This content is from the eCFR and is authoritative but unofficial.

Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter C —Air Programs
Part 97 —Federal NOX Budget Trading Program, CAIR NOX and SO2 Trading Programs, CSAPR NOX and SO2 Trading Programs, and Texas SO2 Trading Program

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

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

Subpart FFFFF Texas SO_2 Trading Program

§ 97.901 Purpose.
§ 97.902 Definitions.
§ 97.903 Measurements, abbreviations, and acronyms.
§ 97.904 Applicability.
§ 97.905 Retired unit exemptions.
§ 97.906 General provisions.
§ 97.907 Computation of time.
§ 97.908 Administrative appeal procedures.
§ 97.909 [Reserved]
§ 97.910 Texas SO_2 Trading Program budget, Supplemental Allowance Pool budget, and variability limit.
§ 97.911 Texas SO_2 Trading Program allowance allocations.
§ 97.912 Texas SO_2 Trading Program Supplemental Allowance Pool.
§ 97.913 Authorization of designated representative and alternate designated representative.
§ 97.914 Responsibilities of designated representative and alternate designated representative.
§ 97.915 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.
§ 97.916 Certificate of representation.
§ 97.917 Objections concerning designated representative and alternate designated representative.
§ 97.918 Delegation by designated representative and alternate designated representative.
§ 97.919 [Reserved]
§ 97.920 Establishment of compliance accounts, assurance accounts, and general accounts.
§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.
§ 97.922 Submission of Texas SO_2 Trading Program allowance transfers.
§ 97.923 Recordation of Texas SO_2 Trading Program allowance transfers.
§ 97.924 Compliance with Texas SO_2 Trading Program emissions limitations.
§ 97.925 Compliance with Texas SO_2 Trading Program assurance provisions.
§ 97.926 Banking.

§ 97.927 Account error.
§ 97.928 Administrator's action on submissions.
§ 97.929 [Reserved]
§ 97.930 General monitoring, recordkeeping, and reporting requirements.
§ 97.931 Initial monitoring system certification and recertification procedures.
§ 97.932 Monitoring system out-of-control periods.
§ 97.933 Notifications concerning monitoring.
§ 97.934 Recordkeeping and reporting.
§ 97.935 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

Subpart FFFFF—Texas SO_2 Trading Program

Source: 82 FR 48364, Oct. 17, 2017, unless otherwise noted.

§ 97.901 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Texas SO_2 Trading Program under sections 110 and 169A of the Clean Air Act and 40 CFR 52.2312, as a means of addressing Texas' obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to sulfur dioxide emissions from electricity generating units.

§ 97.902 Definitions.

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

Acid Rain Program means a multi-state SO_2 and NO_X air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or *allocation* means, with regard to Texas SO_2 Trading Program allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart or any SIP revision submitted by the State approved by the Administrator, of the amount of such Texas SO_2 Trading Program allowances to be initially credited, at no cost to the recipient, to a Texas SO_2 Trading Program unit.

Allowance Management System means the system by which the Administrator records allocations, transfers, and deductions of Texas SO_2 Trading Program allowances under the Texas SO_2 Trading Program. Such allowances are allocated, recorded, held, transferred, or deducted only as whole allowances.

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Texas SO_2 Trading Program allowances.

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a Texas SO_2 Trading Program allowance transfer must be submitted for recordation in a Texas SO_2 Trading Program source's compliance account in order to be available for use in complying with the source's Texas SO_2 Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

Alternate designated representative means, for a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the Texas SO_2 Trading Program. If the Texas SO_2 Trading Program source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.925(b)(3) for certain owners and operators of a group of one or more Texas SO_2 Trading Program sources and units, in which are held Texas SO_2 Trading Program allowances available for use for a control period in a given year in complying with the Texas SO_2 Trading Program assurance provisions in accordance with §§ 97.906 and 97.925.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of Texas SO_2 Trading Program allowances held in the general account and, for a Texas SO_2 Trading Program source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subpart.

Business day means a day that does not fall on a weekend or a federal holiday.

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

Coal means "coal" as defined in § 72.2 of this chapter.

Commence commercial operation means, with regard to a Texas SO_2 Trading Program unit, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

Common designated representative means, with regard to a control period in a given year, a designated representative where, as of July 1 immediately after the allowance transfer deadline for such control period, the same natural person is authorized under §§ 97.913(a) and 97.915(a) as the designated representative for a group of one or more Texas SO_2 Trading Program sources and units.

Common designated representative's assurance level means, with regard to a specific common designated representative and control period in a given year for which the State assurance level is exceeded as described in § 97.906(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of Texas SO_2 Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to the group of one or more Texas SO_2 Trading Program units having the common designated representative for such control period multiplied by the sum for such control period of the Texas SO_2 Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b) and divided by the sum of the total amount of Texas SO_2 Trading Program allowances allocated for such control period under § 97.911, or deemed to have been allocated under paragraph (2) of this definition, to all Texas SO_2 Trading Program units;

(2) Provided that, in the case of a Texas SO_2 Trading Program unit that operates during, but has no amount of Texas SO_2 Trading Program allowances allocated under § 97.911 for, such control period, the unit shall be treated, solely for purposes of this definition, as being allocated the amount of Texas SO_2 Trading Program allowances shown for the unit in § 97.911(a)(1).

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and the total amount of SO_2 emissions from all Texas SO_2 Trading Program units during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more Texas SO_2 Trading Program units having the common designated representative for such control period.

