowances available under paragraph (C)(2)(b) of this rule covering such units. This adjustment shall be made by multiplying each unit's allocation by the amount of the CAIR NO<sub>x</sub> ozone season allowances available under paragraph (C)(2)(b) of this rule covering such units, dividing by the total number of CAIR NO<sub>x</sub> ozone season allowances allocated under paragraph (C)(2)(d) of this rule, and rounding to the nearest whole CAIR NO<sub>x</sub> ozone season allowance as appropriate.

(f) If the initial total number of CAIR NO<sub>x</sub> ozone season allowances allocated to all CAIR NO<sub>x</sub> ozone season units under paragraph (C)(4) of rule [3745-109-01](#) of the Administrative Code(non-EGUs) for a control period under paragraph (C)(2)(b) of this rule is less than the total amount of the CAIR NO<sub>x</sub> ozone season allowances available under paragraph (C)(2)(b) of this rule covering such units, any such unallocated CAIR NO<sub>x</sub> ozone season allowances will be placed into an account controlled by the state of Ohio. The director of Ohio EPA shall determine if any

such unallocated CAIR NO<sub>x</sub> ozone season allowances will be retired, distributed, stored, or used for whatever purpose the director deems necessary.

(3) For each control period in 2009 and thereafter, the director shall allocate CAIR NO<sub>x</sub> ozone season allowances to CAIR NO<sub>x</sub> ozone season units in the state that are not allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (C)(2)(a) of this rule because the units do not yet have a baseline heat input under paragraph (C)(1)(a) of this rule or because the units have a baseline heat input but all CAIR NO<sub>x</sub> ozone season allowances available under paragraph (C)(2)(a) of this rule for the control period are already allocated, in accordance with the following procedures:

(a) The director shall establish a separate new unit set-aside for each control 3745-109-17 5 period. Each new unit set-aside shall be allocated CAIR NO<sub>x</sub> ozone season allowances equal to five per cent for the control periods in 2009 to 2014, and three per cent for control periods in 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the state trading budget for both EGUs and non-EGUs under paragraph (A) of this rule (EGUs and non-EGUs will have separate new unit set-asides established using the amount of tons of NO<sub>x</sub> emissions available in their respective portions of the state trading budgets under paragraph (A) of this rule).

(b) The CAIR designated representative of such a CAIR NO<sub>x</sub> ozone season unit may submit to the director a request, in a format specified by the director, to be allocated CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> ozone season allowances under paragraph (C)(2) of this rule. A separate CAIR NO<sub>x</sub> ozone season allowance allocation request for each control period for which CAIR NO<sub>x</sub> ozone season allowances are sought must be submitted on or before February first before such control period and after the date on which the CAIR NO<sub>x</sub> ozone season unit commences commercial operation.

(c) In a CAIR NO<sub>x</sub> ozone season allowance allocation request under paragraph (C)(3)(b) of this rule, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> ozone season allowances in an amount not exceeding the CAIR NO<sub>x</sub> ozone season unit's total tons of NO<sub>x</sub> emissions during the control period immediately before such control period.

(d) The director shall review each CAIR NO<sub>x</sub> ozone season allowance allocation request under paragraph (C)(3)(b) of this rule and shall allocate CAIR NO<sub>x</sub> ozone season allowances for each control period pursuant to such request as follows:

(i) The director shall accept an allowance allocation request only if the request meets, or is adjusted by the director as necessary to meet, the requirements of paragraphs (C)(3)(b) and (C)(3)(c) of this rule.

(ii) On or after February first before the control period, the director shall determine the sum of the CAIR NO<sub>x</sub> ozone season allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule) in all allowance allocation requests accepted under 3745-109-17 6 paragraph (C)(3)(d)(i) of this rule for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> ozone season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (C)(3)(d)(ii) of this rule, then the director shall allocate the amount of CAIR NO<sub>x</sub> ozone season allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule) to each CAIR NO<sub>x</sub> ozone season unit covered by an allowance allocation request accepted under paragraph (C)(3)(d)(i) of this rule.

(iv) If the amount of CAIR NO<sub>x</sub> ozone season allowances in the new unit set-aside for the control period is less than the sum under paragraph (C)(3)(d)(ii) of this rule, then the director shall allocate to each CAIR NO<sub>x</sub> ozone season unit covered by an allowance allocation request accepted under paragraph (C)(3)(d)(i) of this rule the amount of the CAIR NO<sub>x</sub> ozone season allowances requested (as adjusted under paragraph (C)(3)(d)(i) of this rule), multiplied by the number of CAIR NO<sub>x</sub> ozone season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (C)(3)(d)(ii) of this rule, and rounded to the nearest whole allowance as appropriate.

(v) The director shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> ozone season allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> ozone season unit covered by the request.

[Comment: As stated in paragraph (C)(3) of this rule, units commencing operation on or after January 1, 2001 and lacking a baseline heat input because of insufficient heat input data availability, as stated in paragraph (C)(1)(a)(ii) of this rule, shall be allocated allowances from the new unit set-aside. The unit will continue to be allocated allowances from the new unit set-aside, even if the unit has sufficient heat input data for determination of a baseline until such time as the director has determined new allowance allocations from the state trading budget under paragraph (A) of this rule, for all units in the state with a baseline heat input based on the timing requirements in paragraph (B) of this rule.]

(4) If, after completion of the procedures under paragraph (C)(3)(d) of this rule for a control period, any unallocated CAIR NO<sub>x</sub> ozone season allowances remain 3745-109-17 7 in the new unit set-aside for the control period, the director shall allocate to each CAIR NO<sub>x</sub> ozone season unit that was allocated CAIR NO<sub>x</sub> ozone season allowances under paragraph (C)(2) of this rule an amount of CAIR NO<sub>x</sub> ozone season allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> ozone season allowances, multiplied by the unit's allocation under paragraph (C)(2) of this rule, divided by ninety-five per cent for a control period during 2009 to 2014, and ninety-seven per cent for a control period during 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of rule 3745-109-17 of the Administrative Code, and rounded to the nearest whole allowance as appropriate.

(5) The director shall establish an allocation set-aside for each control period beginning in 2009 for energy efficiency/renewable energy projects. Each energy efficiency/renewable energy project set-aside shall be allocated CAIR NO<sub>x</sub> ozone season allowances equal to one per cent of the tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule, as applicable to units identified by paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code (EGUs only), rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(a) Applicants may submit a proposal to the director for an energy efficiency/renewable energy project and request allocations from the energy efficiency/renewable energy project set-aside for energy reductions obtained as a result of the project. The director shall review proposals based on criteria determined by the director, and notify applicants of approved projects. Proposals must contain the following:

(i) A detailed description of the project; and

(ii) An estimate of the number of allocations that will be requested.

(iii) The director will calculate the number of NO<sub>x</sub> allowances requested for each approved project based on the energy savings or NO<sub>x</sub> emissions reduced by the project. By March first of each year, the director will determine the total number of NO<sub>x</sub> allowances to be reserved for approved projects. If the total number of NO<sub>x</sub> allowances requested for approved projects is less than or equal to the number of NO<sub>x</sub> allowances in the designated set-aside, the number of

allowances requested will be reserved for each approved project. If more NO<sub>x</sub> allowances are requested than exist in the set-aside, allowances will be reserved on a pro-rated basis based on the number of allowances available. Approved projects requesting only one NO<sub>x</sub> allowance will not 3745-109-17 8 be pro-rated.

(b) To receive allocations for the energy efficiency/renewable energy projects approved by the director, the applicant must submit a completed project report that verifies that the project was completed as proposed and that proposed energy reductions were obtained.

(c) Upon verification of the project's success, the director shall award the required allocations to the applicant.

