

PART 245**CAIR SO₂ TRADING PROGRAM**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311; Energy Law, §§ 3-101, 3-103)

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Historical Note

Part (§§ 245.1-245.4) refiled June 19, 1968; Part (*General Provisions*, §§ 245.1-245.4) renum. Part 398, Title 9, filed Sept. 1971; new (Subparts 245-1 — 245-9) filed Sept. 19, 2007 eff. 30 days after filing.

SUBPART 245-1**CAIR SO₂ TRADING PROGRAM GENERAL PROVISIONS**

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Historical Note

Subpart (§§ 245-1.1 — 245-1.8) filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.1 Purpose.

This Part establishes the Clean Air Interstate Rule (CAIR) SO₂ Trading Program, which is designed to mitigate interstate transport of fine particulates and sulfur dioxide. Emissions of NO_x and SO₂ contribute to the formation of particulate matter with a mass median diameter of less than 2.5 microns. The department authorizes the administrator to assist the department in implementing the CAIR SO₂ Trading Program by performing the functions set forth for the administrator in this Part.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.2 Definitions.

- (a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200 of this Title apply to this Part.
- (b) For the purposes of this Part, the following specific definitions apply:
 - (1) *Account number*. The identification number given by the administrator to each CAIR SO₂ Allowance Tracking System account.

(2) *Acid rain emissions limitation.* A limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

(3) *Acid Rain Program.* A multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under title IV of the act and 40 CFR parts 72 through 78.

(4) *Allocate or allocation.* With regard to CAIR SO₂ allowances issued under the Acid Rain Program, the determination by the administrator of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity and, with regard to CAIR SO₂ allowances issued under provisions of a State implementation plan that are approved under 40 CFR 51.124(o)(1) or (2) or (r) or 40 CFR 97.288, the determination by a permitting authority of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity.

(5) *Allowance transfer deadline.* For a control period, midnight of March 1st (if it is a business day), or midnight of the first business day thereafter (if March 1st is not a business day), immediately following the control period and is the deadline by which a CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR SO₂ source's compliance account in order to be used to meet the source's CAIR SO₂ emissions limitation for such control period in accordance with section 245-6.5 of this Part.

(6) *Alternate CAIR designated representative.* For a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 245-2 and 245-9 of this Part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO₂ source is subject to the Mercury Reduction Program for coal-fired electric utility steam generating units (Part 246 of this Title), then this natural person shall be the same person as the owner or operator required to submit monitoring and compliance data pursuant to Part 246 of this Title.

(7) *Automated data acquisition and handling system or DAHS.* That component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Subpart 245-8, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subpart 245-8 of this Part.

(8) *Boiler.* An enclosed fossil- or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(9) *Bottoming-cycle cogeneration unit.* A cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(10) *CAIR authorized account representative.* With regard to a general account, a responsible natural person who is authorized, in accordance with Subparts 245-2, 245-6, and 245-9 of this Part, to transfer and otherwise dispose of CAIR SO₂ allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) *CAIR designated representative.* For a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 245-2 and 245-9 of this Part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person

shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO₂ source is subject to the Mercury Reduction Program for coal-fired electric utility steam generating units (Part 246 of this Title), then this natural person shall be the same person as the owner or operator required to submit monitoring and compliance data pursuant to Part 246 of this Title.

(12) *CAIR NO_x Annual Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to Part 244 of this Title and corresponding regulations in other states promulgated in accordance with 40 CFR 51.123(o)(1) or (2), along with any Federal implementation plan imposed by the administrator in accordance with 40 CFR 97.101-188, 40 CFR 51.123(p), and 40 CFR 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(13) *CAIR NO_x Ozone Season source.* A source that is subject to the CAIR NO_x Ozone Season Trading Program.

(14) *CAIR NO_x Ozone Season Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to Part 243 of this Title and corresponding regulations in other states promulgated in accordance with 40 CFR 51.123(aa)(1) or (2) (and [bb][1]), (bb)(2), or (dd) along with any Federal implementation plan imposed by the administrator in accordance with 40 CFR 97.301-388, 40 CFR 51.123(ee), and 40 CFR 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(15) *CAIR NO_x source.* A source that is subject to the CAIR NO_x Annual Trading Program.

