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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

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Subpart AAAAA CSAPR NO_X Annual Trading Program

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Subpart AAAAA—CSAPR NO_X Annual Trading Program

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§ 97.401 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) NO_X Annual Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.402 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym "CSAPR" shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym "TR" in place of the acronym "CSAPR":

Acid Rain Program means a 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 CSAPR NO_X Annual allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State and approved by the Administrator under § 52.38(a)(3), (4), or (5) of this chapter, of the amount of such CSAPR NO_X Annual allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR NO_X Annual unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR NO_X Annual unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_X Annual allowances, the CSAPR NO_X Annual unit will be treated as being allocated an amount (*i.e.,* zero) of CSAPR NO_X Annual allowances.

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

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR NO_X Annual allowances.

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Annual allowance transfer must be submitted for recordation in a CSAPR NO_X Annual source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Annual emissions limitation for such control period in accordance with §§ 97.406 and 97.424.

Alternate designated representative means, for a CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR NO_X Annual Trading Program. If the CSAPR NO_X Annual source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR NO_X Ozone Season Group 3 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.425(b)(3) for certain owners and operators of a group of one or more CSAPR NO_X Annual sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR NO_X Annual allowances available for use for a control period in a given year in complying with the CSAPR NO_X Annual assurance provisions in accordance with §§ 97.406 and 97.425.

Auction means, with regard to CSAPR NO_X Annual allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, of such CSAPR NO_X Annual allowances to be initially recorded in an Allowance Management System account.

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

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

Biomass means—

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

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

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

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

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

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

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

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

Certifying official means a natural person who is:

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

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

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

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

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

Cogeneration system means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle unit,

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

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

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

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

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

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

Combustion turbine means an enclosed device comprising:

(1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.405.

(i) For a unit that is a CSAPR NO_X Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CSAPR NO_X Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.405, for a unit that is not a CSAPR NO_X Annual unit under § 97.404 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR NO_X Annual unit under § 97.404.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common designated representative means, with regard to a control period in a given year, a designated representative where, as of April 1 immediately after the allowance transfer deadline for such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same natural person is authorized under §§ 97.413(a) and 97.415(a) as the designated representative for a group of one or more CSAPR NO_X Annual sources and units in a State (and Indian country within the borders of such State).

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.406(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Annual allowances allocated for such control period to the group of one or more CSAPR NO_X Annual units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_X Annual allowances purchased by an owner or operator of such CSAPR NO_X Annual units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_X Annual units in accordance with the CSAPR NO_X Annual allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, multiplied by the sum of the State NO_X Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b) for such control period, and divided by such State NO_X Annual trading budget.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all CSAPR NO_X Annual units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more CSAPR NO_X Annual units in such State (and such Indian country) having the common designated representative for such control period.

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

Compliance account means an Allowance Management System account, established by the Administrator for a CSAPR NO_X Annual source under this subpart, in which any CSAPR NO_X Annual allowance allocations to the CSAPR NO_X Annual units at the source are recorded and in which are held any CSAPR NO_X Annual allowances available for use for a control period in a given year in complying with the source's CSAPR NO_X Annual emissions limitation in accordance with §§ 97.406 and 97.424.

Continuous emission monitoring system or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of NO_X emissions, stack gas volumetric flow rate, stack gas moisture content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.430 through 97.435. The following systems are the principal types of continuous emission monitoring systems:

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

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

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

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

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

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

Control period means the period starting January 1 of a calendar year, except as provided in § 97.406(c)(3), and ending on December 31 of the same year, inclusive.

CSAPR NO_X Annual allowance means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(a)(3), (4), or (5) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Annual Trading Program.

CSAPR NO_X Annual allowance deduction or *deduct CSAPR NO_X Annual allowances* means the permanent withdrawal of CSAPR NO_X Annual allowances by the Administrator from a compliance account (*e.g.*, in order to account for compliance with the CSAPR NO_X Annual emissions limitation) or from an assurance account (*e.g.*, in order to account for compliance with the assurance provisions under §§ 97.406 and 97.425).

CSAPR NO_X Annual allowances held or *hold CSAPR NO_X Annual allowances* means the CSAPR NO_X Annual allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

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

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR NO_X Annual allowance transfer in accordance with this subpart.

CSAPR NO_X Annual emissions limitation means, for a CSAPR NO_X Annual source, the tonnage of NO_X emissions authorized in a control period in a given year by the CSAPR NO_X Annual allowances available for deduction for the source under § 97.424(a) for such control period.

CSAPR NO_X Annual source means a source that includes one or more CSAPR NO_X Annual units.

CSAPR NO_X Annual Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with this subpart and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and NO_X.

CSAPR NO_X Annual unit means a unit that is subject to the CSAPR NO_X Annual Trading Program.

CSAPR NO_X Ozone Season Group 1 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(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.

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

CSAPR SO_2 Group 2 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

Designated representative means, for a CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR NO_X Annual Trading Program. If the CSAPR NO_X Annual source is also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR NO_X Ozone Season Group 3 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

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

(1) In accordance with this subpart; and

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

Excess emissions means any ton of emissions from the CSAPR NO_X Annual units at a CSAPR NO_X Annual source during a control period in a given year that exceeds the CSAPR NO_X Annual emissions limitation for the source for such control period.