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

Compliance account means an Allowance Management System account, established by the Administrator for a Texas SO_2 Trading Program source under this subpart, in which any Texas SO_2 Trading Program allowance allocations to the Texas SO_2 Trading Program units at the source are recorded and in which are held any Texas SO_2 Trading Program allowances available for use for a control period in a given year in complying with the source's Texas SO_2 Trading Program emissions limitation in accordance with §§ 97.906 and 97.924.

Continuous emission monitoring system or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of SO_2 emissions, stack gas volumetric flow rate, stack gas moisture content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.930 through 97.935. The following systems are the principal types of continuous emission monitoring systems:

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

(2) A SO_2 monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

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

(4) A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

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

Control period means the period starting January 1 of a calendar year, except as provided in § 97.906(c)(3), and ending on December 31 of the same year, inclusive.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(ii), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

Designated representative means, for a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the Texas SO_2 Trading Program. If the Texas SO_2 Trading Program source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

Excess emissions means any ton of emissions from the Texas SO_2 Trading Program units at a Texas SO_2 Trading Program source during a control period in a given year that exceeds the Texas SO_2 Trading Program emissions limitation for the source for such control period.

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

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

General account means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

Generator means a device that produces electricity.

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Indian country means "Indian country" as defined in 18 U.S.C. 1151.

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

(1) For the life of the unit;

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

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

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

Natural gas means "natural gas" as defined in § 72.2 of this chapter.

Natural person means a human being, as opposed to a legal person, which may be a private (*i.e.,* business entity or non-governmental organization) or public (*i.e.,* government) organization.

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Operate or *operation* means, with regard to a unit, to combust fuel.

Operator means, for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at a source respectively, any person who operates, controls, or supervises a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

Owner means, for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at a source, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit;

(2) Any holder of a leasehold interest in a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit, provided that, unless expressly provided for in a leasehold agreement, "owner" shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Texas SO_2 Trading Program unit; and

(3) Any purchaser of power from a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit under a life-of-the-unit, firm power contractual arrangement.

Permanently retired means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

Permitting authority means "permitting authority" as defined in §§ 70.2 and 71.2 of this chapter.

Receive or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to Texas SO_2 Trading Program allowances, the moving of Texas SO_2 Trading Program allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, transfer, or deduction.

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

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

Serial number means, for a Texas SO_2 Trading Program allowance, the unique identification number assigned to each Texas SO_2 Trading Program allowance by the Administrator.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of "major source", "stationary source", or "source" as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

State means Texas.

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

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Texas SO_2 Trading Program means an SO_2 air pollution control and emission reduction program established in accordance with this subpart and 40 CFR 52.2312 (including such a program that is revised in a SIP revision approved by the Administrator), or established in a SIP revision approved by the Administrator, as a means of addressing the State's obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to emissions of SO_2 from electricity generating units.

Texas SO_2 Trading Program allowance means a limited authorization issued and allocated by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator, to emit one ton of SO_2 during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Texas SO_2 Trading Program.

Texas SO_2 Trading Program allowance deduction or *deduct Texas SO_2 Trading Program allowances* means the permanent withdrawal of Texas SO_2 Trading Program allowances by the Administrator from a compliance account (*e. g.,* in order to account for compliance with the Texas SO_2 Trading Program emissions limitation) or from an assurance account (*e. g.,* in order to account for compliance with the assurance provisions under §§ 97.906 and 97.925).

Texas SO_2 Trading Program allowances held or *hold Texas SO_2 Trading Program allowances* means the Texas SO_2 Trading Program allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, Texas SO_2 Trading Program allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, Texas SO_2 Trading Program allowance transfer in accordance with this subpart.

Texas SO_2 Trading Program emissions limitation means, for a Texas SO_2 Trading Program source, the tonnage of SO_2 emissions authorized in a control period by the Texas SO_2 Trading Program allowances available for deduction for the source under § 97.924(a) for such control period.

Texas SO_2 Trading Program source means a source that includes one or more Texas SO_2 Trading Program units.

Texas SO_2 Trading Program unit means a unit that is subject to the Texas SO_2 Trading Program under § 97.904.

Unit means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

Unit operating day means, with regard to a unit, a calendar day in which the unit combusts any fuel.

Unit operating hour or hour of unit operation means, with regard to a unit, an hour in which the unit combusts any fuel.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49214, Aug. 12, 2020; 86 FR 23207, Apr. 30, 2021; 88 FR 36904, June 5, 2023]

§ 97.903 Measurements, abbreviations, and acronyms.

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

BART—best available retrofit technology

Btu—British thermal unit

CO_2—carbon dioxide

CSAPR—Cross-State Air Pollution Rule

H_2O—water

hr—hour

lb—pound

mmBtu—million Btu

MWe—megawatt electrical

NO_X—nitrogen oxides

O_2—oxygen

ppm—parts per million

scfh—standard cubic feet per hour

SIP—State implementation plan

SO_2—sulfur dioxide

§ 97.904 Applicability.

(a) Each of the units in Texas listed in the table in § 97.911(a)(1) shall be a Texas SO_2 Trading Program unit, and each source that includes one or more such units shall be a Texas SO_2 Trading Program source, subject to the requirements of this subpart.

(b) [Reserved]

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

§ 97.905 Retired unit exemptions.

(a)

(1) Any Texas SO_2 Trading Program unit that is permanently retired shall be exempt from § 97.906(b) and (c)(1), § 97.924, and §§ 97.930 through 97.935.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Texas SO_2 Trading Program unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b)

(1) A unit exempt under paragraph (a) of this section shall not emit any SO_2, starting on the date that the exemption takes effect.