(16) *CAIR permit.* The portion of the legally binding and federally enforceable written permit issued by the department under Subpart 245-3 of this Part and Parts 201 and 621 of this Title, including any permit revisions, specifying the CAIR SO₂ Trading Program requirements applicable to a CAIR SO₂ source, to each CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(17) *CAIR SO₂ allowance.* A limited authorization issued by the administrator under the Acid Rain Program, or by a permitting authority under provisions of a State implementation plan that are approved under 40 CFR 51.124(o)(1) or (2) or (r) or 40 CFR 97.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO₂ Trading Program as follows:

(i) or one CAIR SO₂ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in section 245-6.5(b) of this Part;

(ii) for one CAIR SO₂ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in section 245-6.5(b) of this Part; and

(iii) for one CAIR SO₂ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in section 245-6.5(b) of this Part;

(iv) an authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, provisions of a State implementation plan that are approved under 40 CFR 51.124(o)(1) or (2) or (r) or 40 CFR 97.288, shall not be a CAIR SO₂ allowance.

(18) *CAIR SO₂ allowance deduction or deduct CAIR SO₂ allowances.* The permanent withdrawal of CAIR SO₂ allowances by the administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO₂ units at a CAIR SO₂ source for a control period, determined in accordance with Subpart 245-8 of this Part, or to account for excess emissions.

(19) *CAIR SO₂ Allowance Tracking System.* The system by which the administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program. This is the same system as the Allowance Tracking System under 40 CFR

72.2 by which the administrator records allocations, deductions, and transfers of acid rain SO₂ allowances under the Acid Rain Program.

(20) *CAIR SO₂ Allowance Tracking System account.* An account in the CAIR SO₂ Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(21) *CAIR SO₂ allowances held or hold CAIR SO₂ allowances.* The CAIR SO₂ allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Subparts 245-6, 245-7, and 245-9 of this Part, or 40 CFR part 73, in a CAIR SO₂ Allowance Tracking System account.

(22) *CAIR SO₂ emissions limitation.* For a CAIR SO₂ source, the tonnage equivalent, in SO₂ emissions in a control period, of the CAIR SO₂ allowances available for deduction for the source under sections 245-6.5(a) and (b) of this Part for the control period.

(23) *CAIR SO₂ source.* A source that includes one or more CAIR SO₂ units.

(24) *CAIR SO₂ Trading Program.* A multi-state sulfur dioxide air pollution control and emission reduction program established pursuant to this subpart and corresponding regulations in other states promulgated in accordance with 40 CFR 51.124(o)(1) or (2) along with any Federal implementation plan imposed by the administrator in accordance with 40 CFR 97.201-288 and 40 CFR part 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(25) *CAIR SO₂ unit.* A unit that is subject to the CAIR SO₂ Trading Program under section 245-1.4 of this Part and, except for purposes of section 245-1.5 of this Part, a CAIR SO₂ opt-in unit under Subpart 245-9 of this Part.

(26) *Coal.* Any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

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

(28) *Coal-fired.* Combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel, during any year.

(29) *Cogeneration unit.* A stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine:

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

(ii) producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

(a) for a topping-cycle cogeneration unit:

(1) useful thermal energy not less than five percent of total energy output; and

(2) 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;

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

(30) *Combustion turbine:*

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

(i) if the enclosed device under subparagraph (i) of this paragraph is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

(31) *Commence commercial operation.* With regard to a unit:

(i) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in sections 245-1.5 of this Subpart and 245-9.5(h) of this Part.

(a) For a unit that is a CAIR SO₂ unit under section 245-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph (i) of this paragraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(b) For a unit that is a CAIR SO₂ unit under section 245-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (e.g., re-powered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this subparagraph or subparagraph (ii) of this paragraph as appropriate.

(ii) Notwithstanding subparagraph (i) of this paragraph and except as provided in section 245-1.5 of this Subpart, for a unit that is not a CAIR SO₂ unit under section 245-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph (i) of this paragraph, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO₂ unit under section 245-1.4 of this Subpart.

