COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9VAC5 CHAPTER 140.
REGULATION FOR EMISSIONS TRADING.

PART III.
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Article 1.
CAIR NO_X Ozone Season Trading Program General Provisions.

9VAC5-140-2010. Purpose.

A. This part establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under § 110 of the Clean Air Act and 40 CFR 51.123, as a means of mitigating interstate transport of ozone and nitrogen oxides.

B. The purpose of this part is not to create the CAIR NO_X Ozone Season Trading Program only for CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources geographically located within the borders of the Commonwealth of Virginia. Upon approval by EPA in accordance with 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd), qualifying CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources within the Commonwealth will become full participants in the EPA-administered

regional CAIR NO_X Ozone Season Trading Program, which will include CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources permitted by authorities in all other states that are participating in the regional CAIR NO_X Ozone Season Trading Program.

C. This part should not be interpreted to limit the CAIR NO_X Seasonal Trading Program to Virginia CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources, which would be contrary to the intention that CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources covered by CAIR programs of other states approved in accordance with 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or by the CAIR Federal Implementation Plan (subparts AAAA through IIII of 40 CFR Part 97) may trade allowances with CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources in the Commonwealth. While the CAIR NO_X Ozone Season Trading Program must include CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources and permitting authorities beyond the borders of the Commonwealth, the permitting authority for Virginia (the State Air Pollution Control Board) has no authority to ensure compliance with this part by any permitting authority, person or entity outside the Commonwealth.

D. The board has the authority under the Code of Virginia to regulate the allocations of allowances, issuance of the budget permits, the administration of the opt-in provisions and other duties assigned to the permitting authority only for CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources in Virginia. The board authorizes the administrator to assist the board in implementing the CAIR NO_X Ozone Season Trading Program by carrying out the functions set forth for the administrator in this part.

9VAC5-140-2020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this paragraph.

"Account number" means the identification number given by the administrator to each CAIR NO_X Ozone Season Allowance Tracking System account.

"Acid Rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

"Acid Rain Program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means, with regard to CAIR NO_X Ozone Season allowances, the determination by a permitting authority or the administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit, a new unit set-aside, a new energy efficiency/renewable energy unit set-aside, or other entity.

"Allocation year" means the year in which allowance allocations are calculated for a future year.

"Allowance transfer deadline" means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day),

immediately following the control period and is the deadline by which a CAIR NO_X Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_X Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_X Ozone Season emissions limitation for such control period in accordance with 9VAC5-140-2540.

"Alternate CAIR-designated representative" means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-2100 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to act on behalf of the CAIR-designated representative in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season 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 NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Article 8 (9VAC5-140-2700 et seq.) 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 Article 8 (9VAC5-140-2700 et seq.) of this part.

"Biomass" means:

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

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

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

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

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

"Biomass energy" means energy derived from the combustion or electro-chemical reaction (as with a fuel cell) of hydrocarbon materials of a biogenic origin using a solid, liquid or gaseous fuel. Biomass fuel materials include, but are not limited to, animal wastes (e.g., manure) and clean plant materials (e.g., wood chips, waste paper and crop wastes). Biomass fuels exclude products that have emissions that include heavy metals and other neurotoxins (e.g., municipal solid wastes). Biomass fuel materials may be converted to a gaseous fuel, such as landfills (i.e., landfill gas) or waste treatment facilities (i.e., digester gas), or to liquid fuels (e.g., biodiesel). To be considered a biomass facility, the facility must (i) employ maximum achievable control technology and continuous emission stack monitors for all chemical emissions of concern to human health and (ii) be listed in one of the following categories: anaerobic digestion systems operating on animal or plant wastes, methane gas, combustion of clean wood, bark or other plant material; or on combustion of fuels derived entirely from processing of clean

wood, bark, or other plant or animal material, including processing by gasification, pyrolysis, fermentation, distillation, or densification.

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

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

"CAIR-authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Article 2 (9VAC5-140-2100 et seq.), Article 6 (9VAC5-140-2500 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to transfer and otherwise dispose of CAIR NO_X Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR-designated representative of the source.

"CAIR-designated representative" means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-2100 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season 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 NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

"CAIR NO_X Annual Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part II (9VAC5-140-1010 et seq.) of this chapter, subparts AA through II of 40 CFR Part 96, and 40 CFR 51.123(o)(1) or (2) or established by the administrator in accordance with subparts AA through II of 40 CFR Part 97 and 40 CFR 51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO_X Ozone Season allowance" means a limited authorization issued by a permitting authority or the administrator under Article 5 (9VAC5-140-2400 et seq.) of this part, provisions of an implementation plan that are approved under 40 CFR 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), (dd), or (ee), or under subpart EEEE of 40 CFR Part 97 or 40 CFR 97.388, 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 Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_X Budget Trading Program under Part I (9VAC5-140-10 et seq.) of this chapter or in accordance with 40 CFR 51.121(p) to emit one ton of nitrogen oxides during a control period, provided that the provision in 40 CFR 51.121(b)(2) (ii)(E) shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_X Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under Article 5 (9VAC5-140-2400 et seq.) of this part, provisions of an implementation plan approved under 40 CFR 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), (dd), or (ee) or subpart EEEE of 40 CFR Part 97 or 40 CFR 97.388 or under the NO_X Budget Trading Program as described in the prior sentence shall not be a CAIR NO_X Ozone Season allowance. No provision of the CAIR NO_X Ozone Season Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-2050 and no provision of law shall be construed to limit the authority of

the United States or the board to terminate or limit such authorization, which does not constitute a property right.

"CAIR NO_X Ozone Season allowance deduction" or "deduct CAIR NO_X Ozone Season allowances" means the permanent withdrawal of CAIR NO_X Ozone Season 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 Ozone Season units at a CAIR NO_X Ozone Season source for a control period, determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, or to account for excess emissions.

"CAIR NO_X Ozone Season Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of CAIR NO_X Ozone Season allowances under the CAIR NO_X Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

"CAIR NO_X Ozone Season Allowance Tracking System account" means an account in the CAIR NO_X Ozone Season Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X Ozone Season allowances.

"CAIR NO_X Ozone Season allowances held" or "hold CAIR NO_X Ozone Season allowances" means the CAIR NO_X Ozone Season allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), and Article 9 (9VAC5-140-2800 et seq.) of this part, in a CAIR NO_X Ozone Season Allowance Tracking System account.

"CAIR NO_X Ozone Season core trading budget" means the amount of tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for the control period minus the amount of tons of NO_X emissions under subdivision 1 of the definition of new unit set-aside budget and the new energy efficiency/renewable energy unit set-aside budget.

"CAIR NO_X Ozone Season emissions limitation" means, for a CAIR NO_X Ozone Season source, the tonnage equivalent, in NO_X emissions in a control period, of the CAIR NO_X Ozone Season allowances available for deduction for the source under 9VAC5-140-2540 A and B for the control period.

"CAIR NO_X Ozone Season source" means a source that includes one or more CAIR NO_X Ozone Season units.

"CAIR NO_X Ozone Season trading budget" means the total number of NO_X tons set forth in 9VAC5-140-2400 and apportioned to all CAIR NO_X Ozone Season units and energy efficiency/renewable energy units in accordance with the CAIR NO_X Ozone Trading Program, for use in a given control period.

"CAIR NO_X Ozone Season Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with this part, subparts AAAA through IIII of 40 CFR Part 96, and 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or established by the administrator in accordance with subparts AAAA through IIII of 40 CFR Part 97 and 40 CFR 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

"CAIR NO_X Ozone Season unit" means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under 9VAC5-140-2040 and, except for purposes of 9VAC5-140-2050 and Article 5 (9VAC5-140-2400 et seq.) of this part, a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part.

"CAIR NO_X source" means a source that is subject to the CAIR NO_X Annual Trading Program.

"CAIR permit" means the terms and conditions in a Title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9VAC5-140-2200 et seq.) of this part, including any permit revisions, specifying the CAIR NO_X Ozone Season Trading Program requirements applicable to a CAIR NO_X Ozone Season source, to each CAIR NO_X Ozone Season unit at the source, and to the owners and operators and the CAIR-designated representative of the source and each such unit.

"CAIR SO_2 source" means a source that is subject to the CAIR SO_2 Trading Program.

"CAIR SO_2 Trading Program" means a multistate sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance with Part IV (9VAC5-140-3010 et seq.) of this chapter, subparts AAA through III of 40 CFR Part 96, and 40 CFR 51.124 (o)(1) or (2) or established by the administrator in accordance with subparts AAA through III of 40 CFR Part 97 and 40 CFR 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

"Clean Air Act" or "CAA" means the Clean Air Act, 42 USC § 7401 et seq.

"Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

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

"Coal-fired" means:

1. Except for purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

2. For purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

"Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

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

2. 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 5.0% of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5% of total energy input, if useful thermal energy produced is 15%

or more of total energy output, or not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.

b. For a bottoming-cycle cogeneration unit, useful power not less than 45% of total energy input;

3. Provided that the total energy input under subdivisions 2 a (2) and 2 b of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

"Combustion turbine" means:

1. 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

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

"Commence commercial operation" means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9VAC5-140-2050 and subdivision 8 of 9VAC5-140-2840.

a. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC50-140-2040 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 1 of this definition 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 Ozone Season unit under 9VAC5-140-2040 the later of November 15, 1990 or on the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9VAC5-140-2050, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040.

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

"Commence commercial operation" means, with regard to an existing nonelectric generating unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Article 9 (9VAC5-140-2800 et seq.) of this part, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date the unit commences commercial operation, the date the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 shall be the unit's date of commencement of commercial operation.

"Commence operation" means:

1. 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 subdivision 8 of 9VAC5-140- 2840.

2. 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 subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, 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 subdivisions 1, 2, or 3 of this definition as appropriate, except as provided in subdivision 8 of 9VAC5-140-2840.

“Commence operation” means, with regard to an existing nonelectric generating unit, to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Article 9 (9VAC5-140-2800 et seq.) of this part, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date of commencement of operation, the date the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 shall be the unit's date of commencement of operation.

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

"Compliance account" means a CAIR NO_X Ozone Season Allowance Tracking System account, established by the administrator for a CAIR NO_X Ozone Season source under Article 6 (9VAC5-140-2500 et seq.) or Article 9 (9VAC5-140-2800 et seq.) of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with 9VAC5-140-2540.

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-2700 et seq.) 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 Article 8 (9VAC5-140-2700 et seq.) of this part:

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

2. A 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);

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

4. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

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

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

"Control period" or "ozone season" means the period beginning May 1 of a calendar year, except as provided in 9VAC5-140-2060 C 2, and ending on September 30 of the same year, inclusive.