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

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Texas SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. A retired unit that resumes operation will not receive an allowance allocation under § 97.911. The unit may receive allowances from the Supplemental Allowance Pool pursuant to § 97.912. All other provisions of Subpart FFFFF regarding monitoring, reporting, recordkeeping and compliance will apply on the first date on which the unit resumes operation.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23207, Apr. 30, 2021]

§ 97.906 General provisions.

(a) ***Designated representative requirements.*** The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.913 through 97.918.

(b) ***Emissions monitoring, reporting, and recordkeeping requirements.***

(1) The owners and operators, and the designated representative, of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.930 through 97.935.

(2) The emissions data determined in accordance with §§ 97.930 through 97.935 shall be used to calculate allocations of Texas SO_2 Trading Program allowances under § 97.912 and to determine compliance with the Texas SO_2 Trading Program emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass

emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.930 through 97.935 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero and any fraction of a ton greater than or equal to 0.50 being deemed to be a whole ton.

(c) *SO_2 emissions requirements* —

(1) *Texas SO_2 Trading Program emissions limitation.*

(i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall hold, in the source's compliance account, Texas SO_2 Trading Program allowances available for deduction for such control period under § 97.924(a) in an amount not less than the tons of total SO_2 emissions for such control period from all Texas SO_2 Trading Program units at the source.

(ii) If total SO_2 emissions during a control period in a given year from the Texas SO_2 Trading Program units at a Texas SO_2 Trading Program source are in excess of the Texas SO_2 Trading Program emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall hold the Texas SO_2 Trading Program allowances required for deduction under § 97.924(d); and

(B) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *Texas SO_2 Trading Program assurance provisions.*

(i) If total SO_2 emissions during a control period in a given year from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such SO_2 emissions during such control period exceeds the common designated representative's assurance level for such control period, shall hold (in the assurance account established for the owners and operators of such group) Texas SO_2 Trading Program allowances available for deduction for such control period under § 97.925(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.925(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such SO_2 emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units for such control period, by which each common designated representative's share of such SO_2 emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the Texas SO_2 Trading Program allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period in a given year exceed the State assurance level if such total SO_2 emissions exceed the sum, for such control period, of the Texas SO_2 Trading Program budget under § 97.910(a)(1) and the variability limit under § 97.910(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period exceed the State assurance level or if a common designated representative's share of total SO_2 emissions from the Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold Texas SO_2 Trading Program allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each Texas SO_2 Trading Program allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) ***Compliance periods.***

(i) A Texas SO_2 Trading Program unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on January 1, 2019 and for each control period thereafter.

(ii) A Texas SO_2 Trading Program unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on January 1, 2021 and for each control period thereafter.

(4) ***Vintage of Texas SO_2 Trading Program allowances held for compliance.***

(i) A Texas SO_2 Trading Program allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a Texas SO_2 Trading Program allowance that was allocated for such control period or a control period in a prior year.

(ii) A Texas SO_2 Trading Program allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a Texas SO_2 Trading Program allowance that was allocated for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) ***Allowance Management System requirements.*** Each Texas SO_2 Trading Program allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) ***Limited authorization.*** A Texas SO_2 Trading Program allowance is a limited authorization to emit one ton of SO_2 during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the Texas SO_2 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) ***Property right.*** A Texas SO_2 Trading Program allowance does not constitute a property right.

(d) ***Title V permit requirements.***

(1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of Texas SO_2 Trading Program allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report SO_2 emissions using a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.930 through 97.935 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) ***Additional recordkeeping and reporting requirements.***

(1) Unless otherwise provided, the owners and operators of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.916 for the designated representative for the source and each Texas SO_2 Trading Program unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.916 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the Texas SO_2 Trading Program.

(2) The designated representative of a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall make all submissions required under the Texas SO_2 Trading Program, except as provided in § 97.918. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) ***Liability.***

(1) Any provision of the Texas SO_2 Trading Program that applies to a Texas SO_2 Trading Program source or the designated representative of a Texas SO_2 Trading Program source shall also apply to the owners and operators of such source and of the Texas SO_2 Trading Program units at the source.

(2) Any provision of the Texas SO_2 Trading Program that applies to a Texas SO_2 Trading Program unit or the designated representative of a Texas SO_2 Trading Program unit shall also apply to the owners and operators of such unit.

(g) ***Effect on other authorities.*** No provision of the Texas SO_2 Trading Program or exemption under § 97.905 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a Texas SO_2 Trading Program source or Texas SO_2 Trading Program unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

§ 97.907 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Texas SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Texas SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Texas SO_2 Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.908 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the Texas SO_2 Trading Program are set forth in part 78 of this chapter.

§ 97.909 [Reserved]

§ 97.910 Texas SO_2 Trading Program budget, Supplemental Allowance Pool budget, and variability limit.

(a) The budgets for the Texas SO_2 Trading Program and Supplemental Allowance Pool for the control periods in 2019 and thereafter are as follows:

(1) The Texas SO_2 Trading Program budget for the control period in 2019 and each future control period is 238,395 tons.

(2) The Texas SO_2 Trading Program Supplemental Allowance Pool budget for the control period in 2019 and each future control period is 10,000 tons.

(b) The variability limit for the Texas SO_2 Trading Program budget for the control periods in 2021 and thereafter is 16,688 tons.

(c) The Texas SO_2 Trading Program budget in paragraph (a)(1) of this section does not include any tons in the Supplemental Allowance Pool budget in paragraph (a)(2) of this section or the variability limit in paragraph (b) of this section.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49215, Aug. 12, 2020]

§ 97.911 Texas SO_2 Trading Program allowance allocations.