Fossil fuel means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on "average annual fuel consumption of fossil fuel" in § 97.404(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

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

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

Generator means a device that produces electricity.

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

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

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

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

(1) For the life of the unit;

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

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

Maximum design heat input rate means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

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

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

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

Newly affected CSAPR NO_X Annual unit means a unit that was not a CSAPR NO_X Annual unit when it began operating but that thereafter becomes a CSAPR NO_X Annual unit.

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

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

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

Owner means, for a CSAPR NO_X Annual source or a CSAPR NO_X Annual unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR NO_X Annual unit at the source or the CSAPR NO_X Annual unit;

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

(3) Any purchaser of power from a CSAPR NO_X Annual unit at the source or the CSAPR NO_X Annual unit under a life-of-the-unit, firm power contractual arrangement.

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

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

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

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

Recordation, record, or *recorded* means, with regard to CSAPR NO_X Annual allowances, the moving of CSAPR NO_X Annual allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, transfer, or deduction.

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

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

Sequential use of energy means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

Serial number means, for a CSAPR NO_X Annual allowance, the unique identification number assigned to each CSAPR NO_X Annual allowance by the Administrator.

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

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

State means one of the States that is subject to the CSAPR NO_X Annual Trading Program pursuant to § 52.38(a) of this chapter.

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

(1) In person;

(2) By United States Postal Service; or

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

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

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

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

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

where:

LHV = lower heating value of the form of energy in Btu/lb,

HHV = higher heating value of the form of energy in Btu/lb,

W = weight % of moisture in the form of energy, and

H = weight % of hydrogen in the form of energy.

Total energy output means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

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

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

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

Useful power means, with regard to a unit, electricity or mechanical energy that the unit makes available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means thermal energy that is:

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

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

(3) Used in a space cooling application (*i.e.,* in an absorption chiller).

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021; 88 FR 36898, June 5, 202]

§ 97.403 Measurements, abbreviations, and acronyms.

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

Btu—British thermal unit

CO_2—carbon dioxide

CSAPR—Cross-State Air Pollution Rule

H_2O—water

hr—hour

kWh—kilowatt-hour

lb—pound

mmBtu—million Btu

MWe—megawatt electrical

MWh—megawatt-hour

NO_X—nitrogen oxides

O_2—oxygen

ppm—parts per million

scfh—standard cubic feet per hour

SIP—State implementation plan

SO_2—sulfur dioxide

TR—Transport Rule

yr—year

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016]

§ 97.404 Applicability.

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

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR NO_X Annual units, and any source that includes one or more such units shall be a CSAPR NO_X Annual source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR NO_X Annual unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR NO_X Annual unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR NO_X Annual unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR NO_X Annual unit:

(1)

(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR NO_X Annual unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR NO_X Annual unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR NO_X Annual unit.

(2)

(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR NO_X Annual unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR NO_X Annual unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR NO_X Annual unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, of the CSAPR NO_X Annual Trading Program to the unit or other equipment.

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

(2) ***Response.*** The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR NO_X Annual Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021]

§ 97.405 Retired unit exemption.

(a)

(1) Any CSAPR NO_X Annual unit that is permanently retired shall be exempt from § 97.406(b) and (c)(1), § 97.424, and §§ 97.430 through 97.435.

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

(b)

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

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

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

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74605, Oct. 26, 2016; 86 FR 23181, Apr. 30, 2021]

§ 97.406 Standard requirements.

(a) ***Designated representative requirements.*** The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.413 through 97.418.

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

(1) The owners and operators, and the designated representative, of each CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.430 through 97.435.

(2) The emissions data determined in accordance with §§ 97.430 through 97.435 shall be used to calculate allocations of CSAPR NO_X Annual allowances under §§ 97.411(a)(2) and (b) and 97.412 and to determine compliance with the CSAPR NO_X Annual emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.430 through 97.435 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *NO_X emissions requirements —*

(1) *CSAPR NO_X Annual emissions limitation.*

(i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source shall hold, in the source's compliance account, CSAPR NO_X Annual allowances available for deduction for such control period under § 97.424(a) in an amount not less than the tons of total NO_X emissions for such control period from all CSAPR NO_X Annual units at the source.

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

(A) The owners and operators of the source and each CSAPR NO_X Annual unit at the source shall hold the CSAPR NO_X Annual allowances required for deduction under § 97.424(d); and

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

(2) *CSAPR NO_X Annual assurance provisions.*

(i) If total NO_X emissions during a control period in a given year from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such NO_X emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR NO_X Annual allowances available for deduction for such control period under § 97.425(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.425(b), of multiplying—

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

(B) The amount by which total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

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

(iii) Total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_X emissions exceed the sum, for such control period, of the State NO_X Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total NO_X emissions from the CSAPR NO_X Annual units at CSAPR NO_X Annual sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

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

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

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

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

(i) A CSAPR NO_X Annual unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2015 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(ii) A CSAPR NO_X Annual unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2017 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(4) ***Vintage of CSAPR NO_X Annual allowances held for compliance.***

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

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

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

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

(i) Such authorization shall only be used in accordance with the CSAPR NO_X Annual Trading Program; and

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

(7) ***Property right.*** A CSAPR NO_X Annual allowance does not constitute a property right.

