

PART 244**CAIR NO_x ANNUAL 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 (§§ 244.1-244.11) refiled June 19, 1968; Part (*Boat Channel*, §§ 244.1-244.10) renum. Part 397, Title 9, filed Sept. 1971; new (Subparts 244-1—244-9) filed Sept. 19, 2007 eff. 30 days after filing.

SUBPART 244-1**CAIR NO_x ANNUAL TRADING PROGRAM GENERAL PROVISIONS**

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Historical Note

Subpart (§§ 244-1.1—244-1.8) filed Sept. 19, 2007 eff. 30 days after filing.

§ 244-1.1 Purpose.

This Part establishes the New York State component of the Clean Air Interstate (CAIR) NO_x Annual Trading Program, which is designed to mitigate interstate transport of fine particulates and nitrogen oxides by limiting emissions of NO_x from fossil fuel-fired electricity generating units. 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 NO_x Annual 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.

§ 244-1.2 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 NO_x 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 NO_x allowances, the determination by a permitting authority or the administrator of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit, the new CAIR NO_x unit set-aside, 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 NO_x allowance transfer must be submitted for recordation in a CAIR NO_x source's compliance account in order to be used to meet the source's CAIR NO_x emissions limitation for such control period in accordance with section 244-6.5 of this Part.

(6) *Alternate CAIR designated representative.* For a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 244-2 and 244-9 of this Part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x 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.

(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 244-8 of this Part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subpart 244-8 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 244-2, 244-6 and 244-9 of this Part, to transfer and otherwise dispose of CAIR NO_x allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) *CAIR designated representative.* For a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 244-2 and 244-9 of this Part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain

Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x source is subject to the Mercury Reduction Program for Coal-Fired Electric Utility Steam Generating Units (6 NYCRR Part 246), 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.

(12) *CAIR NO_x allowance.* A limited authorization issued by a permitting authority or the administrator under provisions of a State implementation plan that are approved under 40 CFR part 51.123(o)(1) or (2) or (p), or under subpart EE of 40 CFR part 97 or 40 CFR 97.188, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under 40 CFR part 51.123(o)(1) or (2) or (p) or subpart EE of 40 CFR part 97 or 40 CFR 97.188 shall not be a CAIR NO_x allowance.

(13) *CAIR NO_x allowance deduction or deduct CAIR NO_x allowances.* The permanent withdrawal of CAIR NO_x allowances by the administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x units at a CAIR NO_x source for a control period, determined in accordance with Subpart 244-8 of this Part, or to account for excess emissions.

(14) *CAIR NO_x Allowance Tracking System.* The system by which the administrator records allocations, deductions, and transfers of CAIR NO_x allowances under the CAIR NO_x Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(15) *CAIR NO_x Allowance Tracking System account.* An account in the CAIR NO_x Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x allowances.

(16) *CAIR NO_x allowances held or hold CAIR NO_x allowances.* The CAIR NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Subparts 244-6, 244-7 and 244-9 of this Part, in a CAIR NO_x Allowance Tracking System account.

(17) *CAIR NO_x Annual Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program, established pursuant to this Part 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.

(18) *CAIR NO_x emissions limitation.* For a CAIR NO_x source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x allowances available for deduction for the source under section 244-6.5(a) and (b) of this Part for the control period.

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

(20) *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 or established by the administrator in accordance with subparts AAAA through IIII of 40 CFR part 97 and 40 CFR part 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(21) *CAIR NO_x source.* A source that includes one or more CAIR NO_x units.

(22) *CAIR NO_x unit.* A unit that is subject to the CAIR NO_x Annual Trading Program under section 244-1.4 of this Subpart and, except for purposes of section 244-1.5 of this Subpart and Subpart 244-5 of this Part, a CAIR NO_x opt-in unit under Subpart 244-9 of this Part.

(23) *CAIR permit.* The portion of the legally binding and federally enforceable written permit, issued by the department under Subpart 244-3 of this Part and Parts 201 and 621 of this Title, including any permit revisions, specifying the CAIR NO_x Annual Trading Program requirements applicable to a CAIR NO_x source, to each CAIR NO_x unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(24) *CAIR SO₂ source.* A source that is subject to the CAIR SO₂ Trading Program.

(25) *CAIR SO₂ Trading Program.* A multi-state sulfur dioxide air pollution control and emission reduction program established pursuant to Part 245 of this Title 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 40 CFR 97.201-288 and 40 CFR parts 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(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

(ii) 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 244-1.5 of this Subpart and 244-9.5(h) of this Part.