“EERE proponent” means any person who owns, leases, operates or controls an energy efficiency unit or a renewable energy unit, or an EERE representative.

“EERE representative” means a party that aggregates one or more energy efficiency units or renewable energy units. An EERE representative may include, without limitation, a common owner of projects, an energy service company, an emission trading broker or a state or municipal entity.

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

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR-designated representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part.

"Energy efficiency unit" means an end-use energy efficiency project implemented after January 1, 2006, that reduces electricity consumption at a building or facility located in Virginia according to an energy efficiency verification protocol acceptable to the permitting authority. Projects resulting in energy savings at a CAIR NO_X Ozone Season unit are not encompassed within this definition.

"Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source during a control period that exceeds the CAIR NO_X

Ozone Season emissions limitation for the source.

“Existing nonelectric generating unit” means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 1 and listed in 9VAC5-140-2430.

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

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

"Fossil fuel-fired" means, with regard to an existing nonelectric generating unit:

1. For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1995 or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

2. For units that commenced operation on or after January 1, 1996, and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1996; or

3. For units that commence operation on or after January 1, 1997:

a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year; or

b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

"General account" means a NO_X Ozone Season Allowance Tracking System account, established under Article 6 (9VAC5-140-2500 et seq.) of this part, that is not a compliance account.

"Generator" means a device that produces electricity.

"Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Heat input" means, 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 Article 8 (9VAC5-140-2700 et seq.) of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Heat input rate" means 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.

“Hg Budget Trading Program” means a multi-state Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with Part VI (9VAC5-140-5010 et seq.) of this chapter and 40 CFR 60.24(h)(6), or established by the administrator under § 111 of the Clean Air Act, as a means of reducing national Hg emissions.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the CAA and which implements the relevant requirements of the CAA.

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

1. For the life of the unit;

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

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

"Maximum design heat input" means 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.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-2700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

"Most stringent state or federal NO_X emissions limitation" means the lowest NO_X emissions limitation (in lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit which provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal NO_X emissions limitation. The primary fuel shall be the fuel designated in the permit as such or resulting in the lowest emissions rate.

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

"New energy efficiency/renewable energy unit set-aside budget" means the amount of

tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for each control period in 2009 and thereafter multiplied by 1.0%, rounded to the nearest whole allowance as appropriate.

"New nonelectric generating unit" means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2.

"New unit set-aside budget" means the sum of:

1. The amount of tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for the control period to which the new unit set-aside applies multiplied by the new unit set-aside percentage, rounded to the nearest whole allowance as appropriate.

2. 736 tons of NO_X emissions for each control period.

"New unit set-aside percentage" means 4.0% for each control period in 2009 through 2013 or 1.0 % for each control period in 2014 and thereafter.

"Nonelectric generating unit" means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C but is not covered under 9VAC5-140-2040 A.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or projected emissions data.

"Oil-fired" means, for purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting fuel oil for more than 15.0% of the annual heat input in a specified year and not qualifying as coal-fired.

"Operator" means any person who operates, controls, or supervises a CAIR NO_X Ozone Season unit or a CAIR NO_X Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

1. With regard to a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit at a source, respectively:

a. Any holder of any portion of the legal or equitable title in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit;

b. Any holder of a leasehold interest in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit; or

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

2. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account and who is

subject to the binding agreement for the CAIR-authorized account representative to represent the person's ownership interest with respect to CAIR NO_X Ozone Season allowances.

"Permitting authority" means the state air pollution control agency, local agency, other state agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board. The board will issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program in accordance with Article 3 (9VAC5-140-2200 et seq.) of this part.

"Potential electrical output capacity" means 33% 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.

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

"Recordation," "record," or "recorded" means, with regard to CAIR NO_X Ozone Season allowances, the movement of CAIR NO_X Ozone Season allowances by the administrator into or between CAIR NO_X Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

"Renewable energy unit" means an electric generator that began commercial operation after January 1, 2006, and is powered by (i) wind, solar, ocean thermal, wave, tidal, geothermal, or biomass energy, or (ii) fuel cells powered by hydrogen generated by a renewable energy source. Renewable energy does not include energy derived from: (i) material that has been treated or painted or derived from demolition or construction material; (ii) municipal, industrial or other multiple source solid waste; and (iii) co-firing of biomass with fossil fuels or solid waste.

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

"Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magnetohydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition

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.

"Sequential use of energy" means:

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

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

"Serial number" means, for a CAIR NO_X Ozone Season allowance, the unique identification number assigned to each CAIR NO_X Ozone Season allowance by the administrator.

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

"Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

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

1. In person;

2. By United States Postal Service; or

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

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X Ozone Season 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 Article 8 (9VAC5-140-2700 et seq.) 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.

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

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

$$LHV = HHV – 10.55(W + 9H)$$

where:

LHV = lower heating value of fuel in Btu/lb.

HHV = higher heating value of fuel in Btu/lb.

W = Weight percent of moisture in fuel.

H = Weight percent of hydrogen in fuel.

"Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

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

"Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

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

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

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

"Utility power distribution system" means the portion of an electricity grid owned or

operated by a utility and dedicated to delivering electricity to customers.

9VAC5-140-2030. Measurements, abbreviations, and acronyms.

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

Btu-British thermal unit.
CO_2-carbon dioxide.
H_2O-water.
Hg-mercury.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
lb-pound.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
NO_X-nitrogen oxides.
O_2-oxygen.
ppm-parts per million.
scfh-standard cubic feet per hour.
SO_2-sulfur dioxide.
yr-year.

9VAC5-140-2040. Applicability.

A. Except as provided in subsection B of this section:

1. The following units shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this article and Article 2 (9VAC5-140-2100 et seq.) through Article 8 (9VAC5-140-2700 et seq.) 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 start-up 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, under subdivision 1 of this subsection, is not a CAIR NO_X Ozone Season 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 Ozone Season unit as provided in subdivision 1 of this subsection 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 subdivision 1 a, 2 a, or 2 b of this subsection shall not be CAIR NO_X Ozone Season units:

1.a. Any unit that is a CAIR NO_X Ozone Season unit under subdivision A 1 or 2 of this section:

(1) 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

(2) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 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.

b. 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 subdivision 1 a of this subsection for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subdivision 1 a (2) of this subsection.

2.a. Any unit that is a CAIR NO_X Ozone Season unit under subdivision A 1 or 2 of this section commencing operation before January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of nonfossil fuel for 1985-1987 exceeding 80% (on a Btu basis) and an average annual fuel consumption of nonfossil fuel for any 3 consecutive calendar years after 1990 exceeding 80% (on a Btu basis).

b. Any unit that is a CAIR NO_X Ozone Season unit under subdivision A 1 or 2 of this section commencing operation on or after January 1, 1985:

(1) Qualifying as a solid waste incineration unit; and

(2) With an average annual fuel consumption of nonfossil fuel for the first three calendar years of operation exceeding 80% (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80% (on a Btu basis).

c. If a unit qualifies as a solid waste incineration unit and meets the requirements of subdivision 2 a or b of this subsection for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_X Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20% or more.

C. The following units shall be CAIR NO_X Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_X Ozone Season source, subject to the requirements of this article and Article 2 (9VAC5-140-2100 et seq.) through Article 8 (9VAC5-140-2700 et seq.) of this part:

1. Units listed in 9VAC5-140-2430.

2. Except for units under subsection A or C 1 of this section, the units that meet the requirements set forth in subdivisions a and b of this subdivision:

a.(1) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(2) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(3) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

b.(1) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(2) For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(3) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(a) At no time serves a generator producing electricity for sale under firm contract to the grid; or

(b) At any time serves a generator producing electricity for sale under firm contract to the grid, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit.

9VAC5-140-2050. Retired unit exemption.

A.1. Any CAIR NO_X Ozone Season unit that is permanently retired and is not a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part shall be exempt from the CAIR NO_X Ozone Season Trading Program, except for the provisions of this section, 9VAC5-140-2020, 9VAC5-140-2030, 9VAC5-140-2040, 9VAC5-140-2060 C 4 through 7, 9VAC5-140-2070, 9VAC5-140-2080, and Article 2 (9VAC5-140-2100 et seq.) and Article 5 (9VAC5-140-2400 et seq.) through Article 7 (9VAC5-140-2600 et seq.) of this part.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the CAIR NO_X Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR-designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the administrator. The statement shall state, in a format acceptable to the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of subsection B of this section.

3. After receipt of the statement under subdivision 2 of this subsection, the permitting authority will amend any permit under Article 3 (9VAC5-140-2200 et seq.) of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection B of this section.

B. Special provisions for exempt units shall be as follows:

1. A unit exempt under subsection A of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

2. The permitting authority will allocate CAIR NO_X Ozone Season allowances under Article 5 (9VAC5-140-2400 et seq.) of this part to a unit exempt under subsection 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 subsection 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 permitting authority

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 subsection A of this section shall comply with the requirements of the CAIR NO_X Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or shall be complied with, after the exemption takes effect.

5. A unit exempt under subsection 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 9VAC5-140-2220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) 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 subsection A of this section shall lose its exemption:

a. The date on which the CAIR-designated representative submits a CAIR permit application for the unit under subdivision 5 of this subsection;

b. The date on which the CAIR-designated representative is required under subdivision 5 of this subsection to submit a CAIR permit application for the unit; or

c. 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 Article 8 (9VAC5-140-2700 et seq.) of this part, a unit that loses its exemption under subsection A of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

9VAC5-140-2060. Standard requirements.

A. Permit requirements shall be as follows:

1. The CAIR-designated representative of each CAIR NO_X Ozone Season source required to have a Title V operating permit and each CAIR NO_X Ozone Season unit required to have a Title V operating permit at the source shall:

a. Submit to the permitting authority a complete CAIR permit application under 9VAC5-140-2220 in accordance with the deadlines specified in 9VAC5-140-2210; and

b. Submit in a timely manner any supplemental information that the permitting authority 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 Ozone Season source required to have a Title V operating permit and each CAIR NO_X Ozone Season unit required to have a Title V operating permit at the source shall have a CAIR permit issued by the permitting authority under Article 3 (9VAC5-140-2200 et seq.) of this part for the source and operate the source and the unit in compliance with such CAIR permit.

3. Except as provided in Article 9 (9VAC5-140-2800 et seq.) of this part, the owners and

operators of a CAIR NO_X Ozone Season source that is not otherwise required to have a Title V operating permit and each CAIR NO_X Ozone Season unit that is not otherwise required to have a Title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under Article 3 (9VAC5-140-2200 et seq.) of this part for such CAIR NO_X Ozone Season source and such CAIR NO_X Ozone Season unit.