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

(1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR NO_X Annual allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report NO_X emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.430 through 97.435 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

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

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

(i) The certificate of representation under § 97.416 for the designated representative for the source and each CSAPR NO_X Annual unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.416 changing the designated representative.

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

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

(2) The designated representative of a CSAPR NO_X Annual source and each CSAPR NO_X Annual unit at the source shall make all submissions required under the CSAPR NO_X Annual Trading Program, except as provided in § 97.418. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) ***Liability.***

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

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

(g) ***Effect on other authorities.*** No provision of the CSAPR NO_X Annual Trading Program or exemption under § 97.405 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR NO_X Annual source or CSAPR NO_X Annual unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48379, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021]

§ 97.407 Computation of time.

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.408 Administrative appeal procedures.

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.409 [Reserved]

§ 97.410 State NO_X Annual trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State NO_X Annual trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR NO_X Annual allowances for the control periods in the years indicated are as follows:

(1) *Alabama.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 72,691 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,454 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 71,962 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,441 tons.

(vi) [Reserved]

(2) *Georgia.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 62,010 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,240 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 53,738 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,074 tons.

(vi) [Reserved]

(3) *Illinois.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 47,872 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,830 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 47,872 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,831 tons.

(vi) [Reserved]

(4) *Indiana.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 109,726 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,292 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 108,424 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,256 tons.

(vi) [Reserved]

(5) *Iowa.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 38,335 tons.

(ii) The new unit set-aside for 2015 and 2016 is 729 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 38 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 37,498 tons.

(v) The new unit set-aside for 2017 and thereafter is 715 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 38 tons.

(6) *Kansas.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 31,354 tons.

(ii) The new unit set-aside for 2015 and 2016 is 596 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 31 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 31,354 tons.

(v) The new unit set-aside for 2017 and thereafter is 596 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 31 tons.

(7) *Kentucky.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 85,086 tons.

(ii) The new unit set-aside for 2015 and 2016 is 3,403 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 77,238 tons.

(v) The new unit set-aside for 2017 and thereafter is 3,090 tons.

(vi) [Reserved]

(8) *Maryland.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 16,633 tons.

(ii) The new unit set-aside for 2015 and 2016 is 333 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 16,574 tons.

(v) The new unit set-aside for 2017 and thereafter is 333 tons.

(vi) [Reserved]

(9) *Michigan.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 65,421 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,243 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 65 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 63,040 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,201 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 63 tons.

(10) ***Minnesota.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 29,572 tons.

(ii) The new unit set-aside for 2015 and 2016 is 561 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 30 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 29,572 tons.

(v) The new unit set-aside for 2017 and thereafter is 565 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 30 tons.

(11) ***Missouri.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 52,400 tons.

(ii) The new unit set-aside for 2015 is 1,572 tons and for 2016 is 3,144 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 48,743 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,929 tons.

(vi) [Reserved]

(12) ***Nebraska.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 30,039 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,772 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 30 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 30,039 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,771 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 30 tons.

(13) ***New Jersey.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 8,218 tons.

(ii) The new unit set-aside for 2015 and 2016 is 164 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 7,945 tons.

(v) The new unit set-aside for 2017 and thereafter is 155 tons.

(vi) [Reserved]

(14) *New York.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 21,722 tons.

(ii) The new unit set-aside for 2015 and 2016 is 412 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 22 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 21,722 tons.

(v) The new unit set-aside for 2017 and thereafter is 410 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 22 tons.

(15) *North Carolina.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 50,587 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,984 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 51 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 41,553 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,451 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 42 tons.

(16) *Ohio.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 95,468 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,909 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 90,258 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,805 tons.

(vi) [Reserved]

(17) *Pennsylvania.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 119,986 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,400 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 119,194 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,383 tons.

(vi) [Reserved]

(18) *South Carolina.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 32,498 tons.

(ii) The new unit set-aside for 2015 and 2016 is 617 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 33 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 32,498 tons.

(v) The new unit set-aside for 2017 and thereafter is 620 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 33 tons.

(19) ***Tennessee.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 35,703 tons.

(ii) The new unit set-aside for 2015 and 2016 is 714 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 19,337 tons.

(v) The new unit set-aside for 2017 and thereafter is 381 tons.

(vi) [Reserved]

(20) ***Texas.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 137,701 tons.

(ii) The new unit set-aside for 2015 and 2016 is 5,370 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 138 tons.

(iv)-(vi) [Reserved]

(21) ***Virginia.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 33,242 tons.

(ii) The new unit set-aside for 2015 and 2016 is 1,662 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 33,242 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,663 tons.

(vi) [Reserved]

(22) ***West Virginia.***

(i) The NO_X Annual trading budget for 2015 and 2016 is 59,472 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,974 tons.

(iii) [Reserved]

(iv) The NO_X Annual trading budget for 2017 and thereafter is 54,582 tons.

(v) The new unit set-aside for 2017 and thereafter is 2,730 tons.

(vi) [Reserved]

(23) *Wisconsin.*

(i) The NO_X Annual trading budget for 2015 and 2016 is 34,101 tons.

(ii) The new unit set-aside for 2015 and 2016 is 2,012 tons.