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

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

(32) *Commence operation.* (i) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 245-9.5(h) of this Part.

(ii) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subparagraph (i) of this paragraph, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(iii) For a unit that is replaced by a unit at the same source (e.g., re-powered) after the date the unit commences operation as defined in subparagraph (i) of this paragraph, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in this subparagraph or subparagraph (i) or (ii) of this paragraph as appropriate, except as provided in section 245-9.5(h) of this Part.

(33) *Common stack.* A single flue through which emissions from two or more units are exhausted.

(34) *Compliance account.* A CAIR SO₂ Allowance Tracking System account, established by the administrator for a CAIR SO₂ source subject to an acid rain emissions limitations under 40 CFR 73.31(a) or (b) or for any other CAIR SO₂ source under Subpart 245-6 or 245-9 of this Part, in which any CAIR SO₂ allowance allocations for the CAIR SO₂ units at the source are initially recorded and in which are held any CAIR SO₂ allowances available for use during a

control period in order to meet the source's CAIR SO₂ emissions limitation in accordance with section 245-6.5 of this Part.

(35) *Continuous emission monitoring system or CEMS.* The equipment required under Subpart 245-8 of this Part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system [DAHS]), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR part 75. The following systems are the principal types of continuous emission monitoring systems required under Subpart 243-8 of this Part:

(i) 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);

(ii) a sulfur dioxide monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO₂ emissions, in parts per million (ppm);

(iii) a moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;

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

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

(36) *Control period.* The period beginning January 1st of a calendar year, except as provided in section 245-1.6(c)(2) of this Subpart, and ending on December 31st of the same year, inclusive.

(37) *Emissions.* Air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR designated representative and as determined by the administrator in accordance with Subpart 245-8 of this Part.

(38) *Excess emissions.* Any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO₂ units at a CAIR SO₂ source during a control period that exceeds the CAIR SO₂ emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

(39) *Fossil fuel.* Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(40) *Fossil fuel-fired.* With regard to a unit, combusting any amount of fossil fuel in any calendar year.

(41) *General account.* A CAIR SO₂ Allowance Tracking System account, established under Subpart 245-6 of this Part, that is not a compliance account.

(42) *Generator.* A device that produces electricity.

(43) *Heat input.* With regard to a specific period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR designated representative and determined by the administrator in accordance with Subpart 245-8 of this Part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(44) *Heat input rate.* The amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

(45) *Life-of-the-unit, firm power contractual arrangement.* 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:

- (i) for the life of the unit;
- (ii) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (iii) 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.

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

(47) *Monitoring system.* Any monitoring system that meets the requirements of Subpart 245-8 of this Part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75.

(48) *Most stringent State or Federal SO₂ emissions limitation.* With regard to a unit, the lowest SO₂ emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

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

(50) *Operator.* Any person who operates, controls, or supervises a CAIR SO₂ unit or a CAIR SO₂ source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(51) *Owner.* Any of the following persons:

- (i) with regard to a CAIR SO₂ source or a CAIR SO₂ unit at a source, respectively:
 - (a) any holder of any portion of the legal or equitable title in a CAIR SO₂ unit at the source or the CAIR SO₂ unit;
 - (b) any holder of a leasehold interest in a CAIR SO₂ unit at the source or the CAIR SO₂ unit; or
 - (c) any purchaser of power from a CAIR SO₂ unit at the source or the CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO₂ unit; or
- (ii) with regard to any general account, any person who has an ownership interest with respect to the CAIR SO₂ allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO₂ allowances.

(52) *Permitting authority.* The department or, for other states, the State air pollution control agency, local agency, other State agency, or other agency authorized by the administra-

tor to issue or revise permits to meet the requirements of the CAIR SO₂ Trading Program as implemented in other states or, if no such agency has been so authorized, the administrator.