B. Monitoring, reporting, and recordkeeping requirements shall be performed as follows:

1. The owners and operators, and the CAIR-designated representative, of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of Article 8 (9VAC5-140-2700 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part shall be used to determine compliance by each CAIR NO_X Ozone Season source with the CAIR NO_X Ozone Season emissions limitation under subsection C of this section.

C. Nitrogen oxides ozone season emission requirements shall be as follows:

1. As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_X Ozone Season allowances available for compliance deductions for the control period under 9VAC5-140-2540 A in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X Ozone Season units at the source, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part.

2. A CAIR NO_X Ozone Season unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of May 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-2700 C 1, 2, 3, or 7 and for each control period thereafter.

3. A CAIR NO_X Ozone Season allowance shall not be deducted, for compliance with the requirements under subdivision 1 of this subsection, for a control period in a calendar year before the year for which the CAIR NO_X Ozone Season allowance was allocated.

4. CAIR NO_X Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Ozone Season Allowance Tracking System accounts in accordance with Article 5 (9VAC5-140-2400 et seq.), Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), and Article 9 (9VAC5-140-2800 et seq.) of this part.

5. A CAIR NO_X Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Ozone Season Trading Program. No provision of the CAIR NO_X Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-2050 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 Ozone Season allowance does not constitute a property right.

7. Upon recordation by the administrator under Article 5 (9VAC5-140-2400 et seq.), Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), or Article 9 (9VAC5-140-2800 et seq.) of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from a CAIR NO_X Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

D. If a CAIR NO_X Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_X Ozone Season emissions limitation, then:

1. The owners and operators of the source and each CAIR NO_X Ozone Season unit at the source shall surrender the CAIR NO_X Ozone Season allowances required for deduction under 9VAC5-140-2540 D 1 and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or the Virginia Air Pollution Control Law; and

2. Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this article, the Clean Air Act, and the Virginia Air Pollution Control Law.

E. Recordkeeping and reporting requirements shall be performed as follows:

1. Unless otherwise provided, the owners and operators of the CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the permitting authority or the administrator.

a. The certificate of representation under 9VAC5-140-2130 for the CAIR-designated representative for the source and each CAIR NO_X Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under 9VAC5-140-2130 changing the CAIR-designated representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, provided that to the extent that Article 8 (9VAC5-140-2700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Ozone Season Trading Program.

d. Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Ozone Season Trading Program.

2. The CAIR-designated representative of a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source shall submit the reports required under the CAIR NO_X Ozone Season Trading Program, including those under Article 8 (9VAC5-140-2700 et seq.) of this part.

F. Liability shall be assigned as follows:

1. Each CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit shall meet the requirements of the CAIR NO_X Ozone Season Trading Program.

2. Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season source or the CAIR-designated representative of a CAIR NO_X Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_X Ozone Season units at the source.

3. Any provision of the CAIR NO_X Ozone Season Trading Program that applies to a CAIR NO_X Ozone Season unit or the CAIR-designated representative of a CAIR NO_X Ozone Season unit shall also apply to the owners and operators of such unit.

G. No provision of the CAIR NO_X Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under 9VAC5-140-2050 shall be construed as exempting or excluding the owners and operators, and the CAIR-designated representative, of a CAIR NO_X Ozone Season source or CAIR NO_X Ozone Season unit from compliance with any other provision of the applicable, approved state implementation plan, a state operating permit, the Virginia Air Pollution Control Law, or the Clean Air Act.

9VAC5-140-2061. Repealed.
9VAC5-140-2062. Repealed.

9VAC5-140-2070. Computation of time.

A. Unless otherwise stated, any time period scheduled, under the CAIR NO_X Ozone Season 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 Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period, under the CAIR NO_X Ozone Season Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9VAC5-140-2080. Appeal procedures.

The appeal procedures for decisions of the administrator under the CAIR NO_X Ozone Season Trading Program are set forth in 40 CFR Part 78.

Article 2.
CAIR-designated Representative for CAIR NO_X Ozone Season Sources.

9VAC5-140-2100. Authorization and responsibilities of CAIR-designated representative.

A. Except as provided under 9VAC5-140-2110, each CAIR NO_X Ozone Season source, including all CAIR NO_X Ozone Season units at the source, shall have one and only one CAIR-designated representative, with regard to all matters under the CAIR NO_X Ozone Season Trading Program concerning the source or any CAIR NO_X Ozone Season unit at the source.

B. The CAIR-designated representative of the CAIR NO_X Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_X Ozone Season units at the source and shall act in accordance with the certification statement in 9VAC5-140-2130 A 4 d.

C. Upon receipt by the administrator of a complete certificate of representation under 9VAC5-140-2130, the CAIR-designated representative of the source shall represent and, by the CAIR-designated representative's representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_X Ozone Season source represented and each CAIR NO_X Ozone Season unit at the source in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR-designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR-designated representative by the permitting authority, 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 NO_X

Ozone Season Allowance Tracking System account will be established for a CAIR NO_X Ozone Season unit at a source, until the administrator has received a complete certificate of representation under 9VAC5-140-2130 for a CAIR-designated representative of the source and the CAIR NO_X Ozone Season units at the source.

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

2. The permitting authority and the administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit only if the submission has been made, signed, and certified in accordance with subdivision 1 of this subsection.

9VAC5-140-2110. Alternate CAIR-designated representative.

A. A certificate of representation under 9VAC5-140-2130 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 9VAC5-140-2130, 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 9VAC5-140-2020, 9VAC5-140-2100 A and D, 9VAC5-140-2120, 9VAC5-140-2130, 9VAC5-140-2150, 9VAC5-140-2510, and 9VAC5-140-2820 whenever the term "CAIR-designated representative" is used in this part, the term shall be construed to include the CAIR-designated representative or any alternate CAIR-designated representative.

9VAC5-140-2120. Changing CAIR-designated representative and alternate CAIR-designated representative; changes in owners and operators.

A. The CAIR-designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9VAC5-140-2130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR-designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new CAIR-designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

B. The alternate CAIR-designated representative may be changed at any time upon receipt by the administrator of a superseding complete certificate of representation under 9VAC5-140-2130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the

previous alternate CAIR-designated representative before the time and date when the administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR-designated representative and the owners and operators of the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source.

C. Changes in owners and operators shall be established as follows:

1. In the event an owner or operator of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit is not included in the list of owners and operators in the certificate of representation under 9VAC5-140-2130, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR-designated representative and any alternate CAIR-designated representative of the source or unit, and the decisions and orders of the permitting authority, the administrator, or a court, as if the owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit, including the addition of a new owner or operator, the CAIR-designated representative or any alternate CAIR-designated representative shall submit a revision to the certificate of representation under 9VAC5-140-2130 amending the list of owners and operators to include the change.

9VAC5-140-2130. 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 NO_X Ozone Season source, and each CAIR NO_X Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

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

3. A list of the owners and operators of the CAIR NO_X Ozone Season source and of each CAIR NO_X Ozone Season unit at the source.

4. The following certification statements by the CAIR-designated representative and any alternate CAIR-designated representative:

a. "I certify that I was selected as the CAIR-designated representative or alternate CAIR-designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_X Ozone Season unit at the source."

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

c. "I certify that the owners and operators of the source and of each CAIR NO_X Ozone Season unit at the source shall be bound by any order issued to me by the administrator, the permitting authority, or a court regarding the source or unit."

d. "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_X Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_X Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR-designated representative' or 'alternate CAIR-designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_X Ozone Season unit at the source; and CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_X Ozone Season allowances by contract, CAIR NO_X Ozone Season allowances and proceeds of transactions involving CAIR NO_X Ozone Season 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 permitting authority or the administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-2140. Objections concerning CAIR-designated representative.

A. Once a complete certificate of representation under 9VAC5-140-2130 has been submitted and received, the permitting authority and the administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under 9VAC5-140-2130 is received by the administrator.

B. Except as provided in 9VAC5-140-2120 A or B, no objection or other communication submitted to the permitting authority 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 permitting authority or the administrator under the CAIR NO_X Ozone Season Trading Program.

C. Neither the permitting authority nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR-designated representative, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

9VAC5-140-2150. Delegation by CAIR-designated representative and alternate CAIR-designated representative.

A. A CAIR-designated representative may delegate, to one or more natural persons, his 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 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 subsection 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 subsection A or B of this section for which authority is delegated to him; and

4. The following certification statements by such CAIR-designated representative or alternate CAIR-designated representative:

a. "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 9VAC5-140-2150 D shall be deemed to be an electronic submission by me."

b. "Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-2150 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 9VAC5-140-2150 is terminated."

D. A notice of delegation submitted under subsection 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 subdivision C 4 a of this section and made in accordance with a notice of delegation effective under subsection 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.

Article 3.
Permits.

9VAC5-140-2200. General CAIR NOX Ozone Season Trading Program permit requirements.

A. For each CAIR NO_X Ozone Season source required to have a Title V operating permit or required, under Article 9 (9VAC5-140-2800 et seq.) of this part, to have a Title V operating permit or other state operating permit, such permit shall include a CAIR permit administered by the permitting authority for the Title V operating permit or the state operating permit as applicable. The CAIR portion of the Title V permit or state operating permit as applicable shall be administered in accordance with the permitting authority's Title V operating permit regulations or regulations for state operating permits as applicable, except as provided otherwise by 9VAC5-140-2050, this article, and Article 9 (9VAC5-140-2800 et seq.) of this part.

B. Each CAIR permit shall contain, with regard to the CAIR NO_X Ozone Season source and the CAIR NO_X Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_X Ozone Season Trading Program, CAIR NO_X Annual Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the Title V operating permit or other state

operating permit under subsection A of this section.

9VAC5-140-2210. Submission of CAIR permit applications.

A. The CAIR-designated representative of any CAIR NO_X Ozone Season source required to have a Title V operating permit shall submit to the permitting authority a complete CAIR permit application under 9VAC5-140-2220 for the source covering each CAIR NO_X Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009, or the date on which the CAIR NO_X Ozone Season unit commences commercial operation, except as provided in 9VAC5-140-2830 A.

B. For a CAIR NO_X Ozone Season source required to have a Title V operating permit, the CAIR-designated representative shall submit a complete CAIR permit application under 9VAC5-140-2220 for the source covering each CAIR NO_X Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's Title V operating permit regulations addressing permit renewal, except as provided in 9VAC5-140-2830 B.

9VAC5-140-2220. Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_X Ozone Season source for which the application is submitted, in a format acceptable to the permitting authority:

1. Identification of the CAIR NO_X Ozone Season source;

2. Identification of each CAIR NO_X Ozone Season unit at the CAIR NO_X Ozone Season source; and

3. The standard requirements under 9VAC5-140-2060.

9VAC5-140-2230. CAIR permit contents and term.