(a) ***Allocations from the Texas SO_2 Trading Program budget.***

(1) Except as provided in paragraph (a)(2) of this section, Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program budget will be allocated, for the control periods in 2019 and each year thereafter, as provided in Table 1 to this paragraph (a)(1):

Table 1 to Paragraph (a)(1)—Texas SO_2 Trading Program Allocations

Texas SO_2 Trading Program units	ORIS code	Texas SO_2 Trading Program allocation (tons)	Affiliated ownership group
Big Brown Unit 1	3497	8,473	Vistra.
Big Brown Unit 2	3497	8,559	Vistra.
Coleto Creek Unit 1	6178	9,057	Vistra.
Fayette (Sam Seymour) Unit 1	6179	7,979	Lower Colorado River Authority/City of Austin.
Fayette (Sam Seymour) Unit 2	6179	8,019	Lower Colorado River Authority/City of Austin.
Graham Unit 2	3490	226	Vistra.
HW Pirkey Unit 1	7902	8,882	American Electric Power.
Harrington Unit 061B	6193	5,361	Xcel Energy.

Texas SO_2 Trading Program units	ORIS code	Texas SO_2 Trading Program allocation (tons)	Affiliated ownership group
Harrington Unit 062B	6193	5,255	Xcel Energy.
Harrington Unit 063B	6193	5,055	Xcel Energy.
JT Deely Unit 1	6181	6,170	City of San Antonio.
JT Deely Unit 2	6181	6,082	City of San Antonio.
Limestone Unit 1	298	12,081	NRG Energy.
Limestone Unit 2	298	12,293	NRG Energy.
Martin Lake Unit 1	6146	12,024	Vistra.
Martin Lake Unit 2	6146	11,580	Vistra.
Martin Lake Unit 3	6146	12,236	Vistra.
Monticello Unit 1	6147	8,598	Vistra.
Monticello Unit 2	6147	8,795	Vistra.
Monticello Unit 3	6147	12,216	Vistra.
Newman Unit 2	3456	1	El Paso Electric.
Newman Unit 3	3456	1	El Paso Electric.
Newman Unit **4	3456	2	El Paso Electric.
Newman Unit **5	3456	2	El Paso Electric.
Sandow Unit 4	6648	8,370	Vistra.
Sommers Unit 1	3611	55	City of San Antonio.
Sommers Unit 2	3611	7	City of San Antonio.
Stryker Unit ST2	3504	145	Vistra.
Tolk Unit 171B	6194	6,900	Xcel Energy.
Tolk Unit 172B	6194	7,062	Xcel Energy.
WA Parish Unit WAP4	3470	3	NRG Energy.
WA Parish Unit WAP5	3470	9,580	NRG Energy.
WA Parish Unit WAP6	3470	8,900	NRG Energy.
WA Parish Unit WAP7	3470	7,653	NRG Energy.
Welsh Unit 1	6139	6,496	American Electric Power.
Welsh Unit 2	6139	7,050	American Electric Power.
Welsh Unit 3	6139	7,208	American Electric Power.
Wilkes Unit 1	3478	14	American Electric Power.
Wilkes Unit 2	3478	2	American Electric Power.
Wilkes Unit 3	3478	3	American Electric Power.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation pursuant to the table in paragraph (a)(1) of this section does not operate, starting after 2018, during the control period in two consecutive years, such unit will not be allocated the Texas SO_2 Trading Program allowances

provided in paragraph (a)(1) of this section for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All Texas SO_2 Trading Program allowances that would otherwise have been allocated to such unit will be transferred to the Supplemental Allowance Pool for potential allocation in accordance with § 97.912.

(b) [Reserved]

(c) ***Units incorrectly allocated Texas SO_2 Trading Program allowances.***

(1) For each control period in 2019 and thereafter, if the Administrator determines that Texas SO_2 Trading Program allowances were incorrectly allocated under paragraph (a) of this section, or under a provision of a SIP revision approved by the Administrator, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such Texas SO_2 Trading Program allowances under § 97.921.

(3) If the Administrator already recorded such Texas SO_2 Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will deduct from the account in which such Texas SO_2 Trading Program allowances were recorded an amount of Texas SO_2 Trading Program allowances allocated for the same or a prior control period equal to the amount of such already recorded Texas SO_2 Trading Program allowances. The authorized account representative shall ensure that there are sufficient Texas SO_2 Trading Program allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such Texas SO_2 Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded Texas SO_2 Trading Program allowances.

(5) With regard to the Texas SO_2 Trading Program allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section, the Administrator will transfer such Texas SO_2 Trading Program allowances to the Supplemental Allowance Pool for potential allocation in accordance with § 97.912.

[82 FR 48364, Oct. 17, 2017, as amended at 82 FR 50580, Nov. 1, 2017; 85 FR 49216, Aug. 12, 2020; 86 FR 23207, Apr. 30, 2021]

§ 97.912 Texas SO_2 Trading Program Supplemental Allowance Pool.

(a) For the control periods in 2019 and 2020, the Administrator will allocate Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program Supplemental Allowance Pool as follows:

(1) No later than February 15, 2020 and February 15, 2021, the Administrator will review all the quarterly SO_2 emissions reports provided under § 97.934(d) for each Texas SO_2 Trading Program unit for the previous control period. The Administrator will identify each Texas SO_2 Trading Program source for which the total amount of emissions reported for the units at the source for that control period exceeds the total amount of allowances allocated to the units at the source for that control period under § 97.911 and recorded under § 97.921.