(53) *Potential electrical output capacity.* Thirty-three percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

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

(55) *Recordation, record, or recorded.* With regard to CAIR SO₂ allowances, the movement of CAIR SO₂ allowances by the administrator into or between CAIR SO₂ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

(56) *Reference method.* Any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

(57) *Replacement, replace, or replaced.* With regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

(58) *Re-powered.* With regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (i) atmospheric or pressurized fluidized bed combustion;
- (ii) integrated gasification combined cycle;
- (iii) magnetohydrodynamics;
- (iv) direct and indirect coal-fired turbines;
- (v) integrated gasification fuel cells; or

(vi) as determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subparagraphs (i) through (v) of this paragraph and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(59) *Sequential use of energy:*

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

(60) *Serial number.* For a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ allowance by the administrator.

(61) *Solid waste incineration unit.* 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 act.

(62) *Source.* All buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the act, a *source*, including a *source* with multiple units, shall be considered a single *facility*.

(63) *State.* One of the states or the District of Columbia that adopts the CAIR SO₂ Trading Program pursuant to 40 CFR 51.123(o)(1) or (2).

(64) *Submit or serve.* To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (i) in person;
- (ii) by United States Postal Service; or

(iii) by other means of dispatch or transmission and delivery. Compliance with any submission or service deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(65) *Ton*. Two thousand pounds. For the purpose of determining compliance with the CAIR SO₂ emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Subpart 245-8 of this Part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

(66) *Topping-cycle cogeneration unit*. A cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(67) *Total energy input*. With regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

(68) *Total energy output*. With regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(69) *Unit*. A stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(70) *Unit operating day*. A calendar day in which a unit combusts any fuel.

(71) *Unit operating hour* or *hour of unit operation*. An hour in which a unit combusts any fuel.

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

(73) *Useful thermal energy*. With regard to a cogeneration unit, thermal energy that is:

- (i) made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (ii) used in a heating application (*e.g.*, space heating or domestic hot water heating); or
- (iii) used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

(74) *Utility power distribution system*. The portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.3 Measurements, abbreviations and acronyms.

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

- (a) *Btu* - British thermal unit.
- (b) *CO₂* - carbon dioxide.
- (c) *H₂O* - water.
- (d) *hr* - hour or hours.
- (e) *kW* - kilowatt electrical.
- (f) *kWh* - kilowatt hour.
- (g) *lb* - pound or pounds.
- (h) *mmBtu* - million Btu.

- (i) *MWe* - megawatt electrical.
- (j) *MWh* - megawatt hour.
- (k) *NO_x* - nitrogen oxides.
- (l) *O₂* - oxygen.
- (m) *ppm* - parts per million.
- (n) *scfh* - standard cubic feet per hour.
- (o) *SO₂* - sulfur dioxide.
- (p) *yr* - year or years.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.4 Applicability.

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

(1) The following units shall be CAIR SO₂ units, and any source that includes one or more such units shall be a CAIR SO₂ source, subject to the requirements of this Subpart and Subparts 245-2 through 245-8 of this Part: any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (1) of this subdivision, is not a CAIR SO₂ unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x unit as provided in paragraph (1) of this subdivision on the first date on which it both combusts fossil fuel and serves such generator.

- (b) The units that meet the requirements set forth in subparagraph (1)(i), (2)(i), or (ii) of this subdivision shall not be CAIR SO₂ units:

- (1) (i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section:

(a) qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(b) not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (i) of this paragraph for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1st after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1st after the first calendar year during which the unit no longer meets the requirements of clause (i)(b) of this paragraph.

- (2) (i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(a) qualifying as a solid waste incineration unit; and

(b) with an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

- (a) qualifying as a solid waste incineration unit; and
- (b) with an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).
- (iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (i) or (ii) of this paragraph for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1st after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1st after the first three consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.5 Retired unit exemption.

(a) (1) Any CAIR SO₂ unit that is permanently retired and is not a CAIR SO₂ opt-in unit under Subpart 245-9 of this Part shall be exempt from the CAIR SO₂ Trading Program, except for the provisions of this section, sections 245-1.2, 245-1.3, 245-1.4, 245-1.6(c)(4) through (7), 245-1.7, 245-1.8 of this Subpart, and Subparts 245-2, 245-6 and 245-7 of this Part.