A. Each CAIR permit will contain, in a format acceptable to the permitting authority, all elements required for a complete CAIR permit application under 9VAC5-140-2220.

B. Each CAIR permit is deemed to incorporate automatically the definitions of terms under 9VAC5-140-2020 and, upon recordation by the administrator under Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), or Article 9 (9VAC5-140-2800 et seq.) of this part, every allocation, transfer, or deduction of a CAIR NO_X Ozone Season allowance to or from the compliance account of the CAIR NO_X Ozone Season source covered by the permit.

C. The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_X Ozone Season source's Title V operating permit or state operating permit as applicable.

9VAC5-140-2240. CAIR permit revisions.

Except as provided in 9VAC5-140-2230 B, the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's Title V operating permit regulations or the permitting authority's regulations for state operating permits as applicable addressing permit revisions.

Article 4.
(Reserved).

9VAC5-140-2300. (Reserved.)

Article 5.
CAIR NO_X Ozone Season Allowance Allocations.

9VAC5-140-2400. CAIR NOX Ozone Season trading budgets.

A. The CAIR NO_X Ozone Season trading budgets for annual allocations of CAIR NO_X ozone season allowances apportioned to all CAIR NO_X Ozone Season units, except for units under 9VAC5-140-2040 C 1, and energy efficiency units and renewable energy units for the control periods are as follows:

1. For use in each control period in 2009 through 2014, the total number of NO_X tons is 15,994.

2. For use in each control period in 2015 and thereafter, the total number of NO_X tons is 13,328.

B. The amount of CAIR NO_X Ozone Season allowances in the CAIR NO_X Ozone Season trading budget for a control period in a calendar year set forth in subsection A of this section shall not include the amount of CAIR NO_X Ozone Season allowances allocated under 9VAC5-140-2405 for the year.

9VAC5-140-2405. State trading budgets for nonelectric generating units.

The state trading budgets for annual allocations of CAIR NO_X ozone season allowances for the control periods are as follows:

1. For use in each control period in 2009 and thereafter, the total number of NO_X tons apportioned to all CAIR NO_X Ozone Season units under 9VAC5-140-2040 C 1 is 3,104.

2. For use in the new unit set-aside budget for each control period in 2009 and thereafter, the total number of NO_X tons apportioned to all CAIR NO_X Ozone Season units is 736.

9VAC5-140-2410. Timing requirements for CAIR NOX Ozone Season allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-2420 A and C and 9VAC5-140-2430, for the control periods in 2009, 2010, 2011, 2012, and 2013.

B. By October 31, 2009, and October 31 of each year thereafter, the permitting authority will submit to the administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-2420 A and C and 9VAC5-140-2430, for the control period in the fifth year after the year of the applicable deadline for submission under this subsection.

C. By July 31, 2009, the permitting authority will submit to the administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-2420 A, B, D, and F, for the control periods in 2009, 2010, 2011, 2012, and 2013.

D. By July 31, 2014, and July 31 of each year thereafter, the permitting authority will submit to the administrator the CAIR NO_X Ozone Season allowance allocations, in a format prescribed by the administrator and in accordance with 9VAC5-140-2420 A, B, E, and F, for the control period in the year of the applicable deadline for submission under this subsection.

9VAC5-140-2420. CAIR NOX Ozone Season allowance allocations.

A.1. The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under subsection C of this section for each CAIR NO_X Ozone Season unit under 9VAC5-140-2040 A will be:

a. For units commencing operation before January 1, 2006, the average of the three highest amounts of the unit's control period heat input for the five years prior to the allocation year. For units operating each calendar year during a period of at least one but less than five consecutive calendar years, one year or, where available, the average of the two highest amounts of the unit's control period heat input over the consecutive years of operation.

b. For units commencing operation on or after January 1, 2006:

(1) For units operating each calendar year during a period of five or more consecutive calendar years, the average of the three highest amounts of the unit's total converted control period heat input over the most recent five years prior to the allocation year.

(2) For units operating each calendar year during a period of at least three but less than five consecutive calendar years, the average of the three highest amounts of the unit's total converted control period heat input over the consecutive years of operation.

(3) For units operating each calendar year during a period of at least one but less than five consecutive calendar years, one year or, where available, the average of the two highest amounts of the unit's control period heat input over the consecutive years of operation.

2.a. A unit's control period heat input for a calendar year under subdivision 1 a of this subsection, and a unit's total tons of NO_X emissions during a control period in a calendar year under subdivisions D 3 and E 3 of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

b. A unit's converted control period heat input for a calendar year specified under subdivision 1 b of this subsection equals:

(1) Except as provided in subdivision (2) of this subdivision, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by two or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(2) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the unit multiplied by 7,900 Btu/kWh, plus the useful thermal energy (in Btu) produced during the control period, divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

B.1. The baseline heat input (in mmBtu) used with respect to CAIR NO_X Ozone Season allowance allocations under subsection C of this section for each CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 will be:

a. For units operating each calendar year during a period of five or more consecutive calendar years, the average of the three highest amounts of the unit's total control period heat input over the most recent five years prior to the allocation year.

b. For units operating each calendar year during a period of at least three but less than five consecutive calendar years, the average of the three highest amounts of the unit's total control period heat input over the consecutive years of operation.

2. A unit's control period heat input for a calendar year under subdivision 1 of this subsection, and a unit's total tons of NO_X emissions during a control period in a calendar year under subdivisions D 3 and E 3 of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

C.1. For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_X Ozone Season units that have a baseline heat input (as determined under subsections A and B of this section) a total amount of CAIR NO_X Ozone Season allowances equal to the CAIR NO_X Ozone Season core trading budget (except as provided in subsection F of this section).

2. The permitting authority will allocate CAIR NO_X Ozone Season allowances to each CAIR NO_X Ozone Season unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of CAIR NO_X Ozone Season allowances allocated under subdivision 1 of this subsection by the ratio of the baseline heat input of such CAIR NO_X Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_X Ozone Season units and rounding to the nearest whole allowance as appropriate.

D. For each control period in 2009 through 2013, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units are not allocated CAIR NO_X allowances under subsection C of this section because the units do not yet have a baseline heat input under subsections A and B of this section or because the units have a baseline heat input but all CAIR NO_X allowances under subsection C of this section for the control period are already allocated, in accordance with the following procedures:

1. The permitting authority will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated CAIR NO_X Ozone Season allowances equal to the new unit set-aside budget.

2. The CAIR-designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, for each control period in 2009 through 2013. The CAIR NO_X Ozone Season allowance allocation request shall be submitted on or before February 1, 2009 and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

3. In a CAIR NO_X Ozone Season allowance allocation request under subdivision 2 of this subsection, the CAIR-designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

4. The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under subdivision 2 of this subsection and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 2 and 3 of this subsection.

b. On or after February 1 2009, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) in all allowance allocation requests accepted under subdivision a of this subdivision for the control period.

c. If the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period is greater than or equal to the sum under subdivision b of this subdivision, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subdivision a of this subdivision.

d. If the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period is less than the sum under subdivision b of this subdivision, then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subdivision a of this subdivision the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period, divided by the sum determined under subdivision b of this subdivision, and rounded to the nearest whole allowance as appropriate.

e. The permitting authority will notify each CAIR-designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

E. For each control period in 2014 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to CAIR NO_X Ozone Season units that are not allocated CAIR NO_X allowances under subsection C of this section because the units do not yet have a baseline heat input under subsections A and B of this section or because the units have a baseline heat input but all CAIR NO_X allowances under subsection C of this section for the control period are already allocated, in accordance with the following procedures:

1. The permitting authority will establish a separate new unit set aside for each control period. Each new unit set aside will be allocated CAIR NO_X Ozone Season allowances equal to the new unit set-aside budget.

2. The CAIR-designated representative of such a CAIR NO_X Ozone Season unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2014 or the first control period after the control period in which the CAIR NO_X Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_X Ozone Season allowances under subsection B of this section. A separate CAIR NO_X Ozone Season allowance allocation request for each control period for which CAIR NO_X Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_X Ozone Season unit commences commercial operation.

3. In a CAIR NO_X Ozone Season allowance allocation request under subdivision 2 of this subsection, the CAIR-designated representative may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding the CAIR NO_X Ozone Season unit's total tons of NO_X emissions during the control period immediately before such control period.

4. The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under subdivision 2 of this subsection and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the

request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 2 and 3 of this subsection.

b. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) in all allowance allocation requests accepted under subdivision a of this subdivision for the control period.

c. If the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period is greater than or equal to the sum under subdivision b of this subdivision, then the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subdivision a of this subdivision.

d. If the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period is less than the sum under subdivision b of this subdivision, then the permitting authority will allocate to each CAIR NO_X Ozone Season unit covered by an allowance allocation request accepted under subdivision a of this subdivision the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision), multiplied by the amount of CAIR NO_X Ozone Season allowances in the new unit set aside for the control period, divided by the sum determined under subdivision b of this subdivision, and rounded to the nearest whole allowance as appropriate.

e. The permitting authority will notify each CAIR-designated representative that submitted an allowance allocation request of the amount of CAIR NO_X Ozone Season allowances (if any) allocated for the control period to the CAIR NO_X Ozone Season unit covered by the request.

F. If, after completion of the procedures under subdivision D 4 or E 4 of this section for a control period, any unallocated CAIR NO_X Ozone Season allowances remain in the new unit set aside for the control period, the permitting authority will allocate to each CAIR NO_X Ozone Season unit that was allocated CAIR NO_X Ozone Season allowances under subsection C of this section an amount of CAIR NO_X Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_X Ozone Season allowances, multiplied by the unit's allocation under subsection C of this section, divided by the CAIR NO_X Ozone Season core trading budget, and rounded to the nearest whole allowance as appropriate.

G. For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances not to exceed the new energy efficiency/renewable energy unit set-aside budget to qualifying energy efficiency units and renewable energy units in accordance with the following procedures:

1. The EERE proponent of an energy efficiency unit or a renewable energy unit may submit to the permitting authority a request, in a format acceptable to the permitting authority, to be allocated CAIR NO_X Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation. The CAIR NO_X Ozone Season allowance allocation request must be submitted on or before April 1 of each control period for which the CAIR NO_X Ozone Season allowances are requested and after the date on which the energy efficiency unit is implemented or the renewable energy unit commences commercial operation.

2. EERE proponents may submit an application that aggregates two or more energy efficiency units or renewable energy units. The permitting authority will not allocate CAIR NO_X Ozone Season allowances for energy efficiency units or renewable energy units totaling less than one whole allowance or any fraction thereof. If more than one proponent submits an application for allowances for

the same energy efficiency unit or renewable energy unit for the same calendar year, the permitting authority, at its discretion, may refuse to accept the applications.