(d) Allocations shall be awarded on an annual basis and for no more than five consecutive years for each approved energy efficiency/renewable energy project.

(6) The director shall establish an allocation set-aside for each control period beginning in 2009 for innovative technology projects. Each innovative technology project set-aside shall be allocated CAIR NO<sub>x</sub> ozone season allowances equal to one per cent of the tons of NO<sub>x</sub> emissions in the state trading budget under paragraph (A) of this rule, as applicable to units identified by paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code (EGUs only), rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(a) Applicants may submit a proposal to the director for an innovative technology project and request allocations from the innovative technology project set-aside for NO<sub>x</sub> emissions reductions or energy reductions obtained. The director shall review proposals based on criteria determined by the director, and notify applicants of approved projects. Proposals must contain the following:

(i) A detailed description of the project; and

(ii) An estimate of the number of allocations that will be requested.

(iii) The director will calculate the number of NO<sub>x</sub> allowances requested for each approved project based on the energy savings or NO<sub>x</sub> emissions reduced by the project. By March first of each year, the director will determine the total number of NO<sub>x</sub> allowances to be reserved for approved projects. If the total number of NO<sub>x</sub> allowances requested for approved projects is less than or equal to the number of NO<sub>x</sub> allowances in the designated set-aside, the number of allowances requested will be reserved for each approved project. If more NO<sub>x</sub> allowances are 3745-109-17 9 requested than exist in the set-aside, allowances will be reserved on a pro-rated basis based on the number of allowances available. Approved projects requesting only one NO<sub>x</sub> allowance will not be pro-rated.

(b) To receive allocations for the innovative technology projects approved by the director, the applicant shall submit a completed project report that verifies that the project was completed as proposed and that proposed NO<sub>x</sub> emissions reductions or energy reductions were obtained.

(c) Upon verification of the project's success, the director shall award the required allocations to the applicant.

(d) Allocations shall be awarded on an annual basis and for no more than five consecutive years for each approved innovative technology project.

(7) Allowances remaining at the end of each year in the energy efficiency/renewable energy allocation set-aside or in the innovative technology project allocation set-aside, shall be allocated to CAIR NO<sub>x</sub> ozone season units under paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code (EGUs) in the following year, prorated on the basis of each unit's previous year allocations.

(8) The director, beginning with the end of the 2009 CAIR NO<sub>x</sub> ozone season control period and every three years thereafter, will review the number of the allowances requested for approved projects for the control period from both the energy efficiency/renewable energy allocation set-aside and the innovative technology project allocation set-aside, and compare that number to each currently available set-aside. If the number of allowances requested for approved projects exceeds the available allowance set-aside by more than twenty-five per cent for either set-aside, the director shall adjust each set-aside upward as necessary at the first control period available after such time as the director has determined new allowance allocations from the state trading budget under paragraph (A) of this rule, as applicable to units identified by paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code (EGUs), in the state with a baseline heat input based on the timing requirements in paragraph (B) of this rule, but up to a maximum of five per cent for the energy efficiency/renewable energy set-aside or the innovative technology project set aside.

[Comment: If the energy efficiency/renewable energy or the innovative technology project set-aside(s) are proposed to be increased, as outlined above, during a new allowance allocation cycle based on the timing requirements in paragraph (B) of this rule as applicable to units identified by 3745-109-17 10 paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code (EGUs), then the available allowances from the state budget for allocation to units identified by paragraph (C)(1) of rule [3745-109-01](#) of the Administrative Code, will be reduced by an amount equal to the difference between the existing set-aside amount and the new set-aside amount. In 2015 and beyond, the new unit side aside for EGUs is fixed at three per cent, so any increase in the energy efficiency/renewable energy or innovative technology set-aside, should that occur, is the only variable that could decrease the existing unit's allocation amount.]

Effective: 07/16/2009

R.C. [119.032](#) review dates: 09/27/2012

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Statutory Authority: 3704.03(E)

Rule Amplifies: 3704.03(A), 3704.03(E), 3704.03(V)

Prior Effective Dates: 9/27/2007

## **3745-109-18 CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

### **(A) Establishment of accounts.**

(1) Compliance accounts. Except as provided in paragraph (E)(5) of rule [3745-109-21](#) of the Administrative Code, upon receipt of a complete certificate of representation under paragraph (D) of rule [3745-109-15](#) of the Administrative Code, the Administrator shall establish a compliance account for the CAIR NO<sub>x</sub> ozone season source for which the certificate of representation was submitted, unless the source already has a compliance account.

### **(2) General accounts.**

#### **(a) Application for general account.**

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO<sub>x</sub> 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 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 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<sub>x</sub> 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 director or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the director or the Administrator. Neither the director nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.



(b) 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 (A)(2)(a) of this rule:

(a) The Administrator shall 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<sub>x</sub> ozone season allowances held in the general account in all matters pertaining to the CAIR NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (A)(2)(b)(ii) of this rule.

(c) 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 (A)(2)(a) of this rule. 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<sub>x</sub> 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 (A)(2)(a) of this rule. 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<sub>x</sub> ozone season allowances in the general account.

(iii) Ownership change.

(a) In the event a person having an ownership interest with respect to CAIR NO<sub>x</sub> 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 thirty days following any change in the persons having an ownership interest with respect to CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season allowances in the general account to include the change.

(d) Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (A)(2)(a) of this rule has been submitted and received, the Administrator shall rely on the application unless and until a superseding complete application for a general account under paragraph (A)(2)(a) of this rule is received by the Administrator.

(ii) Except as provided in paragraphs (A)(2)(c)(i) and (A)(2)(c)(ii) of this rule 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<sub>x</sub> 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<sub>x</sub> ozone season allowance transfers.

(e) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under rules 3745-109-18 and [3745-109-19](#) of the Administrative Code.

(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 rules 3745-109-18 and [3745-109-19](#) of the Administrative Code.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (A)(2)(e)(i) or (A)(2)(e)(ii) of this rule, 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 (A)(2)(e)(i) or (A)(2)(e)(ii) of this rule 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 paragraph (A)(2)(e)(iv) of rule 3745-109-18 of the Administrative Code 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 paragraph (A)(2)(e)(iv) of rule 3745-109-18 of the Administrative Code, 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 paragraph (A)(2)(e) of rule 3745-109-18 of the Administrative Code is terminated.”

(iv) A notice of delegation submitted under paragraph (A)(2)(e)(iii) of this rule 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 (A)(2)(e)(iii)(d) of this rule and made in accordance with a notice of delegation effective under paragraph (A)(2)(e)(iv) of this rule shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(3) Account identification. The Administrator shall assign a unique identifying number to each account established under paragraph (A)(1) or (A)(2) of this rule.

(B) Responsibilities of CAIR authorized account representative.

(1) Following the establishment of a CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(C) Recordation of CAIR NO<sub>x</sub> ozone season allowance allocations.

(1) By September 30, 2007, the Administrator shall record in the CAIR NO<sub>x</sub> ozone season source's compliance account the CAIR NO<sub>x</sub> ozone season allowances allocated for the CAIR NO<sub>x</sub> ozone season units at the source, as submitted by the director in accordance with paragraph (B)(1) of rule [3745-109-17](#) of the Administrative Code, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(2) By December 1, 2009, and December first every six years thereafter, the Administrator shall record in the CAIR NO<sub>x</sub> ozone season source's compliance account the CAIR NO<sub>x</sub> ozone season allowances allocated for the CAIR NO<sub>x</sub> ozone season units at the source as submitted by the director in accordance with paragraph (B)(2)(a) of rule [3745-109-17](#) of the Administrative Code, for the control periods in the six years, seven years, eight years, nine years, ten years and eleven years after the year of the applicable deadline for recordation under this paragraph.