(iii) The Indian country new unit set-aside for 2015 and 2016 is 34 tons.

(iv) The NO_X Annual trading budget for 2017 and thereafter is 32,871 tons.

(v) The new unit set-aside for 2017 and thereafter is 1,939 tons.

(vi) The Indian country new unit set-aside for 2017 and thereafter is 33 tons.

(b) The States' variability limits for the State NO_X Annual trading budgets for the control periods in 2017 and thereafter are as follows:

(1) The variability limit for Alabama is 12,953 tons.

(2) The variability limit for Georgia is 9,673 tons.

(3) The variability limit for Illinois is 8,617 tons.

(4) The variability limit for Indiana is 19,516 tons.

(5) The variability limit for Iowa is 6,750 tons.

(6) The variability limit for Kansas is 5,644 tons.

(7) The variability limit for Kentucky is 13,903 tons.

(8) The variability limit for Maryland is 2,983 tons.

(9) The variability limit for Michigan is 11,347 tons.

(10) The variability limit for Minnesota is 5,323 tons.

(11) The variability limit for Missouri is 8,774 tons.

(12) The variability limit for Nebraska is 5,407 tons.

(13) The variability limit for New Jersey is 1,430 tons.

(14) The variability limit for New York is 3,910 tons.

(15) The variability limit for North Carolina is 7,480 tons.

(16) The variability limit for Ohio is 16,246 tons.

(17) The variability limit for Pennsylvania is 21,455 tons.

(18) The variability limit for South Carolina is 5,850 tons.

(19) The variability limit for Tennessee is 3,481 tons.

(20) [Reserved]

(21) The variability limit for Virginia is 5,984 tons.

(22) The variability limit for West Virginia is 9,825 tons.

(23) The variability limit for Wisconsin is 5,917 tons.

(c) Each State NO_X Annual trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

[77 FR 10334, Feb. 21, 2012, as amended at 77 FR 10347, Feb. 21, 2012; 77 FR 34844, June 12, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021]

§ 97.411 Timing requirements for CSAPR NO_X Annual allowance allocations.

(a) ***Existing units.***

(1) CSAPR NO_X Annual allowances are allocated, for the control periods in 2015 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR NO_X Annual unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR NO_X Annual unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2014, during the control period in two consecutive years, such unit will not be allocated the CSAPR NO_X Annual allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR NO_X Annual allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR NO_X Annual allowances to the unit in accordance with paragraph (b) of this section.

(b) ***New units —***

(1) ***New unit set-asides.***

(i)

(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in a State and areas of Indian country within the borders of the State subject to the State's SIP authority, in accordance with § 97.412(a)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in a State and areas of Indian country within the borders of the State subject to the State's SIP authority, in accordance with § 97.412(a)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

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

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Annual units) are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.

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

(iii) If the new unit set-aside for a control period before 2021 contains any CSAPR NO_X Annual allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Annual units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Annual units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Annual units in each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in accordance with § 97.412(a)(9), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Annual units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Annual allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Annual allowances in accordance with § 97.412(a)(10).

(2) *Indian country new unit set-asides.*

(i)

(A) By June 1 of each year from 2015 through 2020, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in areas of Indian country within the borders of a State not subject to the State's SIP authority, in accordance with § 97.412(b)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in areas of Indian country within the borders of a State not subject to the State's SIP authority, in accordance with § 97.412(b)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

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

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Annual units) are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.

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

(iii) If the Indian country new unit set-aside for a control period before 2021 contains any CSAPR NO_X Annual allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by December 15 immediately after such notice, a notice of data availability that identifies any CSAPR NO_X Annual units that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of CSAPR NO_X Annual units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of CSAPR NO_X Annual units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of CSAPR NO_X Annual units in each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in accordance with § 97.412(b)(9), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435. By February 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of CSAPR NO_X Annual units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any CSAPR NO_X Annual allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Annual allowances in accordance with § 97.412(b)(10).

(c) ***Units incorrectly allocated CSAPR NO_X Annual allowances.***

(1) For each control period in 2015 and thereafter, if the Administrator determines that CSAPR NO_X Annual allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under § 97.412(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)

(A) The recipient is not actually a CSAPR NO_X Annual unit under § 97.404 as of January 1, 2015 and is allocated CSAPR NO_X Annual allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, the recipient is not actually a CSAPR NO_X Annual unit as of January 1, 2015 and is allocated CSAPR NO_X Annual allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Annual units as of January 1, 2015; or

(B) The recipient is not located as of January 1 of the control period in the State from whose NO_X Annual trading budget the CSAPR NO_X Annual allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(a)(3), (4), or (5) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR NO_X Annual unit under § 97.404 as of January 1 of such control period and is allocated CSAPR NO_X Annual allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, the recipient is not actually a CSAPR NO_X Annual unit as of January 1 of such control period and is allocated CSAPR NO_X Annual allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Annual units as of January 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_X Annual allowances under § 97.421.

(3) If the Administrator already recorded such CSAPR NO_X Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.424(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_X Annual allowances were recorded an amount of CSAPR NO_X Annual allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_X Annual allowances. The authorized account representative shall ensure that there are sufficient CSAPR NO_X Annual allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_X Annual allowances under § 97.421 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.424(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_X Annual allowances.