3. In a CAIR NO_X Ozone Season allowance allocation request under subdivisions 1 and 2 of this subsection, the EERE proponent may request for a control period CAIR NO_X Ozone Season allowances in an amount not exceeding:

a. For a renewable energy unit, the control period gross electrical output of the facility during the calendar year immediately before such control period multiplied by 1.5 lb/MWh for the years 2009-2014, or 1.25 lb/MWh for 2015 and thereafter and divided by 2000 and rounded to nearest whole allowance as appropriate.

b. For an energy efficiency unit, the control period verified reduction in electricity consumption during the calendar year immediately before such control period multiplied by 1.5 lb/MWh for the years 2009- 2013, or 1.25 lb/MWh for 2014 and thereafter and divided by 2000 and rounded to the nearest whole allowance as appropriate.

4. The permitting authority will review each CAIR NO_X Ozone Season allowance allocation request under subdivisions 1 and 2 of this subsection and will allocate CAIR NO_X Ozone Season allowances for each control period pursuant to such request as follows:

a. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of subdivisions 1, 2 and 3 of this subsection.

b. On or after July 1 of the control period, the permitting authority will determine the sum of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) in all allowance allocation requests accepted under subdivision a of this subdivision for the control period.

c. If the amount of CAIR NO_X Ozone Season allowances in the energy efficiency/renewable set-aside budget for the control period is greater than or equal to the sum under subdivision b of this subdivision, the permitting authority will allocate the amount of CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision) to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision a of this subdivision.

d. If the amount of CAIR NO_X Ozone Season allowances in the energy efficiency/renewable set-aside budget for the control period is less than the sum under subdivision b of this subdivision, the permitting authority will allocate to each energy efficiency unit or renewable energy unit covered by an allowance allocation request accepted under subdivision a of this subdivision the amount of the CAIR NO_X Ozone Season allowances requested (as adjusted under subdivision a of this subdivision), multiplied by the amount of CAIR NO_X Ozone Season allowances in the energy efficiency/renewable unit set-aside budget for the control period, divided by the sum determined under subdivision b of this subdivision, and rounded to the nearest whole allowance as appropriate.

5. By July 31, 2009 and July 31 of each year thereafter, the permitting authority will notify each EERE proponent that submitted an allowance allocation request under subdivisions 1 and 2 of this subsection of the amount of CAIR NO_X Ozone Season allowances (if any) allocated under subdivision 4 of this subsection for the control period to the energy efficiency unit or renewable energy unit covered by the request.

6. If, after completion of the procedures under subdivisions 4 and 5 of this subsection for a control period, any unallocated CAIR NO_X Ozone Season allowances have remained in the new energy

efficiency/renewable set-aside budget for more than three control periods, the permitting authority will permanently retire those allowances, and they will not be available for compliance for any CAIR NO_X Ozone Season unit.

7. The permitting authority will not submit to the administrator the CAIR NO_X Ozone Season allowance allocations under subdivision 4 of this subsection.

8. CAIR NO_X Ozone Season allowances allocated under subdivision 4 of this subsection shall (i) be retired permanently by the EERE proponent making the request under subdivision 2 of this subsection, (ii) shall not be considered valid or capable of being lawfully traded under the CAIR NO_X Ozone Season Trading Program, and (iii) shall not be available for compliance for any CAIR NO_X Ozone Season unit.

H. For each control period in 2009 and thereafter, the permitting authority will establish an annual voluntary public health set-aside. Any allowances contributed to the public health set-aside will be permanently retired and will not be available for compliance for any affected unit.

9VAC5-140-2430. CAIR NOX Ozone Season allowance allocations for individual existing nonelectric generating units.

For use in each control period for the year 2009 and each year thereafter, the number of NO_X tons apportioned to each CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 1 is as follows:

Plant	Stack ID	Point ID	NO_X Allocation (Tons per control period)
CELANESE ACETATE LLC	001	001	154
CELANESE ACETATE LLC	002	002	55
DAN RIVER INC (SCHOOLFIELD DIV)	003	003	100
GEORGIA-PACIFIC - BIG ISLAND MILL	001	002	89
GEORGIA-PACIFIC - BIG ISLAND MILL	005	005	103
HONEYWELL INTERNATIONAL INC	100	10A	0
HONEYWELL INTERNATIONAL INC	101	10B	200
HONEYWELL INTERNATIONAL INC	102	10C	156
INTERNATIONAL PAPER – FRANKLIN	001	003	306
INTERNATIONAL PAPER – FRANKLIN	012	017	107
INTERNATIONAL PAPER – FRANKLIN	022	029	262
ST. LAURENT PAPER PRODUCTS CORP.	002	002	292
WESTVACO CORP BLEACHED BOARD	001	001	293
WESTVACO CORP BLEACHED BOARD	002	002	158
WESTVACO CORP BLEACHED BOARD	003	003	243
WESTVACO CORP BLEACHED BOARD	004	004	429
WESTVACO CORP BLEACHED BOARD	005	005	87
WESTVACO CORP BLEACHED BOARD	024	011	70

TOTAL			**3104**

Article 6.
CAIR NO_X Ozone Season Allowance Tracking System.

9VAC5-140-2500. (Reserved.)

9VAC5-140-2510. Establishment of accounts.

A. Except as provided in subdivision 5 of 9VAC5-140-2840, upon receipt of a complete certificate of representation under 9VAC5-140-2130, the administrator will establish a compliance account for the CAIR NO_X Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

B. General accounts shall be established as follows:

1. Applications for general accounts shall be submitted as follows:

a. Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_X Ozone Season allowances. An application for a general account may designate one and only one CAIR-authorized account representative and one and only one alternate CAIR-authorized account representative who may act on behalf of the CAIR-authorized account representative. The agreement by which the alternate CAIR-authorized account representative is selected shall include a procedure for authorizing the alternate CAIR-authorized account representative to act in lieu of the CAIR-authorized account representative.

b. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

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

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

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

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

(5) The signature of the CAIR-authorized account representative and any alternate CAIR-authorized account representative and the dates signed.

c. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of a CAIR-authorized account representative and alternate CAIR-authorized account representative shall be established as follows:

a. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

(1) The administrator will establish a general account for the person or persons for whom the application is submitted.

(2) The CAIR-authorized account representative and any alternate CAIR-authorized account representative for the general account shall represent and, by such persons' representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_X Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_X Ozone Season Trading Program, notwithstanding any agreement between the CAIR-authorized account representative or any alternate CAIR-authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR-authorized account representative or any alternate CAIR-authorized account representative by the administrator or a court regarding the general account.

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

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

c. The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision b of this subdivision 2.

3. Changing the CAIR-authorized account representative and alternate CAIR-authorized account representative and changes in persons with ownership interest shall be accomplished as follows:

a. The CAIR-authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR-authorized account representative before the time and date when the administrator receives the superseding application for a

general account shall be binding on the new CAIR-authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

b. The alternate CAIR-authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR-authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate CAIR-authorized account representative and the persons with an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account.

c.(1) In the event a person having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR-authorized account representative and any alternate CAIR-authorized account representative of the account, and the decisions and orders of the administrator or a court, as if the person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_X Ozone Season allowances in the general account, including the addition of a new person, the CAIR-authorized account representative or any alternate CAIR-authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_X Ozone Season allowances in the general account to include the change.

4. Objections concerning the CAIR-authorized account representative and alternate CAIR-authorized account representative shall be processed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 3 a or b of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR-authorized account representative or any alternate CAIR-authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR-authorized account representative or any alternate CAIR-authorized account representative or the finality of any decision or order by the administrator under the CAIR NO_X Ozone Season Trading Program.

c. The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR-authorized account representative or any alternate CAIR-authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

5. Delegation by CAIR-authorized account representative and alternate CAIR-authorized account representative shall be made as follows.

a. A CAIR-authorized account representative may delegate to one or more natural persons his authority to make an electronic submission to the administrator provided for or

required under Article 6 (9VAC5-140-2500 et seq.) and Article 7 (9VAC5-140-2600 et seq.) of this part.

b. An alternate CAIR-authorized account representative may delegate to one or more natural persons his authority to make an electronic submission to the administrator provided for or required under Article 6 (9VAC5-140-2500 et seq.) and Article 7 (9VAC5-140-2600 et seq.) of 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 subdivision 5, the CAIR-authorized account representative or alternate CAIR-authorized account representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

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

(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 subdivision for which authority is delegated to him;

(4) The following certification statement by such CAIR-authorized account representative or alternate CAIR-authorized account representative: “I agree that any electronic submission to the administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR-authorized account representative or alternate CAIR-authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-2510 B 5 d shall be deemed to be an electronic submission by me.”; and

(5) The following certification statement by such CAIR-authorized account representative or alternate CAIR-authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-2510 B 5 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 9VAC5-140-2510 B 5 is terminated.”

d. A notice of delegation submitted under subdivision c of this subdivision 5 shall be effective, with regard to the CAIR-authorized account representative or alternate CAIR-authorized account representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such CAIR-authorized account representative or alternate CAIR-authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

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

C. The administrator will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-2520. Responsibilities of CAIR-authorized account representative.

Following the establishment of a CAIR NO_X Ozone Season Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_X Ozone Season allowances in the account, shall be made only by the CAIR-authorized account representative for the account.

9VAC5-140-2530. Recordation of CAIR NOX Ozone Season allowance allocations.

A. By September 30, 2007, the administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with 9VAC5-2410 A, for the control periods in 2009, 2010, 2011, 2012, and 2013.

B. By December 1, 2009, the administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-2410 B, for the control period in 2014.

C. By December 1, 2010, and by December 1 of each year thereafter, the administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-2410 B, for the control period in the fifth year after the year of the applicable deadline for recordation under this paragraph.

D. By September 1, 2009, the administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-2410 C, for the control periods in 2009, 2010, 2011, 2012, and 2013.

E. By September 1, 2014, and September 1 of each year thereafter, the administrator will record in the CAIR NO_X Ozone Season source's compliance account the CAIR NO_X Ozone Season allowances allocated for the CAIR NO_X Ozone Season units at the source, as submitted by the permitting authority in accordance with 9VAC5-140-2410 D, for the control period in the year of the applicable deadline for recordation under this subsection.

F. When recording the allocation of CAIR NO_X Ozone Season allowances for a CAIR NO_X Ozone Season unit in a compliance account, the administrator will assign each CAIR NO_X Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_X Ozone Season allowance is allocated.

9VAC5-140-2540. Compliance with CAIR NOX emissions limitation.

A. The CAIR NO_X Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_X Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_X Ozone Season allowances:

1. Were allocated for the control period in the year or a prior year; and

2. Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_X Ozone Season allowance transfer correctly submitted for recordation under 9VAC5-140-2600 and 9VAC5-140-2610 by the allowance transfer deadline for the control period.