(3) Serial numbers for allocated CAIR NO<sub>x</sub> ozone season allowances. When recording the allocation of CAIR NO<sub>x</sub> ozone season allowances for a CAIR NO<sub>x</sub> ozone season unit in a compliance account, the Administrator shall assign each CAIR NO<sub>x</sub> ozone season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO<sub>x</sub> ozone season allowance is allocated.

(D) Compliance with CAIR NO<sub>x</sub> ozone season emissions limitation.

(1) Allowance transfer deadline. The CAIR NO<sub>x</sub> ozone season allowances are available to be deducted for compliance with a source's CAIR NO<sub>x</sub> ozone season emissions limitation for a control period in a given calendar year only if the CAIR NO<sub>x</sub> ozone season allowances:

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

(b) 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<sub>x</sub> ozone season allowance transfer correctly submitted for recordation under paragraphs (A) and (B) of rule [3745-109-19](#) of the Administrative Code by the allowance transfer deadline for the control period; and

(2) Deductions for compliance. Following the recordation, in accordance with paragraph (B) of rule [3745-109-19](#) of the Administrative Code, of CAIR NO<sub>x</sub> ozone season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator shall deduct from the compliance account CAIR NO<sub>x</sub> ozone season allowances available under paragraph (D)(1) of this rule in order to determine whether the source meets the CAIR NO<sub>x</sub> ozone season emissions limitation for the control period, as follows:

(a) Until the amount of CAIR NO<sub>x</sub> ozone season allowances deducted equals the number of tons of total NO<sub>x</sub> emissions, determined in accordance with rule [3745-109-20](#) of the Administrative Code, from all CAIR NO<sub>x</sub> ozone season units at the source for the control period; or

(b) If there are insufficient CAIR NO<sub>x</sub> ozone season allowances to complete the deductions in paragraph (D)(2)(a) of this rule, until no more CAIR NO<sub>x</sub> ozone season allowances available under paragraph (D)(1) of this rule remain in the compliance account.

(3) Identification of allowances deducted.

(a) Identification of CAIR NO<sub>x</sub> ozone season allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO<sub>x</sub> 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 (D)(2) or (D)(4) of this rule. 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<sub>x</sub> ozone season source and the appropriate serial numbers.

(b) First-in, first-out. The Administrator shall deduct CAIR NO<sub>x</sub> ozone season allowances under paragraph (D)(2) or (D)(4) of this rule from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO<sub>x</sub> ozone season allowances by serial number under paragraph (D)(3)(a) of this rule, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO<sub>x</sub> ozone season allowances that were allocated to the units at the source, in the order of recordation; and

(ii) Any CAIR NO<sub>x</sub> ozone season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to rule [3745-109-19](#) of the Administrative Code, in the order of recordation.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under paragraph (D)(2) of this rule for a control period in a calendar year in which the CAIR NO<sub>x</sub> ozone season source has excess emissions, the Administrator shall deduct from the source's compliance account an amount of CAIR NO<sub>x</sub> ozone season allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

(b) Any allowance deduction required under paragraph (D)(4)(a) of this rule shall not affect the liability of the owners and operators of the CAIR NO<sub>x</sub> ozone season source or the CAIR NO<sub>x</sub> 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.

(5) Recordation of deductions. The Administrator shall record in the appropriate compliance account all deductions from such an account under paragraph (D)(2) or (D)(4) of this rule and rule [3745-109-21](#) of the Administrative Code.

(6) Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO<sub>x</sub> ozone season trading program and make appropriate adjustments of the information in the submissions.

(b) The Administrator may deduct CAIR NO<sub>x</sub> ozone season allowances from or transfer CAIR NO<sub>x</sub> ozone season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (D)(6)(a) of this rule, and record such deductions and transfers.

(E) Banking.

(1) CAIR NO<sub>x</sub> ozone season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (E)(2) of this rule.

(2) Any CAIR NO<sub>x</sub> ozone season allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR NO<sub>x</sub> ozone season allowance is deducted or transferred under paragraphs (D) and (F) of this rule, or rule [3745-109-19](#) or rule [3745-109-21](#) of the Administrative Code.

(F) 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<sub>x</sub> ozone season allowance tracking system account. Within ten business days of making such correction, the Administrator shall notify the CAIR authorized account representative for the account.

(G) Closing of general accounts.

(1) 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 paragraphs (A) and (B) of rule [3745-109-19](#) of the Administrative Code for any CAIR NO<sub>x</sub> ozone season allowances in the account to one or more other CAIR NO<sub>x</sub> ozone season allowance tracking system accounts.

(2) If a general account has no allowance transfers in or out of the account for a twelve-month period or longer and does not contain any CAIR NO<sub>x</sub> ozone season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account shall be closed following twenty business days after the notice is sent. The account shall be closed after the twenty-day period unless, before the end of the twenty-day period, the Administrator receives a correctly submitted transfer of CAIR NO<sub>x</sub> ozone season allowances into the account under paragraphs (A) and (B) of rule [3745-109-19](#) of the Administrative Code 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.

Effective: 07/16/2009

R.C. [119.032](#) review dates: 09/27/2012

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Statutory Authority: 3704.03(E)

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Prior Effective Dates: 9/27/2007

### **3745-109-19 CAIR NO<sub>x</sub> Ozone Season Allowance Transfers.**

#### **(A) Submission of CAIR NO<sub>x</sub> ozone season allowance transfers.**

A CAIR authorized account representative seeking recordation of a CAIR NO<sub>x</sub> ozone season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO<sub>x</sub> ozone season allowance transfer shall include the following elements, in a format specified by the Administrator:

- (1) The account numbers for both the transferor and transferee accounts;
- (2) The serial number of each CAIR NO<sub>x</sub> ozone season allowance that is in the transferor account and is to be transferred; and
- (3) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

#### **(B) Recordation.**

(1) Within five business days (except as provided in paragraph (B)(2) of this rule) of receiving a CAIR NO<sub>x</sub> ozone season allowance transfer, the Administrator shall record a CAIR NO<sub>x</sub> ozone season allowance transfer by moving each CAIR NO<sub>x</sub> ozone season allowance from the transferor account to the transferee account as specified by the request, provided that:

- (a) The transfer is correctly submitted under paragraph (A) of this rule; and
- (b) The transferor account includes each CAIR NO<sub>x</sub> ozone season allowance identified by serial number in the transfer.

(2) A CAIR NO<sub>x</sub> ozone season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO<sub>x</sub> ozone season allowances allocated for any control period before such allowance transfer deadline shall not be recorded until after the Administrator completes the deductions under paragraph (D) of rule [3745-109-18](#) of the Administrative Code for the control period immediately before such allowance transfer deadline.

(3) Where a CAIR NO<sub>x</sub> ozone season allowance transfer submitted for recordation fails to meet the requirements of paragraph (B)(1) of this rule, the Administrator shall not record such transfer.

#### **(C) Notification.**

(1) Notification of recordation. Within five business days of recordation of a CAIR NO<sub>x</sub> ozone season allowance transfer under paragraph (B) of this rule, the Administrator shall notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Notification of non-recordation. Within ten business days of receipt of a CAIR NO<sub>x</sub> ozone season allowance transfer that fails to meet the requirements of paragraph (B)(1) of this rule, the

Administrator shall notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(a) A decision not to record the transfer, and

(b) The reasons for such non-recording.

(3) Nothing in this section shall preclude the submission of a CAIR NO<sub>x</sub> ozone season allowance transfer for recording following notification of non-recording.

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## **3745-109-20 Monitoring and Reporting.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled "Incorporation by Reference."]