(5)

(i) With regard to the CSAPR NO_X Annual allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Annual allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose NO_X Annual trading budget the CSAPR NO_X Annual allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such CSAPR NO_X Annual allowances in the portion of the State NO_X Annual trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR NO_X Annual allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Annual allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such CSAPR NO_X Annual allowances in the portion of the State NO_X Annual trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR NO_X Annual allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR NO_X Annual allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23182, Apr. 30, 2021; 88 FR 36898, June 5, 2023]

§ 97.412 CSAPR NO_X Annual allowance allocations to new units.

(a) ***Allocations from new unit set-asides.*** For each control period in 2015 and thereafter and for the CSAPR NO_X Annual units in each State and areas of Indian country within the borders of the State subject to the State's SIP authority, the Administrator will allocate CSAPR NO_X Annual allowances to the CSAPR NO_X Annual units as follows:

(1) The CSAPR NO_X Annual allowances will be allocated to the following CSAPR NO_X Annual units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR NO_X Annual units that are not allocated an amount of CSAPR NO_X Annual allowances in the notice of data availability issued under § 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period;

(ii) CSAPR NO_X Annual units whose allocation of an amount of CSAPR NO_X Annual allowances for such control period in the notice of data availability issued under § 97.411(a)(1) is covered by § 97.411(c)(2) or (3);

(iii) CSAPR NO_X Annual units that are allocated an amount of CSAPR NO_X Annual allowances for such control period in the notice of data availability issued under § 97.411(a)(1), which allocation is terminated for such control period pursuant to § 97.411(a)(2), and that operate during the control period immediately preceding such control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or

(iv) For purposes of paragraph (a)(9) of this section, CSAPR NO_X Annual units under § 97.411(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Annual allowances for such control period in the notice of data availability issued under § 97.411(b)(1)(ii)(B) is covered by § 97.411(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_X Annual allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.410(a) and will be allocated additional CSAPR NO_X Annual allowances (if any) in accordance with § 97.411(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR NO_X Annual unit described in paragraph (a)(1) of this section, an allocation of CSAPR NO_X Annual allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2015;

(ii)

(A) The first control period after the control period in which the CSAPR NO_X Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter;

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_X Annual unit operates in the State and areas of Indian country within the borders of the State subject to the State's SIP authority after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR NO_X Annual allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the first control period after the control period in which the unit resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.

(4)

(i) The allocation to each CSAPR NO_X Annual unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Annual allowances determined for all such CSAPR NO_X Annual units under paragraph (a)(4)(i) of this section in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for such control period.

(6) If the amount of CSAPR NO_X Annual allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Annual allowances determined for each such CSAPR NO_X Annual unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Annual allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Annual unit the amount of the CSAPR NO_X Annual allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Annual allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i) and (ii), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (a)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (a)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (a)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Annual allowances referenced in the notice of data availability required under § 97.411(b)(1)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (a)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Annual allowances remaining in the new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (a)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Annual allowances determined for each such CSAPR NO_X Annual unit under paragraph (a)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Annual allowances remaining in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Annual unit the amount of the CSAPR NO_X Annual allowances determined under paragraph (a)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Annual allowances remaining in the new unit set-aside for such control period, divided by the sum under paragraph (a)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (a)(9) and (12) of this section for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR NO_X Annual allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_X Annual unit that is in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, is allocated an amount of CSAPR NO_X Annual allowances in the notice of data availability issued under § 97.411(a)(1), and continues to be allocated CSAPR NO_X Annual allowances for such control period in accordance with § 97.411(a)(2), an amount of CSAPR NO_X Annual allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_X Annual allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.411(a) for such control period, divided by the remainder of the amount of tons in the applicable State NO_X Annual trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11)

(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(iii), (iv), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (a)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) ***Allocations from Indian country new unit set-asides.*** For each control period in 2015 and thereafter and for the CSAPR NO_X Annual units in areas of Indian country within the borders of each State not subject to the State's SIP authority, the Administrator will allocate CSAPR NO_X Annual allowances to the CSAPR NO_X Annual units as follows:

(1) The CSAPR NO_X Annual allowances will be allocated to the following CSAPR NO_X Annual units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR NO_X Annual units that are not allocated an amount of CSAPR NO_X Annual allowances in the notice of data availability issued under § 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period; or

(ii) For purposes of paragraph (b)(9) of this section, CSAPR NO_X Annual units under § 97.411(c)(1)(ii) whose allocation of an amount of CSAPR NO_X Annual allowances for such control period in the notice of data availability issued under § 97.411(b)(2)(ii)(B) is covered by § 97.411(c)(2) or (3).

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_X Annual allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.410(a) and will be allocated additional CSAPR NO_X Annual allowances (if any) in accordance with § 97.411(c)(5).

(3) The Administrator will determine, for each CSAPR NO_X Annual unit described in paragraph (b)(1) of this section, an allocation of CSAPR NO_X Annual allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2015; and

(ii)

(A) The first control period after the control period in which the CSAPR NO_X Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter.

(4)

(i) The allocation to each CSAPR NO_X Annual unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the immediately preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Annual allowances determined for all such CSAPR NO_X Annual units under paragraph (b)(4)(i) of this section in areas of Indian country within the borders of the State not subject to the State's SIP authority for such control period.