(2) For each Texas SO_2 Trading Program source identified under paragraph (a)(1) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount of allowances allocated for that control period under § 97.911 and recorded under § 97.921.

(3)

(i) For Coleto Creek (ORIS 6178), if the source is identified under paragraph (a)(1) of this section, the Administrator will allocate and record in the source's compliance account an amount of allowances from the Supplemental Allowance Pool equal to the lesser of the amount calculated for the source under paragraph (a)(2) of this section or the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section.

(ii) For any Texas SO_2 Trading Program sources identified under paragraph (a)(1) of this section other than Coleto Creek (ORIS 6178), the Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will allocate and record in the compliance account for each such source an amount of allowances from the Supplemental Allowance Pool equal to the amount calculated for the source under paragraph (a)(2) of this section.

(B) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will calculate each such source's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (a)(2) of this section for the source by the sum of the amounts calculated under paragraph (a)(2) of this section for all such sources, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section and rounding to the nearest allowance. The Administrator will adjust the sources' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the sources' allocations to equal the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section that remain after any allocation under paragraph (a)(3)(i) of this section. The Administrator will then record the calculated allocations of allowances in the applicable compliance accounts.

(iii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraphs (a)(3)(i) and (ii) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (d) of this section.

(b) For each control period in 2021 and thereafter, the Administrator will allocate Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program Supplemental Allowance Pool as follows:

(1) For each control period, the Administrator will assign each Texas SO_2 Trading Program unit to an affiliated ownership group reflecting the unit's ownership as of December 31 of the control period. The affiliated ownership group assignments for each control period will be as shown in § 97.911(a)(1) except that the Administrator will revise the assignments, based on the information required to be submitted in accordance with § 97.915(c) and any other information available to the Administrator, as necessary to reflect any ownership transfer resulting in a 50% or greater ownership share of a unit being held by a new owner that the Administrator determines is not affiliated with the previous holder of a 50% or greater ownership share of the unit.

(2) No later than May 1, 2022 and May 1 of each year thereafter, the Administrator will review all the quarterly SO_2 emissions reports provided under § 97.934(d) for each Texas SO_2 Trading Program unit for the previous control period. The Administrator will identify each affiliated ownership group of Texas SO_2 Trading Program units as of December 31 of such control period for which the total amount of emissions reported for the units in the group for that control period exceeds the total amount of allowances allocated to the units in the group for that control period under § 97.911 and recorded under § 97.921.

(3) For each affiliated ownership group of Texas SO_2 Trading Program units identified under paragraph (b)(2) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount of allowances allocated for that control period under § 97.911 and recorded under § 97.921.

(4)

(i) The Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then each such group's allocation of allowances from the Supplemental Allowance Pool shall equal to the amount calculated for the group under paragraph (b)(3) of this section.

(B) If the total for all such affiliated ownership groups of the amounts calculated under paragraph (b)(3) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section, then the Administrator will calculate each such group's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (b)(3) of this section for the group by the sum of the amounts calculated under paragraph (b)(3) of this section for all such groups, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section and rounding to the nearest allowance. The Administrator will adjust the groups' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the groups' allocations to equal the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (d) of this section.

(C) When an affiliated ownership group receives an allocation of allowances under paragraph (b)(4)(i)(A) or (B) of this section, each source in the group whose emissions during the control period for which allowances are being allocated exceed the amount of allowances

allocated to the source under § 97.911 and recorded under § 97.921 will receive a share of the group's allocation. The Administrator will compute each such source's share by dividing the amount of the source's emissions during the control period exceeding the source's allocation under § 97.911 by the sum for all such sources of the amounts of the sources' emissions during the control period exceeding the sources' allocations under § 97.911, then multiplying by the group's allocation under paragraph (b)(4)(i)(A) or (B) of this section and rounding to the nearest allowance. The Administrator will adjust the sources' allocations up or down by one allowance, starting with the largest allocation and continuing in descending order, as necessary to cause the sum of the sources' allocations to equal the group's allocation. The Administrator will then record the calculated allocations of allowances in the applicable sources' compliance accounts.

(ii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraph (b)(4)(i) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (d) of this section.

(c) The Administrator will notify the designated representative of each Texas SO_2 Trading Program source when the allowances from the Supplemental Allowance Pool have been recorded.

(d) The total amount of allowances in the Supplemental Allowance Pool available for allocation for a control period is equal to the sum of the Supplemental Allowance Pool budget under § 97.910(a)(2), any allowances from retired units pursuant to § 97.911(a)(2) and from corrections pursuant to § 97.911(c)(5), and any allowances maintained in the Supplemental Allowance Pool pursuant to paragraph (a)(3)(iii) or (b)(4)(ii) of this section, provided that if the number of allowances in the Supplemental Allowance Pool exceeds the applicable limit for the control period under paragraph (d)(1) or (d)(2) of this section, then the Administrator may only allocate allowances up to such applicable limit.

(1) For the control periods in 2019 and 2020, the total amount of allowances allocated from the Supplemental Allowance Pool for a control period may not exceed by more than 44,711 tons the sum of the Supplemental Allowance Pool budget under § 97.910(a)(2) and any portion of the Texas SO_2 Trading Program budget under § 97.910(a)(1) not otherwise allocated for that control period under § 97.911(a)(1).

(2) For each control period in 2021 and thereafter, the total amount of allowances allocated from the Supplemental Allowance Pool for a control period may not exceed the sum of the variability limit under § 97.910(b) and any portion of the Texas SO_2 Trading Program budget under § 97.910(a)(1) not otherwise allocated for that control period under § 97.911(a)(1).