### **(A) General requirements.**

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO<sub>x</sub> ozone season unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR Part 75, Subpart H. For purposes of complying with such requirements, the definitions in paragraph (B) of rule [3745-109-01](#) of the Administrative Code and in 40 CFR 72.2 shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system(or CEMS) in 40 CFR Part 75 shall be deemed to refer to the terms CAIR NO<sub>x</sub> ozone season unit, CAIR designated representative, and continuous emission monitoring system (or CEMS) respectively, as defined in paragraph (B) of rule [3745-109-01](#) of the Administrative Code. The owner or operator of a unit that is not a CAIR NO<sub>x</sub> ozone season unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR NO<sub>x</sub> ozone season unit.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO<sub>x</sub> ozone season unit shall:

(a) Install all monitoring systems required under this rule for monitoring NO<sub>x</sub> mass emissions and individual unit heat input (including all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, stack gas moisture content, stack gas flow rate, CO<sub>2</sub> or O<sub>2</sub> concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71 and 40 CFR 75.72 );

(b) Successfully complete all certification tests required under paragraph (B) of this rule and meet all other requirements of this rule and 40 CFR Part 75 applicable to the monitoring systems under paragraph (A)(1)(a) of this rule; and

(c) Record, report, and quality-assure the data from the monitoring systems under paragraph (A)(1)(a) of this rule.

(2) Compliance deadlines. Except as provided in paragraph (A)(5) of this rule, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (A)(1)(a) and (A)(1)(b) of this rule 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)(a) of this rule on and after the following dates:

(a) For the owner or operator of a CAIR NO<sub>x</sub> ozone season unit that commences commercial operation before July 1, 2007, by May 1, 2008:

(b) For the owner or operator of a CAIR NO<sub>x</sub> ozone season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under paragraph (E)(4) of this rule, by the later of the following dates:

(i) Ninety unit operating days or one hundred eighty calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or  
(ii) May 1, 2008.

(c) For the owner or operator of a CAIR NO<sub>x</sub> ozone season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by the later of the following dates:

(i) Ninety unit operating days or one hundred eighty calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or  
(ii) If the compliance date under paragraph (A)(2)(c)(i) of this rule is not during a control period, May first immediately following the compliance date under paragraph (A)(2)(c)(i) of this rule.

(d) For the owner or operator of a CAIR NO<sub>x</sub> ozone season unit for which construction of a new stack or flue or installation of add-on NO<sub>x</sub> emission controls is completed after the applicable deadline under paragraph (A)(2)(a), (A)(2)(b), (A)(2)(f) or (A)(2)(g) of this rule and that reports on an annual basis under paragraph (E)(4) of this rule, by ninety unit operating days or one hundred eighty 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<sub>x</sub> emissions controls.

(e) For the owner or operator of a CAIR NO<sub>x</sub> ozone season unit for which construction of a new stack or flue or installation of add-on NO<sub>x</sub> emission controls is completed after the applicable deadline under paragraph (A)(2)(a), (A)(2)(c), (A)(2)(f) or (A)(2)(g) of this rule and that reports on a control period basis under paragraph (E)(4)(b)(ii) of this rule, by the later of the following dates:

(i) Ninety unit operating days or one hundred eighty 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<sub>x</sub> emissions controls; or  
(ii) If the compliance date under paragraph (A)(2)(e)(i) of this rule is not during a control period, May first immediately following the compliance date under paragraph (A)(2)(e)(i) of this rule.

(f) Notwithstanding the dates in paragraphs (A)(2)(a), (A)(2)(b) and (A)(2)(c) of this rule, for the owner or operator of a unit for which a CAIR NO<sub>x</sub> ozone season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under rule [3745-109-21](#) of the Administrative Code, by the date specified in paragraph (E)(2) of rule [3745-109-21](#) of the Administrative Code.

(g) Notwithstanding the dates in paragraphs (A)(2)(a), (A)(2)(b) and (A)(2)(c) of this rule, for the owner or operator of a CAIR NO<sub>x</sub> ozone season opt-in unit under rule [3745-109-21](#) of the Administrative Code, by the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program as provided in paragraph (E)(7) of rule [3745-109-21](#) of the Administrative Code.

(3) Reporting data. The owner or operator of a CAIR NO<sub>x</sub> ozone season unit that does not meet the applicable compliance date set forth in paragraph (A)(2) of this rule for any monitoring system under paragraph (A)(1)(a) of this rule shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO<sub>x</sub> concentration, NO<sub>x</sub> emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO<sub>x</sub> mass emissions and heat input in

accordance with 40 CFR 75.31(b)(2) or (c)(3), 40 CFR Part 75, Appendix D, Section 2.4, or 40 CFR Part 75, Appendix E, Section 2.5, as applicable.

#### (4) Prohibitions

(a) No owner or operator of a CAIR NO<sub>x</sub> ozone season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this rule without having obtained prior written approval in accordance with paragraph (F) of this rule.

(b) No owner or operator of a CAIR NO<sub>x</sub> ozone season unit shall operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this rule and 40 CFR Part 75.

(c) No owner or operator of a CAIR NO<sub>x</sub> 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<sub>x</sub> 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 rule and 40 CFR Part 75.

(d) No owner or operator of a CAIR NO<sub>x</sub> 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 rule, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code 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 rule and 40 CFR Part 75, by the director 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 paragraph (B)(4)(c)(i) of this rule.

#### (5) Long-term cold storage.

The owner or operator of a CAIR NO<sub>x</sub> ozone season unit is subject to the applicable provisions of 40 CFR Part 75 of this rule concerning units in long-term cold storage.

#### (B) Initial certification and recertification procedures.

(1) The owner or operator of a CAIR NO<sub>x</sub> ozone season unit shall be exempt from the initial certification requirements of this section for a monitoring system under paragraph (A)(1)(a) of this rule if the following conditions are met:

(a) The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

(b) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and 40 CFR Part 75, Appendices B, D and E, are fully met for the certified monitoring system described in paragraph (B)(1)(a) of this rule.

(2) The recertification provisions of this section shall apply to a monitoring system under paragraph (A)(1)(a) of rule 3745-109-20 of the Administrative Code exempt from initial certification requirements under paragraph (B)(1) of this rule.

(3) If the Administrator has previously approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.12 or 40 CFR 75.17 the CAIR designated representative shall resubmit the petition to the Administrator under paragraph (F)(1) of this rule to determine whether the approval applies under the CAIR NO<sub>x</sub> ozone season trading program.

(4) Except as provided in paragraph (B)(1) of this rule, the owner or operator of a CAIR NO<sub>x</sub> 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 40 CFR Part 75, Appendices D and E) under paragraph (A)(1)(a) of this rule. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E shall comply with the procedures in paragraph (B)(5) or (B)(6) of this rule respectively.

(a) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under paragraph (A)(1)(a) of this rule (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in paragraph (A)(2) of this rule. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under paragraph (A)(1)(a) of this rule that may significantly affect the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75, Appendix B, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). 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 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO<sub>x</sub> monitoring system under 40 CFR Part 75, Appendix E under paragraph (A)(1)(a) of this rule are subject to the recertification requirements in 40 CFR 75.20(g)(6).

(c) Approval process for initial certification and recertification. Paragraphs (B)(4)(c)(i) to (B)(4)(c)(iv) of this rule apply to both initial certification and recertification of a continuous monitoring system under paragraph (A)(1)(a) of this rule. 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 40 CFR 75.20(b)(5) and 40 CFR 75.20(g)(7) in lieu of the procedures in paragraph (B)(4)(c)(v) of this rule.

(i) Notification of certification. The CAIR designated representative shall submit to the director, USEPA Region 5, and the Administrator written notice of the dates of certification testing, in accordance with paragraph (D) of this rule.

(ii) Certification application. The CAIR designated representative shall submit to the director a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR NO<sub>x</sub> ozone season trading program for a period not to exceed one hundred twenty days after receipt by the director of the complete certification application for the monitoring system under paragraph (B)(4)(c)(ii) of this rule. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty days of the date of receipt of the complete certification application by the director.