(6) If the amount of CSAPR NO_X Annual allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Annual allowances determined for each such CSAPR NO_X Annual unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Annual allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Annual unit the amount of the CSAPR NO_X Annual allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Annual allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i) and (ii), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (b)(2) through (7) and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(9) For a control period before 2021, if, after completion of the procedures under paragraphs (b)(5) through (8) of this section for such control period, any unallocated CSAPR NO_X Annual allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will allocate such CSAPR NO_X Annual allowances as follows—

(i) The Administrator will determine, for each unit described in paragraph (b)(1) of this section that commenced commercial operation during the period starting January 1 of the year before the year of such control period and ending November 30 of the year of such control period, the positive difference (if any) between the unit's emissions during such control period and the amount of CSAPR NO_X Annual allowances referenced in the notice of data availability required under § 97.411(b)(2)(ii) for the unit for such control period;

(ii) The Administrator will determine the sum of the positive differences determined under paragraph (b)(9)(i) of this section;

(iii) If the amount of unallocated CSAPR NO_X Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum determined under paragraph (b)(9)(ii) of this section, then the Administrator will allocate the amount of CSAPR NO_X Annual allowances determined for each such CSAPR NO_X Annual unit under paragraph (b)(9)(i) of this section; and

(iv) If the amount of unallocated CSAPR NO_X Annual allowances remaining in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(9)(ii) of this section, then the Administrator will allocate to each such CSAPR NO_X Annual unit the amount of the CSAPR NO_X Annual allowances determined under paragraph (b)(9)(i) of this section for the unit, multiplied by the amount of unallocated CSAPR NO_X Annual allowances remaining in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(9)(ii) of this section, and rounded to the nearest allowance.

(10) If, after completion of the procedures under paragraphs (b)(9) and (12) of this section for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated CSAPR NO_X Annual allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR NO_X Annual allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(a)(4) or (5) of this chapter covering such control period, include such unallocated CSAPR NO_X Annual allowances in the portion of the State NO_X Annual trading budget that may be allocated for such control period in accordance with such SIP revision.

(11)

(i) For a control period before 2021, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(iii), (iv), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (b)(9), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23183, Apr. 30, 2021; 88 FR 36898, June 5, 2023]

§ 97.413 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.415, each CSAPR NO_X Annual source, including all CSAPR NO_X Annual units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR NO_X Annual Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Annual units at the source and shall act in accordance with the certification statement in § 97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.416:

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

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

(b) Except as provided under § 97.415, each CSAPR NO_X Annual source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Annual units at the source and shall act in accordance with the certification statement in § 97.416(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.416,

(i) The alternate designated representative shall be authorized;

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

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

(c) Except in this section, § 97.402, and §§ 97.414 through 97.418, whenever the term "designated representative" (as distinguished from the term "common designated representative") is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.414 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.418 concerning delegation of authority to make submissions, each submission under the CSAPR NO_X Annual Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR NO_X Annual source and CSAPR NO_X Annual unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) The Administrator will accept or act on a submission made for a CSAPR NO_X Annual source or a CSAPR NO_X Annual unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.418.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

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

(a) ***Changing designated representative.*** The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.416. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR NO_X Annual source and the CSAPR NO_X Annual units at the source.

(b) ***Changing alternate designated representative.*** The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.416. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR NO_X Annual source and the CSAPR NO_X Annual units at the source.

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

(1) In the event an owner or operator of a CSAPR NO_X Annual source or a CSAPR NO_X Annual unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.416, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR NO_X Annual source or a CSAPR NO_X Annual unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.416 amending the list of owners and operators to reflect the change.

(d) ***Changes in units at the source.*** Within 30 days of any change in which units are located at a CSAPR NO_X Annual source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.416 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.416 Certificate of representation.

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

(1) Identification of the CSAPR NO_X Annual source, and each CSAPR NO_X Annual unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county,

latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available.

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

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

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

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

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

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

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

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

(c) A certificate of representation under this section that complies with the provisions of paragraph (a) of this section except that it contains the acronym "TR" in place of the acronym "CSAPR" in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted as if the acronym "CSAPR" appeared in place of the acronym "TR".

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74606, Oct. 26, 2016]

§ 97.417 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.416 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.416 is received by the Administrator.

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74604, Oct. 26, 2016]

§ 97.418 Delegation by designated representative and alternate designated representative.

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

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

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

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

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

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

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

(i) “I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.418(d) shall be deemed to be an electronic submission by me.”

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.418(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.418 is terminated.".

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

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

§ 97.419 [Reserved]

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

(a) ***Compliance accounts.*** Upon receipt of a complete certificate of representation under § 97.416, the Administrator will establish a compliance account for the CSAPR NO_X Annual source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) ***Assurance accounts.*** The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.425(b)(3).

(c) ***General accounts*** —

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

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

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

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

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

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

(B) An identifying name for the general account;

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

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

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

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

(iv) An application for a general account under paragraph (c)(1) of this section that complies with the provisions of such paragraph except that it contains the acronym "TR" in place of the acronym "CSAPR" in the required certification statement will be considered a complete application for a general account under such paragraph, and the certification statement included in such application for a general account will be interpreted as if the acronym "CSAPR" appeared in place of the acronym "TR".