(2) The exemption under paragraph (1) of this subdivision shall become effective the day on which the CAIR SO₂ unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the department and shall submit a copy of the statement to the administrator. The statement shall state, in a format prescribed by the department, that the unit was permanently retired on a specific date and will comply with the requirements of subdivision (b) of this section.

(3) After receipt of the statement under paragraph (2) of this subdivision, the department will amend any permit under Subpart 245-3 of this Part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraph (1) of this subdivision and subdivision (b) of this section.

(b) *Special provisions.* (1) A unit exempt under subdivision (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of five years from the date the records are created, the owners and operators of a unit exempt under subdivision (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the department or 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 CAIR designated representative of a unit exempt under subdivision (a) of this section shall comply with the requirements of the CAIR SO₂ 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 subdivision (a) of this section and located at a source that is required, or but for this exemption would be required, to have a permit under Part 201 of this Title shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 245-3.3 of this Part by the later of January 1, 2009 or the date on which the unit resumes operation.

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

- (i) the date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (4) of this subdivision;

- (ii) the date on which the CAIR designated representative is required under paragraph (4) of this subdivision to submit a CAIR permit application for the unit; or
 - (iii) the date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.
- (6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under Subpart 245-8 of this Part, a unit that loses its exemption under subdivision (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.6 Standard requirements.

- (a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO₂ source shall:
- (i) submit to the department a complete CAIR permit application under section 245-3.3 of this Part in accordance with the deadlines specified in section 245-3.2 of this Part; and
 - (ii) submit in a timely manner any supplemental information that the department determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.
- (2) The owners and operators of each CAIR SO₂ source shall have a CAIR permit issued by the department under Subpart 245-3 of this Part for the source and operate the source and the unit in compliance with such CAIR permit.
- (b) *Monitoring requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall comply with the requirements of Subpart 245-8 of this Part.
- (2) The emissions measurements recorded and reported in accordance with Subpart 245-8 of this Part shall be used to determine compliance by each CAIR SO₂ source with the CAIR SO₂ emissions limitation under subdivision (c) of this section.
- (c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period, as determined in accordance with section 245-6.5(a) and (b) of this Part, not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with Subpart 245-8 of this Part.
- (2) A CAIR SO₂ unit shall be subject to the requirements under paragraph (1) of this subdivision for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under section 245-8.1(b)(1), (2), or (5) of this Part and for each control period thereafter.
- (3) A CAIR SO₂ allowance shall not be deducted, for compliance with the requirements under paragraph (1) of this subdivision, for a control period in a calendar year before the year for which the CAIR SO₂ allowance was allocated.
- (4) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with Subparts 245-6, 245-7, and 245-9 of this Part.
- (5) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under section 245-1.5 of this Subpart and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.
- (6) A CAIR SO₂ allowance does not constitute a property right.

(7) Upon recordation by the administrator under Subpart 245-6, 245-7, or 245-9 of this Part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR SO₂ source emits sulfur dioxide during any control period in excess of the CAIR SO₂ emissions limitation, then:

(1) the owners and operators of the source and each CAIR SO₂ unit at the source shall surrender the CAIR SO₂ allowances required for deduction under section 245-6.5(d)(1) of this Part and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the act or applicable State law; and

(2) each ton of such excess emissions and each day of such control period shall constitute a separate violation of this Subpart, the act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO₂ source and each CAIR SO₂ unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the department or the administrator.

(i) The certificate of representation under section 245-2.4 of this Part for the CAIR designated representative for the source and each CAIR SO₂ unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under section 245-2.4 of this Part changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with Subpart 245-8 of this Part, provided that to the extent that Subpart 245-8 of this Part provides for a three-year period for recordkeeping, the three-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO₂ Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.

(2) The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under Subpart 245-8 of this Part.

(f) *Liability.* (1) Each CAIR SO₂ source and each CAIR SO₂ unit shall meet the requirements of the CAIR SO₂ Trading Program.

(2) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a CAIR SO₂ source shall also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.

(3) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO_x Trading Program, a CAIR permit application, a CAIR permit, or an exemption under section 245-1.5 of this Subpart shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO₂ source or CAIR SO₂ unit from compliance with any other provision of applicable State or Federal laws and regulations, or a federally enforceable permit.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO₂ Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-1.8 Appeal procedures.