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49216, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021]

§ 97.913 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.915, each Texas SO_2 Trading Program source, including all Texas SO_2 Trading Program units at the source, shall have one and only one designated representative, with regard to all matters under the Texas SO_2 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO_2 Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each Texas SO_2 Trading Program unit at the source in all matters pertaining to the Texas SO_2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.915, each Texas SO_2 Trading Program source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO_2 Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.902, and §§ 97.914 through 97.918, whenever the term “designated representative” (as distinguished from the term “common designated representative”) is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020]

§ 97.914 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.918 concerning delegation of authority to make submissions, each submission under the Texas SO_2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each Texas SO_2 Trading Program source and Texas SO_2 Trading Program unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: “I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its

attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) The Administrator will accept or act on a submission made for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.918.

§ 97.915 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) ***Changing designated representative.*** The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the Texas SO_2 Trading Program source and the Texas SO_2 Trading Program units at the source.

(b) ***Changing alternate designated representative.*** The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the Texas SO_2 Trading Program source and the Texas SO_2 Trading Program units at the source.

(c) ***Changes in owners and operators.***

(1) In the event an owner or operator of a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.916, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.916 amending the list of owners and operators to reflect the change.

(d) ***Changes in units at the source.*** Within 30 days of any change in which units are located at a Texas SO_2 Trading Program source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.916 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the

unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020]

§ 97.916 Certificate of representation.

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

(1) Identification of the Texas SO_2 Trading Program source, and each Texas SO_2 Trading Program unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, and actual date of commencement of commercial operation, and a statement of whether such source is located in Indian country.

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the Texas SO_2 Trading Program source and of each Texas SO_2 Trading Program unit at the source.

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

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Texas SO_2 Trading Program unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas SO_2 Trading Program on behalf of the owners and operators of the source and of each Texas SO_2 Trading Program unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit."

(iii) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Texas SO_2 Trading Program unit, or where a utility or industrial customer purchases power from a Texas SO_2 Trading Program unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the `designated representative' or `alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Texas SO_2 Trading Program unit at the source; and Texas SO_2 Trading Program allowances and proceeds of transactions involving Texas SO_2 Trading Program allowances will be deemed to be held or distributed in

proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Texas SO_2 Trading Program allowances by contract, Texas SO_2 Trading Program allowances and proceeds of transactions involving Texas SO_2 Trading Program allowances will be deemed to be held or distributed in accordance with the contract."

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.917 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.916 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.916 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the Texas SO_2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of Texas SO_2 Trading Program allowance transfers.

§ 97.918 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) "I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(d) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.918 is terminated."

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

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

§ 97.919 [Reserved]

§ 97.920 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) ***Compliance accounts.*** Upon receipt of a complete certificate of representation under § 97.916, the Administrator will establish a compliance account for the Texas SO_2 Trading Program source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) ***Assurance accounts.*** The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.925(b)(3).

(c) ***General accounts*** —

(1) ***Application for general account.***

(i) Any person may apply to open a general account, for the purpose of holding and transferring Texas SO_2 Trading Program allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

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

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the Texas SO_2 Trading Program allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: "I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account."; and

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

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) ***Authorization of authorized account representative and alternate authorized account representative.***

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account in all matters pertaining to the Texas SO_2 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

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

(C) Each person who has an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Texas SO_2 Trading Program allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) Except in this section, whenever the term "authorized account representative" is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(3) ***Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.***

(i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account.

(iii)

(A) In the event a person having an ownership interest with respect to Texas SO_2 Trading Program allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to Texas SO_2 Trading Program allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account to include the change.

(4) ***Objections concerning authorized account representative and alternate authorized account representative.***

(i) Once a complete application for a general account under paragraph (c)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the Texas SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of Texas SO_2 Trading Program allowance transfers.

(5) ***Delegation by authorized account representative and alternate authorized account representative.***

(i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an "agent");

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: "I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(c)(5)(iv) shall be deemed to be an electronic submission by me."; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.920(c)(5) is terminated."

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) ***Closing a general account.***

(i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted Texas SO_2 Trading Program allowance transfer under § 97.922 for any Texas SO_2 Trading Program allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no Texas SO_2 Trading Program allowance transfers to or from the account for a 12-month period or longer and does not contain any Texas SO_2 Trading Program allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted Texas SO_2 Trading Program allowance transfer under § 97.922 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) ***Responsibilities of authorized account representative and alternate authorized account representative.*** After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Texas SO_2 Trading Program allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.914(a) and 97.918 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021]

§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.

(a) By November 1, 2018, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control periods in 2019, 2020, 2021, and 2022.

(b)

(1) By July 1, 2019 and July 1, 2020, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(2) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control period in the year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(c) By February 15 of 2020 and 2021 and May 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the allowances allocated from the Texas SO_2 Trading Program Supplemental Allowance Pool in accordance with § 97.912 for the control period in the year before the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

(d) [Reserved]

(e) When recording the allocation of Texas SO_2 Trading Program allowances to a Texas SO_2 Trading Program unit in an Allowance Management System account, the Administrator will assign each Texas SO_2 Trading Program allowance a unique identification number that will include digits identifying the year of the control period for which the Texas SO_2 Trading Program allowance is allocated.