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

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

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

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

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

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

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

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the acronym "TR" will be interpreted as if the acronym "CSAPR" appeared in place of the acronym "TR".

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

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

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the

superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR NO_X Annual allowances in the general account.

(iii)

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The following certification statement by such authorized account representative or alternate authorized account representative: "I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.420(c)(5)(iv) shall be deemed to be an electronic submission by me."; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.420(c)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.420(c)(5) is terminated.".

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

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

(6) *Closing a general account.*

(i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR NO_X Annual allowance transfer under § 97.422 for any CSAPR NO_X Annual allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR NO_X Annual allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR NO_X Annual allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR NO_X Annual allowance transfer under § 97.422 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

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

(e) ***Responsibilities of authorized account representative and alternate authorized account representative.*** After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR NO_X Annual allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.414(a) and 97.418 or paragraphs (c)(2)(ii) and (c)(5) of this section.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74606, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

§ 97.421 Recordation of CSAPR NO_X Annual allowance allocations and auction results.

(a) By November 7, 2011, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.411(a) for the control period in 2015.

(b) By November 7, 2011, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.411(a) for the control period in 2016, unless the State in which the source is located notifies the Administrator in writing by October 17, 2011 of the State's intent to submit to the Administrator a complete SIP revision by April 1, 2015 meeting the requirements of § 52.38(a)(3)(i) through (iv) of this chapter.

(1) If, by April 1, 2015, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by April 15, 2015 in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.411(a) for the control period in 2016.

(2) If the State submits to the Administrator by April 1, 2015, and the Administrator approves by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source as provided in such approved, complete SIP revision for the control period in 2016.

(3) If the State submits to the Administrator by April 1, 2015, and the Administrator does not approve by October 1, 2015, such complete SIP revision, the Administrator will record by October 1, 2015 in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.411(a) for the control period in 2016.

(c) By July 1, 2016, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2017 and 2018.

(d) By July 1, 2017, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2019 and 2020.

(e) By July 1, 2018, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control periods in 2021 and 2022.

(f)

(1) By July 1, 2019 and July 1, 2020, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph.

(2) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year after the year of the applicable recordation deadline under this paragraph.

(g)

(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.412(a)(2) through (8) and (12), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.412(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h)

(1) By August 1 of each year from 2015 through 2020, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b)(2) through (8) and (12) for the control period in the year of the applicable recordation deadline under this paragraph.

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(a)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(j) By February 15 of each year from 2016 through 2021, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b)(9) through (12) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (j) of this section, of CSAPR NO_X Annual allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.411 or § 97.412 or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR NO_X Annual allowances to a CSAPR NO_X Annual unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR NO_X Annual allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR NO_X Annual allowance is allocated or auctioned.

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74606, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021; 87 FR 52481, Aug. 26, 2022]

§ 97.422 Submission of CSAPR NO_X Annual allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR NO_X Annual allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR NO_X Annual allowance transfer shall be correctly submitted if:

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

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

(ii) The serial number of each CSAPR NO_X Annual allowance that is in the transferor account and is to be transferred; and

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

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR NO_X Annual allowance identified by serial number in the transfer.

§ 97.423 Recordation of CSAPR NO_X Annual allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR NO_X Annual allowance transfer that is correctly submitted under § 97.422, the Administrator will record a CSAPR NO_X Annual allowance transfer by moving each CSAPR NO_X Annual allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR NO_X Annual allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR NO_X Annual allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.424 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR NO_X Annual allowance transfer is not correctly submitted under § 97.422, the Administrator will not record such transfer.

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

(e) Within 10 business days of receipt of a CSAPR NO_X Annual allowance transfer that is not correctly submitted under § 97.422, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

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

(2) The reasons for such non-recordation.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

§ 97.424 Compliance with CSAPR NO_X Annual emissions limitation.

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

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

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

(b) ***Deductions for compliance.*** After the recordation, in accordance with § 97.423, of CSAPR NO_X Annual allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR NO_X Annual allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR NO_X Annual emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR NO_X Annual allowances deducted equals the number of tons of total NO_X emissions from all CSAPR NO_X Annual units at the source for such control period; or

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

(c) ***Selection of CSAPR NO_X Annual allowances for deduction*** —

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

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

(i) Any CSAPR NO_X Annual allowances that were recorded in the compliance account pursuant to § 97.421 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Annual allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

§ 97.425 Compliance with CSAPR NO_X Annual assurance provisions.

(a) ***Availability for deduction.*** CSAPR NO_X Annual allowances are available to be deducted for compliance with the CSAPR NO_X Annual assurance provisions for a control period in a given year by the owners and operators of a group of one or more CSAPR NO_X Annual sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO_X Annual allowances:

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

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of CSAPR NO_X Annual sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

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

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO_X emissions exceed the State assurance level as described in § 97.406(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO_X emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO_X Annual sources and units in such State (and such Indian country), the common designated representative's share of the total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO_X emissions from each CSAPR NO_X Annual source in each such State (and Indian country within the borders of such State).