B. Following the recordation, in accordance with 9VAC5-140-2610, of CAIR NO_X Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer

deadline for a control period, the administrator will deduct from the compliance account CAIR NO_X Ozone Season allowances available under subsection A of this section in order to determine whether the source meets the CAIR NO_X Ozone Season emissions limitation for the control period, as follows:

1. Until the amount of CAIR NO_X Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, from all CAIR NO_X Ozone Season units at the source for the control period; or

2. If there are insufficient CAIR NO_X Ozone Season allowances to complete the deductions in subdivision 1 of this subsection, until no more CAIR NO_X Ozone Season allowances available under subsection A of this section remain in the compliance account.

C.1. The CAIR-authorized account representative for a source's compliance account may request that specific CAIR NO_X Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsection B or D of this section. Such request shall be submitted to the administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the administrator, the identification of the CAIR NO_X Ozone Season source and the appropriate serial numbers.

2. The administrator will deduct CAIR NO_X Ozone Season allowances under subsection B or D of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_X Ozone Season allowances by serial number under subdivision 1 of this subsection, on a first in, first out accounting basis in the following order:

a. Any CAIR NO_X Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

b. Any CAIR NO_X Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to Article 7 (9VAC5-140-2600 et seq.) of this part, in the order of recordation.

D. Deductions for excess emissions shall be made as follows:

1. After making the deductions for compliance under subsection B of this section for a control period in a calendar year in which the CAIR NO_X Ozone Season source has excess emissions, the administrator will deduct from the source's compliance account an amount of CAIR NO_X Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

2. Any allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CAIR NO_X Ozone Season source or the CAIR NO_X Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or the Virginia Air Pollution Control Law.

E. The administrator will record in the appropriate compliance account all deductions from such an account under subsections B and D of this section and Article 9 (9VAC5-140-2800 et seq.) of this part.

F. Administrator actions on submissions will occur as follows:

1. The administrator may review and conduct independent audits concerning any submission under the CAIR NO_X Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

2. The administrator may deduct CAIR NO_X Ozone Season allowances from or transfer CAIR NO_X Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 1 of this subsection and record such deductions and transfers.

9VAC5-140-2550. Banking.

A. CAIR NO_X Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection B of this section.

B. Any CAIR NO_X Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_X Ozone Season allowance is deducted or transferred under 9VAC5-140-2540, 9VAC5-140-2560, or Article 7 (9VAC5-140-2600 et seq.) or Article 9 (9VAC5-140-2800 et seq.) of this part.

9VAC5-140-2560. Account error.

The administrator may, at the administrator's sole discretion and on the administrator's own motion, correct any error in any CAIR NO_X Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the administrator will notify the CAIR-authorized account representative for the account.

9VAC5-140-2570. Closing of general accounts.

A. The CAIR-authorized account representative of a general account may submit to the administrator a request to close the account, which shall include a correctly submitted allowance transfer under 9VAC5-140-2600 and 9VAC5-140-2610 for any CAIR NO_X Ozone Season allowances in the account to one or more other CAIR NO_X Ozone Season Allowance Tracking System accounts.

B. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_X Ozone Season allowances, the administrator may notify the CAIR-authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the administrator receives a correctly submitted transfer of CAIR NO_X Ozone Season allowances into the account under 9VAC5-140-2600 and 9VAC5-140-2610 or a statement submitted by the CAIR-authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

Article 7.
CAIR NO_X Ozone Season Allowance Transfers.

9VAC5-140-2600. Submission of CAIR NOX Ozone Season allowance transfers.

A CAIR-authorized account representative seeking recordation of a CAIR NO_X Ozone Season allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the CAIR NO_X Ozone Season allowance transfer shall include the following elements, in a format specified by the administrator:

1. The account numbers for both the transferor and transferee accounts;

2. The serial number of each CAIR NO_X Ozone Season allowance that is in the transferor account and is to be transferred; and

3. The name and signature of the CAIR-authorized account representative of the

transferor account and the date signed.

9VAC5-140-2610. EPA recordation.

A. Within five business days (except as provided in subsection B of this section) of receiving a CAIR NO_X Ozone Season allowance transfer, the administrator will record a CAIR NO_X Ozone Season allowance transfer by moving each CAIR NO_X Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-2600; and

2. The transferor account includes each CAIR NO_X Ozone Season allowance identified by serial number in the transfer.

B. A CAIR NO_X Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_X Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the administrator completes the deductions under 9VAC5-140-2540 for the control period immediately before such allowance transfer deadline.

C. Where a CAIR NO_X Ozone Season allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator will not record such transfer.

9VAC5-140-2620. Notification.

A. Within five business days of recordation of a CAIR NO_X Ozone Season allowance transfer under 9VAC5-140-2610, the administrator will notify the CAIR-authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CAIR NO_X Ozone Season allowance transfer that fails to meet the requirements of 9VAC5-140-2610 A, the administrator will notify the CAIR-authorized account representatives of both accounts subject to the transfer of:

1. A decision not to record the transfer, and

2. The reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a CAIR NO_X Ozone Season allowance transfer for recordation following notification of nonrecordation.

Article 8.
Monitoring and Reporting.

9VAC5-140-2700. General requirements.

A. The owners and operators, and to the extent applicable, the CAIR-designated representative, of a CAIR NO_X Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this article and in subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9VAC5-140-2020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system (CEMS)" in 40 CFR Part 75 shall be deemed to refer to the terms "CAIR NO_X Ozone Season unit," "CAIR-designated representative," and "continuous emission monitoring system (CEMS)" respectively, as defined in 9VAC5-140-2020. The owner or operator of a unit that is not a CAIR NO_X Ozone Season unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the same monitoring, recordkeeping, and

reporting requirements as a CAIR NO_X Ozone Season unit.

B. The owner or operator of each CAIR NO_X Ozone Season unit shall:

1. Install all monitoring systems required under this article for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71 and 40 CFR 75.72);

2. Successfully complete all certification tests required under 9VAC5-140-2710 and meet all other requirements of this article and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection; and

3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. Except as provided in subsection F of this section, the owner or operator shall meet the monitoring system certification and other requirements of subdivisions B 1 and 2 of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates.

1. For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

2. For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007, and that reports on an annual basis under 9VAC5-140-2740 D, by the later of the following dates:

a. Ninety unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

b. May 1, 2008.

3. For the owner or operator of a CAIR NO_X Ozone Season unit that commences commercial operation on or after July 1, 2007, and that reports on a control period basis under 9VAC5-140-2740 D 2 b, by the later of the following dates:

a. Ninety unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

b. If the compliance date under subdivision a of this subdivision is not during a control period, May 1 immediately following the compliance date under subdivision a of this subdivision.

4. For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under subdivision 1, 2, 6, or 7 of this subsection and that reports on an annual basis under 9VAC5-140-2740 D, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls.

5. For the owner or operator of a CAIR NO_X Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under subdivision 1, 3, 6, or 7 of this section and that reports on a control period basis under 9VAC5-140-2740 D 2 b, by the later of the following dates:

a. Ninety unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_X emissions controls; or

b. If the compliance date under subdivision a of this subdivision is not during a control period, May 1 immediately following the compliance date under subdivision a of this subdivision.

6. Notwithstanding the dates in subdivisions 1, 2, and 3 of this subsection, for the owner or operator of a unit for which a CAIR NO_X Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, by the date specified in subdivision 2 of 9VAC5-140-2840.

7. Notwithstanding the dates in subdivisions 1, 2, and 3 of this subsection, for the owner or operator of a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part, by the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in subdivision 7 of 9VAC5-140-2840.

D. The owner or operator of a CAIR NO_X Ozone Season unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or (c)(3), section 2.4 of appendix D to 40 CFR Part 75, or section 2.5 of appendix E to 40 CFR Part 75, as applicable.

E. The following prohibitions shall apply.

1. No owner or operator of a CAIR NO_X Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this article without having obtained prior written approval in accordance with 9VAC5-140-2750.

2. No owner or operator of a CAIR NO_X Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CAIR NO_X Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CAIR NO_X Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by an exemption under 9VAC5-140-2050 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The CAIR-designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with 9VAC5-140-2710 D 3 a.

F. The owner or operator of a CAIR NO_X Ozone Season unit is subject to the applicable provisions of 40 CFR Part 75 concerning units in long-term cold storage.

9VAC5-140-2710. Initial certification and recertification procedures.

A. The owner or operator of a CAIR NO_X Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-2700 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and appendix B, appendix D, and appendix E to 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-2700 B 1 exempt from initial certification requirements under subsection A of this section.

C. If the administrator has previously approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.12 or 75.17, the CAIR-designated representative shall resubmit the petition to the administrator under 9VAC5-140-2750 A to determine whether the approval applies under the CAIR NO_X Ozone Season Trading Program.

D. Except as provided in subsection A of this section, the owner or operator of a CAIR NO_X Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to 40 CFR Part 75) under 9VAC5-140-2700 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 or that qualifies to use an alternative monitoring system under subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.

1. The owner or operator shall ensure that each continuous monitoring system under 9VAC5-140-2700 B 1 (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadline in 9VAC5-140-2700 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this article in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under 9VAC5-140-2700 B 1 that may significantly affect the ability of the system to accurately measure or record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or appendix B to 40 CFR Part 75 the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer,

complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO_X monitoring system under appendix E to 40 CFR Part 75, under 9VAC5-140-2700 B 1 are subject to the recertification requirements in 40 CFR 75.20(g)(6).

3. Subdivisions a through d of this subdivision apply to both initial certification and recertification of a continuous monitoring system under 9VAC5-140-2700 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures in 40 CFR 75.20(b)(5) and (g)(7) in lieu of the procedures in subdivision e of this subdivision.

a. The CAIR-designated representative shall submit to the permitting authority, the EPA Region III Office, and the administrator written notice of the dates of certification testing, in accordance with 9VAC5-140-2730.

b. The CAIR-designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

c. The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR NO_X Ozone Season Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under subdivision b of this subdivision. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

d. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision b of this subdivision. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CAIR NO_X Ozone Season Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR-designated representative shall submit the additional information required to complete the certification application. If the CAIR-designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under subdivision (3) of this subdivision. The 120-day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under subdivision (2) of this subdivision is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data

measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator shall follow the procedures for loss of certification in subdivision e of this subdivision for each monitoring system that is disapproved for initial certification.

(4) The permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, the administrator may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-2720 B.

e. If the permitting authority or the administrator issues a notice of disapproval of a certification application under subdivision d (3) of this subdivision or a notice of disapproval of certification status under subdivision d (4) of this subdivision, then:

(1) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.20(g)(7), or 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i) or (g)(7):

(a) For a disapproved NO_X emission rate (i.e., NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in 40 CFR 72.2.