(iv) Certification application approval process. The director shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty days of receipt of the complete certification application under paragraph (B)(4)(c)(ii) of this rule. In the event the director does not issue such a notice within such one hundred twenty-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the CAIR NO<sub>x</sub> 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 40 CFR Part 75, then the director shall issue a written notice of approval of the certification application within one hundred twenty days of receipt.

(b) Incomplete application notice. If the certification application is not complete, then the director shall 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 director may issue a notice of disapproval under paragraph (B)(4)(c)(iv)(c) of this rule. The one-hundred-twenty 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 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under paragraph (B)(4)(c)(iv)(b) of this rule is met, then the director shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director 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 40 CFR 75.20(a)(3) ). The owner or operator shall follow the procedures for loss of certification in paragraph (B)(4)(c)(v) of this rule for each monitoring system that is disapproved for initial certification.

(d) Audit decertification. The director or, for a CAIR NO<sub>x</sub> 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 rule [3745-109-21](#) of the Administrative Code, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (C)(2) of this rule.

(v) Procedures for loss of certification. If the director or the Administrator issues a notice of disapproval of a certification application under paragraph (B)(4)(c)(iv)(c) of this rule or a notice of disapproval of certification status under paragraph (B)(4)(c)(iv)(d) of this rule, 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 40 CFR 75.20(a)(4) (iii) and 40 CFR 75.20(g)(7) or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7):

(i) For a disapproved NO<sub>x</sub> emission rate (i.e., NO<sub>x</sub>-diluent) system, the maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR 72.2;

(ii) For a disapproved NO<sub>x</sub> pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 2.1 and 2.1. 4.1;

(iii) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential oxygen concentration (as applicable), as defined in 40 CFR Part 75, Appendix A, Sections 2.1. 3.1, 2.1. 3.2, and 2.1.5;

(iv) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR Part 75, Appendix D, Section 2.4. 2.1; and

(v) For a disapproved excepted NO<sub>x</sub> monitoring system under 40 CFR Part 75, Appendix E, the fuel-specific maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR 72.2.

(b) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (B)(4)(c)(i) and (B)(4)(c)(ii) of this rule.

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

(5) Initial certification and recertification procedures for units using the low mass emission excepted methodology under 40 CFR 75.19. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19 shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2) and 40 CFR 75.20(h). 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 40 CFR 75.20(g).

(6) 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 director under 40 CFR Part 75, Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

(C) Out of control periods.

(1) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR Part 75, Subparts D or H, or 40 CFR Part 75, Appendices D or E.

(2) 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 paragraph (B) of this rule or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director or, for a CAIR NO<sub>x</sub> 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 rule [3745-109-21](#) of the Administrative Code, the Administrator shall 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 director or the Administrator. By issuing the notice of disapproval, the director 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 paragraph (B) of this rule for each disapproved monitoring system.

(D) Notifications.

The CAIR designated representative for a CAIR NO<sub>x</sub> ozone season unit shall submit written notice to the director and the Administrator in accordance with 40 CFR 75.61.

(E) Record keeping and reporting.

(1) General provisions. The CAIR designated representative shall comply with all record keeping and reporting requirements in this section, the applicable record keeping and reporting requirements under 40 CFR 75.73, and the requirements of paragraph (A)(5)(a) of rule [3745-109-15](#) of the Administrative Code.

(2) Monitoring plans. The owner or operator of a CAIR NO<sub>x</sub> ozone season unit shall comply with requirements of 40 CFR 75.73(c) and 40 CFR 75.73(e) 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 paragraphs (D) and (E)(1) of rule [3745-109-21](#) of the Administrative Code.



(3) Certification applications. The CAIR designated representative shall submit an application to the director within forty-five days after completing all initial certification or recertification tests required under paragraph (B) of this rule, including the information required under 40 CFR 75.63.

(4) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(a) If the CAIR NO<sub>x</sub> ozone season unit is subject to an acid rain emissions limitation or a CAIR NO<sub>x</sub> emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this rule, the CAIR designated representative shall meet the requirements of 40 CFR Part 75, Subpart H (concerning monitoring of NO<sub>x</sub> mass emissions) for such unit for the entire year and shall report the NO<sub>x</sub> 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 to 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 paragraph (A)(2) of this rule, 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 to June 30, 2008;

(iii) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii) of this rule, 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 rule [3745-109-21](#) of the Administrative Code, the calendar quarter corresponding to the date specified in paragraph (E)(2) of rule [3745-109-21](#) of the Administrative Code; and

(iv) Notwithstanding paragraphs (E)(4)(a)(i) and (E)(4)(a)(ii), for a CAIR NO<sub>x</sub> ozone season opt-in unit under rule [3745-109-21](#) of the Administrative Code, the calendar quarter corresponding to the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program as provided in paragraph (E)(7) of rule [3745-109-21](#) of the Administrative Code.

(b) If the CAIR NO<sub>x</sub> ozone season unit is not subject to an acid rain emissions limitation or a CAIR NO<sub>x</sub> emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of 40 CFR Part 75, Subpart H (concerning monitoring of NO<sub>x</sub> mass emissions) for such unit for the entire year and report the NO<sub>x</sub> mass emissions data and heat input data for such unit in accordance with paragraph (E)(4)(a) of this rule; or

(ii) Meet the requirements of 40 CFR Part 75, Subpart H for the control period (including the requirements in 40 CFR 75.74(c)) and report NO<sub>x</sub> mass emissions data and heat input data (including the data described in 40 CFR 75.74(c)(6)) 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 to 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 paragraph (A)(2) of this rule, unless that

date is not during a control period, in which case reporting shall commence in the quarter that includes May first to June thirtieth of the first control period after such date;

(c) Notwithstanding paragraphs (E)(4)(b)(ii)(a) and (E)(4)(b)(ii)(b) of this rule, 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 rule [3745-109-21](#) of the Administrative Code, the calendar quarter corresponding to the date specified in paragraph (E)(2) of rule [3745-109-21](#) of the Administrative Code; and

(d) Notwithstanding paragraphs (E)(4)(b)(ii)(a) and (E)(4)(b)(ii)(b) of this rule, for a CAIR NO<sub>x</sub> ozone season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program as provided in paragraph (E)(7) of rule [3745-109-21](#) of the Administrative Code.

(c) The CAIR designated representative shall submit each quarterly report to the Administrator within thirty days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f).

(d) For CAIR NO<sub>x</sub> ozone season units that are also subject to an acid rain emissions limitation or the CAIR NO<sub>x</sub> annual trading program or CAIR SO<sub>2</sub> trading program, or Hg budget trading program, quarterly reports shall include the applicable data and information required by 40 CFR Part 75, Subparts F to I, as applicable, in addition to the NO<sub>x</sub> mass emission data, heat input data, and other information required by this rule.

(5) 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:

(a) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR Part 75, including the quality assurance procedures and specifications;

(b) For a unit with add-on NO<sub>x</sub> emission controls and for all hours where NO<sub>x</sub> data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B and the substitute data values do not systematically underestimate NO<sub>x</sub> emissions; and

(c) For a unit that is reporting on a control period basis under paragraph (E)(4)(b)(ii) of this rule, the NO<sub>x</sub> emission rate and NO<sub>x</sub> concentration values substituted for missing data under 40 CFR Part 75, Subpart D are calculated using only values from a control period and do not systematically underestimate NO<sub>x</sub> emissions.

(F) Petitions.

(1) Except as provided in paragraph (F)(2)(a) of this rule, the CAIR designated representative of a CAIR NO<sub>x</sub> ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this rule is in

accordance with this rule only to the extent that the petition is approved in writing by the Administrator, in consultation with the director.