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

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.406(c)(2)(iii), §§ 97.406(b) and 97.430 through 97.435, the definitions of “common designated representative”, “common designated representative's assurance level”, and “common designated representative's share” in § 97.402, and the calculation formula in § 97.406(c)(2)(i).

(ii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice

of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(i) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(ii) of this section as having CSAPR NO_X Annual units with total NO_X emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of CSAPR NO_X Annual sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO_X Annual allowances.

(4)

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

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

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section and after the recordation, in accordance with § 97.423, of CSAPR NO_X Annual allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate CSAPR NO_X Annual sources, CSAPR NO_X Annual units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO_X Annual allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(ii) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(ii) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO_X Annual allowances that the owners and operators are required to hold in accordance with § 97.406(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(ii) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Annual allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.406(c)(2)(i) for such control period with regard to the CSAPR NO_X Annual sources, CSAPR NO_X Annual units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR NO_X Annual allowances that the owners and operators are required to hold for such control period with regard to the CSAPR NO_X Annual sources, CSAPR NO_X Annual units, and State (and Indian country within the borders of such State) involved—

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

(B) For the owners and operators for which the amount of CSAPR NO_X Annual allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO_X Annual allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate CSAPR NO_X Annual sources, CSAPR NO_X Annual units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO_X Annual allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO_X Annual allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO_X Annual allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO_X Annual allowances transferred to such assurance account for such control period from such transferor account.

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

[76 FR 48379, Aug. 8, 2011, as amended at 77 FR 10336, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016; 86 FR 23184, Apr. 30, 2021]

§ 97.426 Banking.

(a) A CSAPR NO_X Annual allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO_X Annual allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_X Annual allowance is deducted or transferred under § 97.411(c), § 97.423, § 97.424, § 97.425, § 97.427, or § 97.428 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State NO_X Annual trading budget is established under § 97.410(a) for a given State, the Administrator may record a transfer of any CSAPR NO_X Annual allowances held in the compliance account for a source in such State (and Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021; 88 FR 36898, June 5, 2023]

§ 97.427 Account error.

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

§ 97.428 Administrator's action on submissions.

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

§ 97.429 [Reserved]

§ 97.430 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR NO_X Annual unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.402 and in § 72.2 of this chapter shall apply, the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CSAPR NO_X Annual unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") respectively as defined in § 97.402, and the term "newly affected unit" shall be deemed to mean "newly affected CSAPR NO_X Annual unit". The owner or operator of a unit that is not a CSAPR NO_X Annual unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR NO_X Annual unit.

(a) ***Requirements for installation, certification, and data accounting.*** The owner or operator of each CSAPR NO_X Annual unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.431 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

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

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

(1) January 1, 2015; or

(2) 180 calendar days after the date on which the unit commences commercial operation.

(3) The owner or operator of a CSAPR NO_X Annual unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1) or (2) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.430 through § 97.435, rather than the monitoring systems required under part 75 of this chapter;

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

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.435, rather than § 75.66 of this chapter.

(c) ***Reporting data.*** The owner or operator of a CSAPR NO_X Annual unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) ***Prohibitions.***

(1) No owner or operator of a CSAPR NO_X Annual unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.435.

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

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

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

(i) During the period that the unit is covered by an exemption under § 97.405 that is in effect;

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

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.431(d)(3)(i).

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

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016]

§ 97.431 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR NO_X Annual unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.430(a)(1) if the following conditions are met:

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

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

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.430(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the designated representative shall resubmit the petition to the Administrator under § 97.435 to determine whether the approval applies under the CSAPR NO_X Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR NO_X Annual unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.430(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) ***Requirements for initial certification.*** The owner or operator shall ensure that each continuous monitoring system under § 97.430(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.430(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) ***Requirements for recertification.*** Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.430(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.430(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) ***Approval process for initial certification and recertification.*** For initial certification of a continuous monitoring system under § 97.430(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v)

of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words "certification" and "initial certification" are replaced by the word "recertification" and the word "certified" is replaced by the word "recertified".

(i) ***Notification of certification.*** The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.433.

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

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

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

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

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

(C) ***Disapproval notice.*** If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and

recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) ***Audit decertification.*** The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.432(b).

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

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

(*1*) For a disapproved NO_X emission rate (*i.e.,* NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

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

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

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

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

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

§ 97.432 Monitoring system out-of-control periods.

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

(b) ***Audit decertification.*** Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.431 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.431 for each disapproved monitoring system.

§ 97.433 Notifications concerning monitoring.

The designated representative of a CSAPR NO_X Annual unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.434 Recordkeeping and reporting.

(a) ***General provisions.*** The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.414(a).

(b) ***Monitoring plans.*** The owner or operator of a CSAPR NO_X Annual unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) ***Certification applications.*** The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.431, including the information required under § 75.63 of this chapter.

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

(1) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Annual unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2015 through March 31, 2015; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.430(b).

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CSAPR NO_X Annual units that are also subject to the Acid Rain Program, CSAPR NO_X Ozone Season Group 1 Trading Program, CSAPR NO_X Ozone Season Group 2 Trading Program, CSAPR NO_X Ozone Season Group 3 Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

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

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

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

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016; 86 FR 23185, Apr. 30, 2021]

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

(a) The designated representative of a CSAPR NO_X Annual unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.430 through 97.434.

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

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

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

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

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

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

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

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]