(a) For a unit that is a CAIR NO_x unit under section 244-1.4 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 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 NO_x unit under section 244-1.4 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 244-1.5 of this Subpart, for a unit that is not a CAIR NO_x unit under section 244-1.4 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 NO_x unit under section 244-1.4 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 (i) of this paragraph as appropriate.

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(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 244-9.5(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 244-9.5(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 NO_x Allowance Tracking System account, established by the administrator for a CAIR NO_x source under Subpart 244-6 or 244-9 of this Part, in which any CAIR NO_x allowance allocations for the CAIR NO_x units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation in accordance with section 244-6.5 of this Part.

(35) *Continuous emission monitoring system or CEMS.* The equipment required under Subpart 244-8 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 nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in

a manner consistent with 40 CFR part 75. The following systems are the principal types of continuous emission monitoring systems required under Subpart 244-8 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 nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);
- (iii) a nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);
- (iv) 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;
- (v) 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
- (vi) 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 244-1.6(c)(2) of this Subpart, and ending on December 31st of the same year, inclusive.

(37) *Control period potential to emit or CPPTE.* The maximum capacity of a CAIR NO_x unit to emit NO_x under its physical and operational design during a control period. Any physical or operational limitation on the capacity of a CAIR NO_x unit to emit NO_x, including air pollution control equipment and/or a restriction on the hours of operation, or on the type or amount of material combusted shall be treated as part of the design if the limitation is enforceable by the department.

The CPPTE can be no greater than the number to be determined by the following:

$CPPTE \leq (ABUhr \times BUER) + ((8,760 - ABUhr) \times PER)$ when PER and BUER are in lb/mmBtu; or,

$CPPTE \leq (ABUhr \times BUER) + ((8,760 - ABUhr) \times PER)$

when PER and BUER are in lb/hr,

where:

ABUhr is number of hours it takes annually to combust the quantity of the backup fuel allowed under the unit's permit which, if used as the only fuel for the unit, would be the number of hours in determining the emission rate potential for the unit.

BUER is the lowest emission rate applicable to the use of the backup fuel (in lb/mmBtu or lb/hr based on inlet temperature of 47.5°F) allowed under the unit's permit which, if used as the only fuel for the unit, would be the emission rate in determining the emission rate potential for the unit.

MRHHI is the maximum rated hourly heat input for the unit based upon an inlet air temperature of 47.5°F for those units without temperature control.

PER is the lowest emission rate applicable to the use of the primary fuel (in lb/mmBtu or lb/hr based on inlet temperature of 47.5°F) allowed under the unit's permit.

(38) *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 244-8 of this Part.

(39) *Energy efficiency and renewable energy technology account.* A general account that may be opened by the New York State Energy Research and Development Authority (NYSERDA) from which allowances will be sold or distributed in order to provide funds to be used to support programs that encourage and foster energy efficiency measures and renewable energy technologies and cover the reasonable costs associated with the administration and evaluation of these programs by NYSERDA.

(40) *Excess emissions.* Any ton of nitrogen oxides emitted by the CAIR NO_x units at a CAIR NO_x source during a control period that exceeds the CAIR NO_x emissions limitation for the source.

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

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

(43) *General account.* A CAIR NO_x Ozone Season Allowance Tracking System account, established under Subpart 243-6, that is not a compliance account.

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

(45) *Heat input.* With regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR designated representative and determined by the administrator in accordance with Subpart 244-8 of this Part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(46) *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.

(47) *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.

(48) *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.

(49) *Monitoring system.* Any monitoring system that meets the requirements of Subpart 244-8 of this Part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75.

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

(51) *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.

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

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

(i) with regard to a CAIR NO_x source or a CAIR NO_x unit at a source, respectively:

(a) any holder of any portion of the legal or equitable title in a CAIR NO_x unit at the source or the CAIR NO_x unit;

(b) any holder of a leasehold interest in a CAIR NO_x unit at the source or the CAIR NO_x unit; or

(c) any purchaser of power from a CAIR NO_x unit at the source or the CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x unit; or

(ii) with regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x allowances.

(54) *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 administrator to issue or revise permits to meet the requirements of the CAIR NO_x Annual Trading Program as implemented in other States or, if no such agency has been so authorized, the administrator.

(55) *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.

(56) *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.

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

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

(59) *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).