(2) Petition process.

(a) The CAIR designated representative of a CAIR NO<sub>x</sub> ozone season unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to any requirement of this rule. Application of an alternative to any requirement of this subpart is in accordance with this rule only to the extent that the petition is approved in writing by both the director and the Administrator.

(b) The CAIR designated representative of a CAIR NO<sub>x</sub> ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72. Application of an alternative to any such requirement is in accordance with this rule only to the extent that the petition is approved in writing by both the director and the Administrator.

Effective: 07/16/2009

R.C. [119.032](#) review dates: 09/27/2012

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Prior Effective Dates: 9/27/2007

## **3745-109-21 CAIR NO<sub>x</sub> Ozone Season Opt-in Units.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (H) of rule [3745-109-01](#) of the Administrative Code titled “Incorporation by Reference.”]

### **(A) Applicability.**

A CAIR NO<sub>x</sub> ozone season opt-in unit must be a unit that:

- (1) Is located in the state;
- (2) Is not a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;
- (3) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;
- (4) Has or is required or qualified to have a Title V operating permit or other federally enforceable permit; and
- (5) Vents all of its emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of rule [3745-109-20](#) of the Administrative Code.

### **(B) General requirements.**

- (1) Except as otherwise provided in paragraphs (A) to (C) and (E) to (G) of rule [3745-109-01](#) of the Administrative Code, and rules [3745-109-15](#), [3745-109-16](#), [3745-109-18](#), [3745-109-19](#) and [3745-109-20](#) of the Administrative Code, a CAIR NO<sub>x</sub> ozone season opt-in unit shall be treated as a CAIR NO<sub>x</sub> ozone season unit for purposes of applying such paragraphs and rules.
- (2) Solely for purposes of applying, as provided in this rule, the requirements of rule [3745-109-20](#) of the Administrative Code 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 rule, such unit shall be treated as a CAIR NO<sub>x</sub> ozone season unit before issuance of a CAIR opt-in permit for such unit.

### **(C) CAIR designated representative.**

Any CAIR NO<sub>x</sub> 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 rule, located at the same source as one or more CAIR NO<sub>x</sub> ozone season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO<sub>x</sub> ozone season units.

### **(D) Applying for CAIR opt-in permit.**

- (1) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO<sub>x</sub> ozone season opt-in unit in paragraph (A) of this rule

may apply for an initial CAIR opt-in permit at any time, except as provided under paragraphs (G)(6) and (G)(7) of this rule, and, in order to apply, must submit the following:

(a) A complete CAIR permit application under paragraph (C) of rule [3745-109-16](#) of the Administrative Code;

(b) A certification, in a format specified by the director, that the unit:

(i) Is not a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code and is not covered by a retired unit exemption under paragraph (D) of rule [3745-109-01](#) of the Administrative Code that is in effect;

(ii) Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than eight hundred seventy-six hours during the six months immediately preceding submission of the CAIR permit application under paragraph (C) of rule [3745-109-16](#) of the Administrative Code;

(c) A monitoring plan in accordance with rule [3745-109-20](#) of the Administrative Code;

(d) A complete certificate of representation under paragraph (D) of rule [3745-109-15](#) of the Administrative Code consistent with paragraph (C) of this rule, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(e) A statement, in a format specified by the director, whether the CAIR designated representative requests that the unit be allocated CAIR NO<sub>x</sub> ozone season allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule). If allocation under paragraph (I)(3) of this rule 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.

(2) Duty to reapply.

(a) The CAIR designated representative of a CAIR NO<sub>x</sub> ozone season opt-in unit shall submit a complete CAIR permit application under paragraph (C) of rule [3745-109-16](#) of the Administrative Code to renew the CAIR opt-in unit permit in accordance with the director's regulations for Title V operating permits, or the director's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(b) Unless the director issues a notification of acceptance of withdrawal of the CAIR NO<sub>x</sub> ozone season opt-in unit from the CAIR NO<sub>x</sub> ozone season trading program in accordance with paragraph (G) of this rule or the unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the CAIR NO<sub>x</sub> ozone season opt-in unit shall remain subject to the requirements for a CAIR NO<sub>x</sub> ozone season opt-in unit, even if the CAIR designated representative for the CAIR NO<sub>x</sub> 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 (D)(2)(a) of this rule.

(E) Opt-in process.

The director shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under paragraph (D) of this rule is submitted in accordance with the following:

(1) Interim review of monitoring plan. The director and the Administrator shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under paragraph (D) of this rule. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO<sub>x</sub> emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with rule [3745-109-20](#) of the Administrative Code. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) Monitoring and reporting.

(a) Monitoring.

(i) If the director and the Administrator determine that the monitoring plan is sufficient under paragraph (E)(1) of this rule, the owner or operator shall monitor and report the NO<sub>x</sub> emissions rate and the heat input of the unit and all other applicable parameters, in accordance with rule [3745-109-20](#) of the Administrative Code, starting on the date of certification of the appropriate monitoring systems under rule [3745-109-20](#) of the Administrative Code and continuing until a CAIR opt-in permit is denied under paragraph (E)(6) of this rule or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO<sub>x</sub> ozone season trading program in accordance with paragraph (G) of this rule.

(ii) The monitoring and reporting under paragraph (E)(2)(a)(i) of this rule shall include the entire control period immediately before the date on which the unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, during which period monitoring system availability must not be less than ninety per cent under rule [3745-109-20](#) of the Administrative Code and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(b) To the extent the NO<sub>x</sub> emissions rate and the heat input of the unit are monitored and reported in accordance with rule [3745-109-20](#) of the Administrative Code for one or more control periods, in addition to the control period under paragraph (E)(2)(a)(ii) of this rule, during which control periods monitoring system availability is not less than ninety per cent under rule [3745-109-20](#) of the Administrative Code 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 three years before the unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, such information shall be used as provided in paragraphs (E)(3) and (E)(4) of this rule.

(3) Baseline heat input. The unit's baseline heat rate shall equal:

(a) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule, the unit's total heat input (in mmBtu) for the control period; or

(b) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, the average of

the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (E)(2)(a)(ii) and (E)(2)(b) of this rule.

(4) Baseline NO<sub>x</sub> emission rate. The unit's baseline NO<sub>x</sub> emission rate shall equal:

(a) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (E)(2)(a) of this rule of this section, the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for the control period;

(b) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, and the unit does not have add-on NO<sub>x</sub> emission controls during any such control periods, the average of the amounts of the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for the control periods under paragraphs (E)(2)(a)(ii) and (E)(2)(b) of this rule; or

(c) If the unit's NO<sub>x</sub> emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (E)(2)(a) and (E)(2)(b) of this rule, and the unit has add-on NO<sub>x</sub> emission controls during any such control periods, the average of the amounts of the unit's NO<sub>x</sub> emissions rate (in pounds per mmBtu) for such control periods during which the unit has add-on NO<sub>x</sub> emission controls.

(5) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO<sub>x</sub> emissions rate for the unit under paragraphs (E)(3) and (E)(4) of this rule and if the director determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO<sub>x</sub> ozone season opt-in unit in paragraph (A) of this rule and meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a CAIR opt-in permit. The director shall provide a copy of the CAIR opt-in permit to the Administrator, who shall then establish a compliance account for the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit unless the source already has a compliance account.

(6) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (E)(1) to (E)(5) of this rule, if at any time before issuance of a CAIR opt-in permit for the unit, the director determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO<sub>x</sub> ozone season opt-in unit in paragraph (A) of this rule or meets the elements certified in paragraph (D)(1)(b) of this rule, the director shall issue a denial of a CAIR opt-in permit for the unit.