(f) Notwithstanding paragraphs (a) and (b) of this section, with respect to the Texas SO_2 Trading Program allowances allocated to Newman Unit **5 in accordance with § 97.911(a) for the control periods in 2019, 2020, 2021, 2022, 2023, and 2024, the Administrator will record the allowances in the source's compliance account by December 31, 2020, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49218, Aug. 12, 2020; 86 FR 23208, Apr. 30, 2021; 87 FR 52481, Aug. 26, 2022]

§ 97.922 Submission of Texas SO_2 Trading Program allowance transfers.

(a) An authorized account representative seeking recordation of a Texas SO_2 Trading Program allowance transfer shall submit the transfer to the Administrator.

(b) A Texas SO_2 Trading Program allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each Texas SO_2 Trading Program allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each Texas SO_2 Trading Program allowance identified by serial number in the transfer.

§ 97.923 Recordation of Texas SO_2 Trading Program allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Texas SO_2 Trading Program allowance transfer that is correctly submitted under § 97.922, the Administrator will record a Texas SO_2 Trading Program allowance transfer by moving each Texas SO_2 Trading Program allowance from the transferor account to the transferee account as specified in the transfer.

(b) A Texas SO_2 Trading Program allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Texas SO_2 Trading Program allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.924 for the control period immediately before such allowance transfer deadline.

(c) Where a Texas SO_2 Trading Program allowance transfer is not correctly submitted under § 97.922, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a Texas SO_2 Trading Program allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a Texas SO_2 Trading Program allowance transfer that is not correctly submitted under § 97.922, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

§ 97.924 Compliance with Texas SO_2 Trading Program emissions limitations.

(a) ***Availability for deduction for compliance.*** Texas SO_2 Trading Program allowances are available to be deducted for compliance with a source's Texas SO_2 Trading Program emissions limitation for a control period in a given year only if the Texas SO_2 Trading Program allowances:

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

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) ***Deductions for compliance.*** After the recordation, in accordance with § 97.923, of Texas SO_2 Trading Program allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account Texas SO_2 Trading Program allowances available under paragraph (a) of this section in order to determine whether the source meets the Texas SO_2 Trading Program emissions limitation for such control period, as follows:

(1) Until the amount of Texas SO_2 Trading Program allowances deducted equals the number of tons of total SO_2 emissions from all Texas SO_2 Trading Program units at the source for such control period; or

(2) If there are insufficient Texas SO_2 Trading Program allowances to complete the deductions in paragraph (b)(1) of this section, until no more Texas SO_2 Trading Program allowances available under paragraph (a) of this section remain in the compliance account.

(c) ***Selection of Texas SO_2 Trading Program allowances for deduction*** —

(1) ***Identification by serial number.*** The designated representative for a source may request that specific Texas SO_2 Trading Program allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas SO_2 Trading Program source and the appropriate serial numbers.

(2) ***First-in, first-out.*** The Administrator will deduct Texas SO_2 Trading Program allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of Texas SO_2 Trading Program allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any Texas SO_2 Trading Program allowances that were recorded in the compliance account pursuant to § 97.921 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other Texas SO_2 Trading Program allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) ***Deductions for excess emissions.*** After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the Texas SO_2 Trading Program source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Texas SO_2 Trading Program allowances, allocated for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to three times the number of tons of the source's excess emissions.

(e) ***Recordation of deductions.*** The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23208, Apr. 30, 2021]

§ 97.925 Compliance with Texas SO_2 Trading Program assurance provisions.

(a) ***Availability for deduction.*** Texas SO_2 Trading Program allowances are available to be deducted for compliance with the Texas SO_2 Trading Program assurance provisions for a control period in a given year by the owners and operators of a group of one or more Texas SO_2 Trading Program sources and units only if the Texas SO_2 Trading Program allowances:

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

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of Texas SO_2 Trading Program sources and units under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) ***Deductions for compliance.*** The Administrator will deduct Texas SO_2 Trading Program allowances available under paragraph (a) of this section for compliance with the Texas SO_2 Trading Program assurance provisions for a control period in a given year in accordance with the following procedures:

(1) By August 1, 2022 and August 1 of each year thereafter, the Administrator will:

(i) Calculate the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total SO_2 emissions exceed the State assurance level as described in § 97.906(c)(2)(iii); and

(ii) If the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total SO_2 emissions exceed the State assurance level for such control period—

(A) Calculate, for such control period and each common designated representative for such control period for a group of one or more Texas SO_2 Trading Program sources and units, the common designated representative's share of the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources, the common

designated representative's assurance level, and the amount (if any) of Texas SO_2 Trading Program allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.906(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the SO_2 emissions from each Texas SO_2 Trading Program source.

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.906(c)(2)(iii), §§ 97.906(b) and 97.930 through 97.935, the definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share" in § 97.902, and the calculation formula in § 97.906(c)(2)(i).

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

(3) The Administrator will establish one assurance account for each set of owners and operators referenced, in each notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of Texas SO_2 Trading Program sources and units having a common designated representative for such control period and as being required to hold Texas SO_2 Trading Program allowances.

(4)

(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units under paragraph (b)(3) of this section a total amount of Texas SO_2 Trading Program allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources and units as calculated by the Administrator and referenced in such notice.