The appeal procedures for decisions of the administrator under the CAIR SO₂ Trading Program are set forth in 40 CFR part 78.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

SUBPART 245-2**CAIR DESIGNATED REPRESENTATIVE FOR CAIR SO₂ SOURCES**

Sec.	
245-2.1	Authorization and responsibilities of CAIR designated representative
245-2.2	Alternate CAIR designated representative
245-2.3	Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators
245-2.4	Certificate of representation
245-2.5	Objections concerning CAIR designated representative
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Historical Note

Subpart (§§ 245-2.1 — 245-2.6) filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.1 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under section 245-2.2 of this Subpart, each CAIR SO₂ source, including all CAIR SO₂ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.

(b) The CAIR designated representative of the CAIR SO₂ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ units at the source and shall act in accordance with the certification statement in section 245-2.4(a)(4)(iv) of this Subpart.

(c) Upon receipt by the administrator of a complete certificate of representation under section 245-2.4 of this Subpart, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the department, the administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO₂ Allowance Tracking System account will be established for a CAIR SO₂ unit at a source, until the administrator has received a complete certificate of representation under section 245-2.4 of this Subpart for a CAIR designated representative of the source and the CAIR SO₂ units at the source.

(e) (1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The department and the administrator will accept or act on a submission made on behalf of the owners or operators of a CAIR SO₂ source or a CAIR SO₂ unit only if the

submission has been made, signed, and certified in accordance with paragraph (1) of this subdivision.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.2 Alternate CAIR designated representative.

(a) A certificate of representation under section 245-2.4 of this Subpart may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the administrator of a complete certificate of representation under section 245-2.4 of this Subpart, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and sections 245-1.2 of this Part, 245-2.1(a) and (d), 245-2.3, 245-2.4, 245-2.6 of this Subpart, 245-6.1 and 245-9.3 of this Part, whenever the term *CAIR designated representative* is used in Subparts 245-1 through 245-9 of this Part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.3 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under section 245-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under section 245-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR SO₂ source or a CAIR SO₂ unit is not included in the list of owners and operators in the certificate of representation under section 245-2.4 of this Subpart, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the department, the administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR SO₂ source or a CAIR SO₂ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under section 245-2.4 of this Subpart amending the list of owners and operators to include the change.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.4 Certificate of representation.

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

(1) Identification of the CAIR SO₂ source, and each CAIR SO₂ unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

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

(3) A list of the owners and operators of the CAIR SO₂ source and of each CAIR SO₂ unit at the source.

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

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO₂ unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ Trading Program on behalf of the owners and operators of the source and of each CAIR SO₂ unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR SO₂ unit at the source shall be bound by any order issued to me by the Administrator, the department, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO₂ unit, or where a utility or industrial customer purchases power from a CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or alternate 'CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO₂ unit at the source; and CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO₂ allowances by contract, CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in accordance with the contract."

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

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

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.5 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under section 245-2.4 of this Subpart has been submitted and received, the department and the administrator will rely on the certificate of

representation unless and until a superseding complete certificate of representation under section 245-2.4 of this Subpart is received by the administrator.

(b) Except as provided in section 245-2.3(a) or (b) of this Subpart, no objection or other communication submitted to the department or the administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the department or the administrator under the CAIR SO₂ Trading Program.

(c) Neither the department nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

§ 245-2.6 Delegation by CAIR designated representative and alternate CAIR designated representative.

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

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

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

- (1) the name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;
- (2) the name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person referred to as an *agent*;
- (3) for each such natural person, a list of the type or types of electronic submissions under subdivision (a) or (b) of this section for which authority is delegated to him or her; and
- (4) the following certification statements by such CAIR designated representative or alternate CAIR designated representative:
 - (i) "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 6 NYCRR section 245-2.6(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 6 NYCRR section 245-2.6(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 6 NYCRR section 245-2.6 is terminated."

(d) A notice of delegation submitted under subdivision (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of

delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

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

Historical Note

Sec. filed Sept. 19, 2007 eff. 30 days after filing.