(b) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to 40 CFR Part 75.

(c) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR Part 75.

(d) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to 40 CFR Part 75.

(e) For a disapproved excepted NO_X monitoring system under appendix E to 40 CFR Part 75, the fuel-specific maximum potential NO_X emission rate, as defined in 40 CFR 72.2.

(2) The CAIR-designated representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subdivision.

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

E. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19 shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2) and 75.20(h). If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

F. The CAIR-designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the permitting authority under subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-2720. Out of control periods.

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

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-2710 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_X Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, the administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the permitting authority or the administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in 9VAC5-140-2710 for each disapproved monitoring system.

9VAC5-140-2730. Notifications.

The CAIR-designated representative for a CAIR NO_X Ozone Season unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-2740. Recordkeeping and reporting.

A. The CAIR-designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-2100 E 1.

B. The owner or operator of a CAIR NO_X Ozone Season unit shall comply with requirements of 40 CFR 75.73(c) and (e) and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, 9VAC5-140-2830 and subdivision 1 of 9VAC5-140-2840.

C. The CAIR-designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9VAC5-140-2710, including the information required under 40 CFR 75.63.

D. The CAIR-designated representative shall submit quarterly reports, as follows:

1. If the CAIR NO_X Ozone Season unit is subject to an acid rain emissions limitation or a CAIR NO_X emissions limitation or if the owner or operator of such unit chooses to report on an annual

basis under this article, the CAIR-designated representative shall meet the requirements of subpart H of 40 CFR Part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and shall report the NO_X mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the administrator, for each calendar quarter beginning with:

a. For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

b. For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under 9VAC5-140-2700 C, unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008, through June 30, 2008;

c. Notwithstanding subdivisions a and b of this subdivision 1, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, the calendar quarter corresponding to the date specified in subdivision 2 of 9VAC5-140-2840; and

d. Notwithstanding subdivisions a and b of this subdivision 1, for a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program as provided in subdivision 7 of 9VAC5-140-2840.

2. If the CAIR NO_X Ozone Season unit is not subject to an acid rain emissions limitation or a CAIR NO_X emissions limitation, then the CAIR-designated representative shall either:

a. Meet the requirements of subpart H of 40 CFR Part 75 (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit in accordance with subdivision 1 of this subsection; or

b. Meet the requirements of subpart H of 40 CFR Part 75 for the control period (including the requirements in 40 CFR 75.74(c)) and report NO_X mass emissions data and heat input data (including the data described in 40 CFR 75.74(c)(6)) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the administrator, for each calendar quarter beginning with:

(1) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008, through June 30, 2008;

(2) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under 9VAC5-140-2700 C, unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(3) Notwithstanding subdivisions b (1) and (2) of this subdivision 2, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under Article 9 (9VAC5-140-2800 et seq.) of this part, the calendar quarter corresponding to the date specified in subdivision 2 of 9VAC5-140-2840; and

(4) Notwithstanding subdivisions b (1) and (2) of this subdivision 2, for a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part, the calendar quarter corresponding to the date on which the CAIR NO_X Ozone Season opt-in unit enters the CAIR

NO_X Ozone Season Trading Program as provided in subdivision 7 of 9VAC5-140-2840.

3. The CAIR-designated representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f).

4. For CAIR NO_X Ozone Season units that are also subject to an acid rain emissions limitation or the CAIR NO_X Annual Trading Program, CAIR SO_2 Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of 40 CFR Part 75 as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this article.

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

1. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications;

2. For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to 40 CFR Part 75 and the substitute data values do not systematically underestimate NO_X emissions; and

3. For a unit that is reporting on a control period basis under subdivision D 2 b of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

9VAC5-140-2750. Petitions.

A. Except as provided in subdivision B 2 of this section, the CAIR-designated representative of a CAIR NO_X Ozone Season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of this article. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the administrator, in consultation with the permitting authority.

B.1. The CAIR-designated representative of a CAIR NO_X Ozone Season unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to any requirement of this article. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by both the permitting authority and the administrator.

2. The CAIR-designated representative of a CAIR NO_X Ozone Season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72. Application of an alternative to any such requirement is in accordance with this article only to the extent that the petition is approved in writing by both the permitting authority and the administrator.

Article 9.

CAIR NO_X Ozone Season Opt-in Units.

9VAC5-140-2800. Applicability.

A CAIR NO_X Ozone Season opt-in unit shall be a unit that:

1. Is located in the state;

2. Is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 and is not covered by a retired unit exemption under 9VAC5-140-2050 that is in effect;

3. Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;

4. Has or is required or qualified to have a Title V operating permit or state operating permit; and

5. Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of Article 8 (9VAC5-140-2700 et seq.) of this part.

9VAC5-140-2810. General.

A. Except as otherwise provided in 9VAC5-140-2010 through 9VAC5-140-2040, 9VAC5-140-2060 through 9VAC5-140-2080, and Article 2 (9VAC5-140-2100 et seq.), Article 3 (9VAC5-140-2200 et seq.), Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), and Article 8 (9VAC5-140-2700 et seq.) of this part, a CAIR NO_X Ozone Season opt-in unit shall be treated as a CAIR NO_X Ozone Season unit for purposes of applying such sections and articles of this part.

B. Solely for purposes of applying, as provided in this article, the requirements of Article 8 (9VAC5-140-2700 et seq.) of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this article, such unit shall be treated as a CAIR NO_X Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

9VAC5-140-2820. CAIR-designated representative.

Any CAIR NO_X Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this article, located at the same source as one or more CAIR NO_X Ozone Season units shall have the same CAIR-designated representative and alternate CAIR-designated representative as such CAIR NO_X Ozone Season units.

9VAC5-140-2830. Applying for CAIR opt-in permit.

A. The CAIR-designated representative of a unit meeting the requirements for a CAIR NO_X Ozone Season opt-in unit in 9VAC5-140-2800 may apply for an initial CAIR opt-in permit at any time, except as provided under 9VAC5-140-2860 G and H, and, in order to apply, shall submit the following:

1. A complete CAIR permit application under 9VAC5-140-2220;

2. A certification, in a format acceptable to the permitting authority, that the unit:

a. Is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 and is not covered by a retired unit exemption under 9VAC5-140-2050 that is in effect;

b. Is not covered by a retired unit exemption under 40 CFR 72.8 that is in effect;

c. Vents all of its emissions to a stack; and

d. Has documented heat input for more than 876 hours during the six months immediately preceding submission of the CAIR permit application under 9VAC5-140-2220;

3. A monitoring plan in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part;

4. A complete certificate of representation under 9VAC5-140 2130 consistent with 9VAC5-140-2820, if no CAIR-designated representative has been previously designated for the source that includes the unit; and

5. A statement, in a format acceptable to the permitting authority, whether the CAIR-designated representative requests that the unit be allocated CAIR NO_X Ozone Season allowances under 9VAC5-140-2880 B or C (subject to the conditions in subdivision 8 of 9VAC5-140-2840 and 9VAC5-140-2860 H). If allocation under 9VAC5-140-2880 C is requested, the statement shall include a statement that the owners and operators intend to repower the unit before January 1, 2015, and that they will provide, upon request, documentation demonstrating such intent.

B. Opt-in permit renewal shall be required as follows:

1. The CAIR-designated representative of a CAIR NO_X Ozone Season opt-in unit shall submit a complete CAIR permit application under 9VAC5-140-2220 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for Title V operating permits, or the permitting authority's regulations for state operating permits if applicable, addressing permit renewal.

2. Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program in accordance with 9VAC5-140-2860 or the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 , the CAIR NO_X Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_X Ozone Season opt-in unit, even if the CAIR-designated representative for the CAIR NO_X Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under subdivision 1 of this subsection.

9VAC5-140-2840. Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under 9VAC5-140-2830 is submitted in accordance with the following:

1. The permitting authority and the administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under 9VAC5-140-2830. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

2. Monitoring and reporting shall be as follows:

a.(1) If the permitting authority and the administrator determine that the monitoring plan is sufficient under subdivision 1 of this section, the owner or operator shall monitor and report the NO_X emissions rate and the heat input of the unit and all other applicable parameters, in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, starting on the date of certification of the appropriate monitoring systems under Article 8 (9VAC5-140-2700 et seq.) of this part and continuing until

a CAIR opt-in permit is denied under subdivision 6 of this section or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_X Ozone Season Trading Program in accordance with 9VAC5-140-2860.

(2) The monitoring and reporting under subdivision a (1) of this subdivision shall include the entire control period immediately before the date on which the unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of this section, during which period monitoring system availability shall not be less than 90% under Article 8 (9VAC5-140-2700 et seq.) of this part and the unit shall be in full compliance with any applicable state or federal emissions or emissions-related requirements.

b. To the extent the NO_X emissions rate and the heat input of the unit are monitored and reported in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part for one or more control periods, in addition to the control period under subdivision a (2) of this subdivision, during which control periods monitoring system availability is not less than 90% under Article 8 (9VAC5-140-2700 et seq.) of this part and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and that control periods begin not more than three years before the unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of this section, such information shall be used as provided in subdivision 3 and 4 of this section.

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

a. If the unit’s NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with subdivision 2 a of this section, the unit's total heat input (in mmBtu) for the control period; or

b. If the unit’s NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions 2 a and b of this section, the average of the amounts of the unit’s total heat input (in mmBtu) for the control periods under subdivisions 2 a (2) and 2 b of this section.

4. The unit's baseline NO_X emission rate shall equal:

a. If the unit’s NO_X emissions rate and heat input are monitored and reported for only one control period, in accordance with subdivision 2 a of this section, the unit's NO_X emissions rate (in lb/mmBtu) for the control period;

b. If the unit’s NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions 2 a and b of this section, and the unit does not have add-on NO_X emission controls during any such control periods, the average of the amounts of the unit’s NO_X emissions rate (in lb/mmBtu) for the control periods under subdivisions 2 a (2) and 2 b of this section; or

c. If the unit’s NO_X emissions rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions 2 a and b of this section, and the unit has add-on NO_X emission controls during any such control periods, the average of the amounts of the unit’s NO_X emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_X emission controls.

5. After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under subdivision 3 and 4 of this section and if the permitting authority determines that the CAIR-designated representative shows that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in 9VAC5-140-2800 and meets the elements certified in 9VAC5-140-2830 A 2, the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in

permit to the administrator, who will then establish a compliance account for the source that includes the CAIR NO_X Ozone Season opt-in unit unless the source already has a compliance account.