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

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section and after the recordation, in accordance with § 97.923, of Texas SO_2 Trading Program allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units established

under paragraph (b)(3) of this section, the amount of Texas SO_2 Trading Program allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources and units as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(ii) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(ii) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of Texas SO_2 Trading Program allowances that the owners and operators are required to hold in accordance with § 97.906(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(ii) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of Texas SO_2 Trading Program allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.906(c)(2)(i) for such control period with regard to the Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of Texas SO_2 Trading Program allowances that the owners and operators are required to hold for such control period with regard to the Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units involved—

(A) Where the amount of Texas SO_2 Trading Program allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of Texas SO_2 Trading Program allowances in the assurance account established by the Administrator for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each Texas SO_2 Trading Program allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of Texas SO_2 Trading Program allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which Texas SO_2 Trading Program allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate Texas SO_2 Trading Program sources and Texas SO_2 Trading Program units under paragraph (b)(3) of

this section, a total amount of the Texas SO_2 Trading Program allowances held in such assurance account equal to the amount of the decrease. If Texas SO_2 Trading Program allowances were transferred to such assurance account from more than one account, the amount of Texas SO_2 Trading Program allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of Texas SO_2 Trading Program allowances transferred to such assurance account for such control period from such transferor account.

(C) Each Texas SO_2 Trading Program allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the Texas SO_2 Trading Program assurance provisions for such control period must be a Texas SO_2 Trading Program allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

[85 FR 49218, Aug. 12, 2020, as amended at 86 FR 23208, Apr. 30, 2021]

§ 97.926 Banking.

(a) A Texas SO_2 Trading Program allowance may be banked for future use or transfer in a compliance account or general account in accordance with paragraph (b) of this section.

(b) Any Texas SO_2 Trading Program allowance that is held in a compliance account or a general account will remain in such account unless and until the Texas SO_2 Trading Program allowance is deducted or transferred under § 97.911(c), § 97.923, § 97.924, § 97.925, § 97.927, or § 97.928.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

§ 97.927 Account error.

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

§ 97.928 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the Texas SO_2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct Texas SO_2 Trading Program allowances from or transfer Texas SO_2 Trading Program allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

§ 97.929 [Reserved]

§ 97.930 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a Texas SO_2 Trading Program unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions

in § 97.902 and in § 72.2 of this chapter shall apply, the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "Texas SO_2 Trading Program unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") respectively as defined in § 97.902. The owner or operator of a unit that is not a Texas SO_2 Trading Program unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Texas SO_2 Trading Program unit.

(a) ***Requirements for installation, certification, and data accounting.*** The owner or operator of each Texas SO_2 Trading Program unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.931 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

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

(b) ***Compliance deadlines.*** Except as provided in paragraph (e) of this section, the owner or operator of a Texas SO_2 Trading Program unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after January 1, 2019.

(1) [Reserved]

(2) [Reserved]

(3) The owner or operator of a Texas SO_2 Trading Program unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after January 1, 2019 shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.930 through § 97.935, rather than the monitoring systems required under part 75 of this chapter;

(ii) SO_2 concentration, stack gas moisture content, stack gas volumetric flow rate, and O_2 or CO_2 concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.935, rather than § 75.66 of this chapter.

(c) ***Reporting data.*** The owner or operator of a Texas SO_2 Trading Program unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.*

(1) No owner or operator of a Texas SO_2 Trading Program unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.935.

(2) No owner or operator of a Texas SO_2 Trading Program unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 to the atmosphere without accounting for all such SO_2 in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a Texas SO_2 Trading Program unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a Texas SO_2 Trading Program unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.905 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.931(d)(3)(i).

(e) ***Long-term cold storage.*** The owner or operator of a Texas SO_2 Trading Program unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

§ 97.931 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a Texas SO_2 Trading Program unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.930(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.930(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a Texas SO_2 Trading Program unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.930(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) ***Requirements for initial certification.*** The owner or operator shall ensure that each continuous monitoring system under § 97.930(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.930(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) ***Requirements for recertification.*** Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.930(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.930(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) ***Approval process for initial certification and recertification.*** For initial certification of a continuous monitoring system under § 97.930(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words “certification” and “initial certification” are replaced by the word “recertification” and the word “certified” is replaced by the word “recertified”.

(i) ***Notification of certification.*** The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.933.

(ii) ***Certification application.*** The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) ***Provisional certification date.*** The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Texas SO_2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for

the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) ***Certification application approval process.*** The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Texas SO_2 Trading Program.

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

(B) ***Incomplete application notice.*** If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) ***Disapproval notice.*** If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) ***Audit decertification.*** The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.932(b).

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

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

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

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020]

§ 97.932 Monitoring system out-of-control periods.

(a) ***General provisions.*** Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of, or appendix D to, part 75 of this chapter.

(b) ***Audit decertification.*** Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.931 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator

completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.931 for each disapproved monitoring system.

[82 FR 48364, Oct. 17, 2017, as amended at 86 FR 23208, Apr. 30, 2021]

§ 97.933 Notifications concerning monitoring.

The designated representative of a Texas SO_2 Trading Program unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.934 Recordkeeping and reporting.

(a) ***General provisions.*** The designated representative of a Texas SO_2 Trading Program unit shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.914(a).

(b) ***Monitoring plans.*** The owner or operator of a Texas SO_2 Trading Program unit shall comply with the requirements of § 75.62 of this chapter.

(c) ***Certification applications.*** The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.931, including the information required under § 75.63 of this chapter.

(d) ***Quarterly reports.*** The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the SO_2 mass emissions data and heat input data for a Texas SO_2 Trading Program unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the calendar quarter covering January 1, 2019 through March 31, 2019.

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For Texas SO_2 Trading Program units that are also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such

extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

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

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

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

[82 FR 48364, Oct. 17, 2017, as amended at 85 FR 49220, Aug. 12, 2020; 88 FR 36904, June 5, 2023]

§ 97.935 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a Texas SO_2 Trading Program unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.930 through 97.934.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.