(7) Date of entry into CAIR NO<sub>x</sub> ozone season trading program. A unit for which an initial CAIR opt-in permit is issued by the director shall become a CAIR NO<sub>x</sub> ozone season opt-in unit, and a CAIR NO<sub>x</sub> ozone season unit, as of the later of May 1, 2009 or May first of the first control period during which such CAIR opt-in permit is issued.

(8) Repowered CAIR NO<sub>x</sub> ozone season opt-in unit.

(a) If a CAIR designated representative requests, and the director issues a CAIR opt-in permit providing for, allocation to a CAIR NO<sub>x</sub> ozone season opt-in unit of CAIR NO<sub>x</sub> ozone season allowances under paragraph (I)(3) of this rule and such unit is repowered after its date of entry into the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, the repowered unit shall be treated as a CAIR NO<sub>x</sub> ozone season opt-in unit replacing the original



CAIR NO<sub>x</sub> ozone season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(b) Notwithstanding paragraphs (E)(3) and (E)(4) of this rule, as of the date of start-up under paragraph (E)(8)(a) of this rule, 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<sub>x</sub> emission rate as the original CAIR NO<sub>x</sub> ozone season opt-in unit, and the original CAIR NO<sub>x</sub> ozone season opt-in unit shall no longer be treated as a CAIR NO<sub>x</sub> ozone season opt-in unit or a CAIR NO<sub>x</sub> ozone season unit.

(F) CAIR opt-in permit contents.

(1) Each CAIR opt-in permit shall contain:

(a) All elements required for a complete CAIR permit application under paragraph (C) of rule [3745-109-16](#) of the Administrative Code;

(b) The certification in paragraph (D)(1)(b) of this rule;

(c) The unit's baseline heat input under paragraph (E)(3) of this rule;

(d) The unit's baseline NO<sub>x</sub> emission rate under paragraph (E)(4) of this rule;

(e) A statement whether the unit is to be allocated CAIR NO<sub>x</sub> allowances under paragraph (I)(2) or (I)(3) of this rule (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule;

(f) A statement that the unit may withdraw from the CAIR NO<sub>x</sub> ozone season trading program only in accordance with paragraph (G) of this rule; and

(g) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of paragraph (H) of this rule.

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under paragraph (B) of rule [3745-109-01](#) of the Administrative Code and, upon recordation by the Administrator under rules [3745-109-18](#) and [3745-109-19](#) of the Administrative Code or this rule, every allocation, transfer, or deduction of CAIR NO<sub>x</sub> ozone season allowances to or from the compliance account of the source that includes a CAIR NO<sub>x</sub> ozone season opt-in unit covered by the CAIR opt-in permit.

(3) 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<sub>x</sub> ozone season opt-in unit is located and in a Title V operating permit or other federally enforceable permit for the source.

(G) Withdrawal from CAIR NO<sub>x</sub> ozone season trading program.

Except as provided under paragraph (G)(7) of this rule, a CAIR NO<sub>x</sub> ozone season opt-in unit may withdraw from the CAIR NO<sub>x</sub> ozone season trading program, but only if the director issues a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> ozone season opt-in unit

of the acceptance of the withdrawal of the CAIR NO<sub>x</sub> ozone season opt-in unit in accordance with paragraph (G)(4) of this rule.

(1) Requesting withdrawal. In order to withdraw a CAIR NO<sub>x</sub> ozone season opt-in unit from the CAIR NO<sub>x</sub> ozone season trading program, the CAIR designated representative of the CAIR NO<sub>x</sub> ozone season opt-in unit shall submit to the director a request to withdraw effective as of midnight of September thirtieth of a specified calendar year, which date must be at least four years after September thirtieth of the year of entry into the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of rule 3745-109-21 of the Administrative Code. The request must be submitted no later than ninety days before the requested effective date of withdrawal.

(2) Conditions for withdrawal. Before a CAIR NO<sub>x</sub> ozone season opt-in unit covered by a request under paragraph (G)(1) of this rule may withdraw from the CAIR NO<sub>x</sub> ozone season trading program and the CAIR opt-in permit may be terminated under paragraph (G)(5) of this rule, the following conditions must be met.

(a) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit must meet the requirement to hold CAIR NO<sub>x</sub> ozone season allowances under paragraph (E)(3) of rule [3745-109-01](#) of the Administrative Code and cannot have any excess emissions.

(b) After the requirement for withdrawal under paragraph (G)(2)(a) of this rule is met, the Administrator shall deduct from the compliance account of the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit CAIR NO<sub>x</sub> ozone season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO<sub>x</sub> ozone season allowances allocated to the CAIR NO<sub>x</sub> ozone season opt-in unit under paragraph (I) of this rule for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO<sub>x</sub> ozone season units at the source, the Administrator shall close the compliance account, and the owners and operators of the CAIR NO<sub>x</sub> ozone season opt-in unit may submit a CAIR NO<sub>x</sub> ozone season allowance transfer for any remaining CAIR NO<sub>x</sub> ozone season allowances to another CAIR NO<sub>x</sub> ozone season allowance tracking system in accordance with rule [3745-109-19](#) of the Administrative Code.

(3) Notification.

(a) After the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are met (including deduction of the full amount of CAIR NO<sub>x</sub> ozone season allowances required), the director shall issue a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> ozone season opt-in unit of the acceptance of the withdrawal of the CAIR NO<sub>x</sub> ozone season opt-in unit as of midnight on September thirtieth of the calendar year for which the withdrawal was requested.

(b) If the requirements for withdrawal under paragraphs (G)(1) and (G)(2) of this rule are not met, the director shall issue a notification to the CAIR designated representative of the CAIR NO<sub>x</sub> ozone season opt-in unit that the CAIR NO<sub>x</sub> ozone season opt-in unit's request to withdraw is denied. Such CAIR NO<sub>x</sub> opt-in unit shall continue to be a CAIR NO<sub>x</sub> ozone season opt-in unit.

(4) Permit amendment. After the director issues a notification under paragraph (G)(3)(a) of this rule that the requirements for withdrawal have been met, the director shall revise the CAIR permit covering the CAIR NO<sub>x</sub> ozone season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (G)(3)(a) of this rule. The unit shall continue to be a CAIR NO<sub>x</sub> ozone season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO<sub>x</sub> ozone season trading program concerning any control periods for which the unit is a CAIR NO<sub>x</sub> ozone season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(5) Reapplication upon failure to meet conditions of withdrawal. If the director denies the CAIR NO<sub>x</sub> ozone season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (G)(1) and (G)(2) of rule 3745-109-21 of the Administrative Code.

(6) Ability to reapply to the CAIR NO<sub>x</sub> ozone season trading program. Once a CAIR NO<sub>x</sub> ozone season opt-in unit withdraws from the CAIR NO<sub>x</sub> 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 paragraph (D) of this rule for such CAIR NO<sub>x</sub> ozone season opt-in unit before the date that is four years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under paragraph (E) of this rule.

(7) Inability to withdraw. Notwithstanding paragraphs (G)(1) to (G)(6) of this rule, a CAIR NO<sub>x</sub> ozone season opt-in unit shall not be eligible to withdraw from the CAIR NO<sub>x</sub> ozone season trading program if the CAIR designated representative of the CAIR NO<sub>x</sub> opt-in unit requests, and the director issues a CAIR opt-in permit providing for, allocation to the CAIR NO<sub>x</sub> ozone season opt-in unit of CAIR NO<sub>x</sub> ozone season allowances under paragraph (I)(3) of this rule.

(H) Change in regulatory status.

(1) Notification. If a CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, then the CAIR designated representative shall notify in writing the director and the Administrator of such change in the CAIR NO<sub>x</sub> ozone season opt-in unit's regulatory status, within thirty days of such change.

(2) Director's and Administrator's actions.