(60) *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.
- (61) *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.
- (62) *Serial number.* For a CAIR NO_x allowance, the unique identification number assigned to each CAIR NO_x allowance by the administrator.
- (63) *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.
- (64) *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.
- (65) *State.* One of the states or the District of Columbia that adopts the CAIR NO_x Trading Program pursuant to 40 CFR 51.123(o)(1) or (2).
- (66) *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.
- (67) *Ton.* Two thousand pounds. For the purpose of determining compliance with the CAIR NO_x emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Subpart 244-8 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.
- (68) *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.
- (69) *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.
- (70) *Total energy output.* With regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.
- (71) *Unit.* A stationary, fossil fuel-fired boiler or combustion turbine or other stationary, fossil fuel-fired combustion device.
- (72) *Unit operating day.* A calendar day in which a unit combusts any fuel.
- (73) *Unit operating hour or hour of unit operation.* An hour in which a unit combusts any fuel.
- (74) *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).

(75) *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).

(76) *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.

§ 244-1.3 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.

§ 244-1.4 Applicability.

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

(1) The following units shall be CAIR NO_x units, and any source that includes one or more such units shall be a CAIR NO_x source, subject to the requirements of this Subpart and Subparts 244-2 through 244-8 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 nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that is not a CAIR NO_x unit under paragraph (1) of this subdivision 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) Units that meet the requirements set forth in subparagraph (1)(i), (2)(i), or (ii) of this subdivision shall not be CAIR NO_x units:

- (1) (i) Any unit that is a CAIR NO_x 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 NO_x 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 NO_x unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:
 - (a) qualifying as a solid waste incineration unit; and
 - (b) with an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 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 NO_x 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.

§ 244-1.5 Retired unit exemption.

- (a) (1) Any CAIR NO_x unit that is permanently retired and is not a CAIR NO_x opt-in unit under Subpart 244-9 shall be exempt from the CAIR NO_x Trading Program, except for the provisions of this section, sections 244-1.1 through 244-1.4, 244-1.6(c)(4) through (7), 244-1.7 of this Part, and Subparts 244-2 and 244-5 through 244-7 of this Part.
- (2) The exemption under paragraph (1) of this subdivision shall become effective the day on which the CAIR NO_x unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the 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 244-3 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 nitrogen oxides, starting on the date that the exemption takes effect.

(2) The department will not allocate CAIR NO_x allowances under Subpart 244-5 of this Part to a unit exempt under subdivision (a) of this section.

(3) 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.

(4) 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 NO_x Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under subdivision (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 244-3.3 of this Part for the unit not less than 12 months before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under 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 (5) of this subdivision;

(ii) The date on which the CAIR designated representative is required under paragraph (5) 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.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under Subpart 244-8 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.

§ 244-1.6 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_x source shall:

(i) submit to the department a complete CAIR permit application under section 244-3.3 of this Part in accordance with the deadlines specified in section 244-3.2 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 NO_x source shall have a CAIR permit issued by the department under Subpart 244-3 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 NO_x source and each CAIR NO_x unit at the source shall comply with the requirements of Subpart 244-8 of this Part.

(2) The emissions measurements recorded and reported in accordance with Subpart 244-8 of this Part shall be used to determine compliance by each CAIR NO_x source with the CAIR NO_x emissions limitation under subdivision (c) of this section.

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x source and each CAIR NO_x unit at the source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under section 244-6.5(a) of this Part in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance with Subpart 244-8 of this Part.

(2) A CAIR NO_x unit shall be subject to the requirements under paragraph (1) of this subdivision for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under section 244-8.1(b)(1), (2), or (5) of this Part and for each control period thereafter.

(3) A CAIR NO_x 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 NO_x allowance was allocated.

(4) CAIR NO_x allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with Subparts 244-6, 244-7, and 244-9 of this Part.

(5) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under section 244-1.5 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 NO_x allowance does not constitute a property right.

(7) Upon recordation by the administrator under Subpart 244-6, 244-7, or 244-9 of this Part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x source's compliance account is incorporated automatically in any CAIR permit of the source.

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

(1) the owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under section 244-6.5(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 NO_x source and each CAIR NO_x unit at the source shall keep on site at the source each of the following documents for a period of 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 244-2.4 of this Part for the CAIR designated representative for the source and each CAIR NO_x unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under section 244-2.4 of this Part changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with Subpart 244-8 of this Part, provided that to the extent that Subpart 244-8 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 NO_x Annual Trading Program.

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

(2) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program, including those under Subpart 244-8 of this Part.

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

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

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

(g) *Effect on other authorities.* No provision of the CAIR NO_x Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under section 244-1.5 of this Subpart shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit from compliance with any other provision of the applicable State or Federal laws and regulations, or a federally enforceable permit.

Historical Note

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§ 244-1.7 Computation of time.

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

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

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

Historical Note

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§ 244-1.8 Appeal procedures.

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

Historical Note

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