(a) If a CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the director shall revise the CAIR NO<sub>x</sub> ozone season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under paragraph (D) of rule [3745-109-16](#) of the Administrative Code, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code.

(b) Allowance deductions.

(i) The Administrator shall deduct from the compliance account of the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit that becomes a CAIR NO<sub>x</sub> ozone season unit under

paragraph (C) of rule [3745-109-01](#) of the Administrative Code, CAIR NO<sub>x</sub> ozone season allowances equal in amount to and allocated for the same or a prior control period as:

- (a) Any CAIR NO<sub>x</sub> ozone season allowances allocated to the CAIR NO<sub>x</sub> ozone season opt-in unit under paragraph (I) of this rule for any control period after the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code; and
  - (b) If the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code is not September thirtieth, the CAIR NO<sub>x</sub> ozone season allowances allocated to the CAIR NO<sub>x</sub> ozone season opt-in unit under paragraph (I) of this rule for the control period that includes the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code 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<sub>x</sub> ozone season unit that becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code contains the CAIR NO<sub>x</sub> ozone season allowances necessary for completion of the deduction under paragraph (H)(2)(b)(i) of this rule.

(c) Allowance allocations.

- (i) For every control period after the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, the CAIR NO<sub>x</sub> ozone season opt-in unit shall be allocated CAIR NO<sub>x</sub> ozone season allocations under paragraph (C) of rule [3745-109-17](#) of the Administrative Code.
- (ii) If the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code is not September thirtieth, the following amount of CAIR NO<sub>x</sub> ozone season allowances shall be allocated to the CAIR NO<sub>x</sub> ozone season opt-in unit (as a CAIR NO<sub>x</sub> ozone season unit) under paragraph (C) of rule [3745-109-17](#) of the Administrative Code for the control period that includes the date on which the CAIR NO<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code:
  - (a) The amount of CAIR NO<sub>x</sub> ozone season allowances otherwise allocated to the CAIR NO<sub>x</sub> ozone season opt-in unit (as a CAIR NO<sub>x</sub> ozone season unit) under paragraph (C) of rule [3745-109-17](#) of the Administrative Code 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<sub>x</sub> ozone season opt-in unit becomes a CAIR NO<sub>x</sub> ozone season unit under paragraph (C) of rule [3745-109-01](#) of the Administrative Code, divided by the total number of days in the control period; and
  - (c) Rounded to the nearest whole allowance as appropriate.

(I) CAIR NO<sub>x</sub> ozone season allowance allocations to CAIR NO<sub>x</sub> ozone season opt-in units.

(1) Timing requirements.

(a) When the CAIR opt-in permit is issued under paragraph (E)(5) of this rule, the director shall allocate CAIR NO<sub>x</sub> ozone season allowances to the CAIR NO<sub>x</sub> ozone season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(b) By no later than July thirty-first, of the control period after the control period in which a CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, and July thirty-first of each year thereafter, the director shall allocate CAIR NO<sub>x</sub> ozone season allowances to the CAIR NO<sub>x</sub> 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<sub>x</sub> ozone season opt-in unit, in accordance with paragraph (I)(2) or (I)(3) of this rule.

(2) Calculation of allocation. For each control period for which a CAIR NO<sub>x</sub> ozone season opt-in unit is to be allocated CAIR NO<sub>x</sub> ozone season allowances, the director shall allocate allowances in accordance with the following procedures:

(a) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> ozone season allowance allocation shall be the lesser of:

(i) The CAIR NO<sub>x</sub> ozone season opt-in unit's baseline heat input determined under paragraph (E)(3) of this rule; or

(ii) The CAIR NO<sub>x</sub> ozone season opt-in unit's heat input, as determined in accordance with rule [3745-109-20](#) of the Administrative Code, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule.

(b) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating CAIR NO<sub>x</sub> ozone season allowance allocations shall be the lesser of:

(i) The CAIR NO<sub>x</sub> ozone season opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule and multiplied by seventy per cent; or

(ii) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> ozone season opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> ozone season allowances are to be allocated.

(c) The director shall allocate CAIR NO<sub>x</sub> ozone season allowances to the CAIR NO<sub>x</sub> ozone season opt-in unit in an amount equaling the heat input under paragraph (I)(2)(a) of this rule, multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(2)(b) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate.

(3) Notwithstanding paragraph (I)(2) of this rule and if the CAIR designated representative requests, and the director issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under paragraph (D)(1)(e) of this rule) providing for, allocation to a CAIR NO<sub>x</sub> ozone season opt-in unit of CAIR NO<sub>x</sub> ozone season allowances under this paragraph (subject to the conditions in paragraphs (E)(8) and (G)(7) of this rule), the director shall allocate to the CAIR NO<sub>x</sub> ozone season opt-in unit as follows:

(a) For each control period in 2009 to 2014 for which the CAIR NO<sub>x</sub> ozone season opt-in unit is to be allocated CAIR NO<sub>x</sub> ozone season allowances:

(i) The heat input (in mmBtu) used for calculating CAIR NO<sub>x</sub> ozone season allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule;

(ii) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating CAIR NO<sub>x</sub> ozone season allowance allocations shall be the lesser of:

(a) The CAIR NO<sub>x</sub> ozone season opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule; or

(b) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> ozone season opt-in unit at any time during the control period in which the CAIR NO<sub>x</sub> ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule;

(iii) The director shall allocate CAIR NO<sub>x</sub> ozone season allowances to the CAIR NO<sub>x</sub> ozone season opt-in unit in an amount equaling the heat input under paragraph (I)(3)(a)(i) of this rule, multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(3)(a)(ii) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate;

(b) For each control period in 2015 and thereafter for which the CAIR NO<sub>x</sub> ozone season opt-in unit is to be allocated CAIR NO<sub>x</sub> ozone season allowances:

(i) The heat input (in mmBtu) used for calculating the CAIR NO<sub>x</sub> ozone season allowance allocations shall be determined as described in paragraph (I)(2)(a) of this rule;

(ii) The NO<sub>x</sub> emission rate (in pounds per mmBtu) used for calculating the CAIR NO<sub>x</sub> ozone season allowance allocation shall be the lesser of:

(a) 0.15 pound per mmBtu;

(b) The CAIR NO<sub>x</sub> ozone season opt-in unit's baseline NO<sub>x</sub> emissions rate (in pounds per mmBtu) determined under paragraph (E)(4) of this rule; or

(c) The most stringent state or federal NO<sub>x</sub> emissions limitation applicable to the CAIR NO<sub>x</sub> ozone season opt-in unit at any time during the control period for which CAIR NO<sub>x</sub> ozone season allowances are to be allocated;

(iii) The director shall allocate CAIR NO<sub>x</sub> ozone season allowances to the CAIR NO<sub>x</sub> ozone season opt-in unit in an amount equaling the heat input under paragraph (I)(3)(a)(i) of this rule, multiplied by the NO<sub>x</sub> emission rate under paragraph (I)(3)(a)(ii) of this rule, divided by two thousand pounds per ton, and rounded to the nearest whole allowance as appropriate.

#### (4) Recordation.

(a) The Administrator shall record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit, the CAIR NO<sub>x</sub> ozone season allowances allocated by the director to the CAIR NO<sub>x</sub> ozone season opt-in unit under paragraph (I)(1)(a) of this rule.

(b) By September first, after the control period in which a CAIR ozone season opt-in unit enters the CAIR NO<sub>x</sub> ozone season trading program under paragraph (E)(7) of this rule, and September first of each year thereafter, the Administrator shall record, in the compliance account of the source that includes the CAIR NO<sub>x</sub> ozone season opt-in unit, the CAIR NO<sub>x</sub> ozone season allowances allocated by the director to the CAIR NO<sub>x</sub> ozone season opt-in unit under paragraph (I)(1)(b) of this rule.

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