6. Notwithstanding subdivisions 1 through 5 of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR-designated representative fails to show that the unit meets the requirements for a CAIR NO_X Ozone Season opt-in unit in 9VAC5-140-2800 or meets the elements certified in 9VAC5-140-2830 A 2, the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

7. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_X Ozone Season opt-in unit, and a CAIR NO_X Ozone Season unit, as of the later of May 1, 2009, or May 1 of the first control period during which such CAIR opt-in permit is issued.

8. Repowered CAIR NO_X Ozone Season opt-in units shall meet the following requirements.

a. If the CAIR-designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under 9VAC5-140-2880 C and such unit is repowered after its date of entry into the CAIR NO_X Ozone Season Trading Program under subdivision 7 of this section, the repowered unit shall be treated as a CAIR NO_X Ozone Season opt-in unit replacing the original CAIR NO_X Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

b. Notwithstanding subdivisions 3 and 4 of this section, as of the date of start-up under subdivision 8 a of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_X emission rate as the original CAIR NO_X Ozone Season opt-in unit, and the original CAIR NO_X Ozone Season opt-in unit shall no longer be treated as a CAIR NO_X Ozone Season opt-in unit or a CAIR NO_X Ozone Season unit.

9VAC5-140-2850. CAIR opt-in permit contents.

A. Each CAIR opt-in permit will contain:

1. All elements required for a complete CAIR permit application under 9VAC5-140-2220;

2. The certification in 9VAC5-140-2830 A 2;

3. The unit's baseline heat input under subdivision 3 of 9VAC5-140-2840;

4. The unit's baseline NO_X emission rate under subdivision 4 of 9VAC5-140-2840;

5. A statement whether the unit is to be allocated CAIR NO_X Ozone Season allowances under 9VAC5-140-2880 B or C (subject to the conditions in subdivision 8 of 9VAC5-140-2840 and 9VAC5-140-2860 H);

6. A statement that the unit may withdraw from the CAIR NO_X Ozone Season Trading Program only in accordance with 9VAC5-140-2860; and

7. A statement that the unit is subject to, and the owners and operators of the unit shall comply with, the requirements of 9VAC5-140-2870.

B. Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under 9VAC5-140-2020 and, upon recordation by the administrator under Article 6 (9VAC5-140-2500 et seq.) or

Article 7 (9VAC5-140-2600 et seq.) of this part or this article, every allocation, transfer, or deduction of CAIR NO_X Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_X Ozone Season opt-in unit covered by the CAIR opt-in permit.

C. The CAIR opt-in permit shall be included, in a format acceptable to the permitting authority, in the CAIR permit for the source where the CAIR NO_X Ozone Season opt-in unit is located and in a Title V operating permit or state operating permit for the source.

9VAC5-140-2860. Withdrawal from CAIR NOX Ozone Season Trading Program.

A. Except as provided under subsection H of this section, a CAIR NO_X Ozone Season opt-in unit may withdraw from the CAIR NO_X Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR-designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit in accordance with subsection E of this section.

B. In order to withdraw a CAIR NO_X Ozone Season opt-in unit from the CAIR NO_X Ozone Season Trading Program, the CAIR-designated representative of the CAIR NO_X Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least four years after September 30 of the year of entry into the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140-2840. The request shall be submitted no later than 90 days before the requested effective date of withdrawal.

C. Before a CAIR NO_X Ozone Season opt-in unit covered by a request under subsection B of this section may withdraw from the CAIR NO_X Ozone Season Trading Program and the CAIR opt-in permit may be terminated under subsection F of this section, the following conditions must be met:

1. For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_X Ozone Season opt-in unit must meet the requirement to hold CAIR NO_X Ozone Season allowances under 9VAC5-140-2060 C and must not have any excess emissions.

2. After the requirement for withdrawal under subdivision 1 of this subsection is met, the administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under 9VAC5-140-2880 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_X Ozone Season units at the source, the administrator will close the compliance account, and the owners and operators of the CAIR NO_X Ozone Season opt-in unit may submit a CAIR NO_X Ozone Season allowance transfer for any remaining CAIR NO_X Ozone Season allowances to another CAIR NO_X Ozone Season Allowance Tracking System in accordance with Article 7 (9VAC5-140-2600 et seq.) of this part.

D. Notification shall be performed as follows:

1. After the requirements for withdrawal under subsections B and C of this section are met (including deduction of the full amount of CAIR NO_X Ozone Season allowances required), the permitting authority will issue a notification to the CAIR-designated representative of the CAIR NO_X Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_X Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

2. If the requirements for withdrawal under subsections B and C of this section are not met, the permitting authority will issue a notification to the CAIR-designated representative of the CAIR NO_X Ozone Season opt-in unit that the CAIR NO_X Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_X Ozone Season opt-in unit shall continue to be a CAIR NO_X Ozone Season opt-

in unit.

E. After the permitting authority issues a notification under subdivision D 1 of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_X Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision D 1 of this section. The unit shall continue to be a CAIR NO_X Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_X Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_X Ozone Season opt-in unit, even if such requirements arise or shall be complied with after the withdrawal takes effect.

F. If the permitting authority denies the CAIR NO_X Ozone Season opt-in unit's request to withdraw, the CAIR-designated representative may submit another request to withdraw in accordance with subsections B and C of this section.

G. Once a CAIR NO_X Ozone Season opt-in unit withdraws from the CAIR NO_X Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR-designated representative may not submit another application for a CAIR opt-in permit under 9VAC5-140-2830 for such CAIR NO_X Ozone Season opt-in unit before the date that is four years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under 9VAC5-140-2840.

H. Notwithstanding subsections B through G of this section, a CAIR NO_X Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_X Ozone Season Trading Program if the CAIR-designated representative of the CAIR NO_X Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under 9VAC5-140-2880 C.

9VAC5-140-2870. Change in regulatory status.

A. If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, then the CAIR-designated representative shall notify in writing the permitting authority and the administrator of such change in the CAIR NO_X Ozone Season opt-in unit’s regulatory status, within 30 days of such change.

B. The permitting authority and the administrator shall take the following actions.

1. If a CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, the permitting authority will revise the CAIR NO_X Ozone Season opt-in unit’s CAIR opt-in permit to meet the requirements of a CAIR permit under 9VAC5-140-2230, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040.

2.a. The administrator will deduct from the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit that becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, CAIR NO_X Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(1) Any CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under 9VAC5-140-2880 for any control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040; and

(2) If the date on which the CAIR NO_X Ozone Season opt-in unit

becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 is not September 30, the CAIR NO_X Ozone Season allowances allocated to the CAIR NO_X Ozone Season opt-in unit under 9VAC5-140-2880 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

b. The CAIR-designated representative shall ensure that the compliance account of the source that includes the CAIR NO_X Ozone Season unit that becomes a CAIR NO_X Ozone Season opt-in unit under 9VAC5-140-2040 contains the CAIR NO_X Ozone Season allowances necessary for completion of the deduction under subdivision a of this subdivision.

3.a. For every control period after the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, the CAIR NO_X Ozone Season opt-in unit will be allocated CAIR NO_X Ozone Season allowances under 9VAC5-140-2420.

b. If the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 is not September 30, the following amount of CAIR NO_X Ozone Season allowances will be allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under 9VAC5-140-2420 for the control period that includes the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040:

(1) The amount of CAIR NO_X Ozone Season allowances otherwise allocated to the CAIR NO_X Ozone Season opt-in unit (as a CAIR NO_X Ozone Season unit) under 9VAC5-140-2420 for the control period multiplied by;

(2) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_X Ozone Season opt-in unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040, divided by the total number of days in the control period; and

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

9VAC5-140-2880. CAIR NOX Ozone Season allowance allocations to CAIR NOX Ozone Season opt-in units.

A. Timing requirements shall be met as follows:

1. When the CAIR opt-in permit is issued under subdivision 5 of 9VAC5-140-2840, the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the administrator the allocation for the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140-2840, in accordance with subsection B or C of this section.

2. By no later than July 31 of the control period after the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140-2840 and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit, and submit to the administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_X Ozone Season opt-in unit, in accordance with subsection B or C of this section.

B. For each control period for which a CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances, the permitting authority will allocate in accordance with the

following procedures:

1. The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

a. The CAIR NO_X Ozone Season opt-in unit's baseline heat input determined under subdivision 3 of 9VAC5-140-2840; or

b. The CAIR NO_X Ozone Season opt-in unit's heat input, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140-2840.

2. The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

a. The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under subdivision 4 of 9VAC5-140-2840 and multiplied by 70.0%; or

b. The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

3. The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under subdivision 1 of this subsection, multiplied by the NO_X emission rate under subdivision 2 of this subsection, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

C. Notwithstanding subsection B of this section and if the CAIR-designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under 9VAC5-140-2830 A 5) providing for, allocation to a CAIR NO_X Ozone Season opt-in unit of CAIR NO_X Ozone Season allowances under this subsection (subject to the conditions in subdivision 8 of 9VAC5-140-2840 and 9VAC5-140-2860 H), the permitting authority will allocate to the CAIR NO_X Ozone Season opt-in unit as follows:

1. For each control period in 2009 through 2014 for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

a. The heat input (in mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be determined as described in subdivision B 1 of this section.

b. The NO_X emission rate (in lb/mmBtu) used for calculating CAIR NO_X Ozone Season allowance allocations will be the lesser of:

(1) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under subdivision 4 of 9VAC5-140-2840; or

(2) The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period in which the CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140-2840.

c. The permitting authority will allocate CAIR NO_X Ozone Season allowances to

the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under subdivision a of this subdivision, multiplied by the NO_X emission rate under subdivision b of this subdivision, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

2. For each control period in 2015 and thereafter for which the CAIR NO_X Ozone Season opt-in unit is to be allocated CAIR NO_X Ozone Season allowances,

a. The heat input (in mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocations will be determined as described in subdivision B 1 of this section.

b. The NO_X emission rate (in lb/mmBtu) used for calculating the CAIR NO_X Ozone Season allowance allocation will be the lesser of:

(1) 0.15 lb/mmBtu;

(2) The CAIR NO_X Ozone Season opt-in unit's baseline NO_X emissions rate (in lb/mmBtu) determined under subdivision 4 of 9VAC5-140-2840; or

(3) The most stringent state or federal NO_X emissions limitation applicable to the CAIR NO_X Ozone Season opt-in unit at any time during the control period for which CAIR NO_X Ozone Season allowances are to be allocated.

c. The permitting authority will allocate CAIR NO_X Ozone Season allowances to the CAIR NO_X Ozone Season opt-in unit in an amount equaling the heat input under subdivision a of this subdivision, multiplied by the NO_X emission rate under subdivision b of this subdivision, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

D. Recordation shall be performed as follows:

1. The administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under subdivision A 1 of this section.

2. By September 1 of the control period in which a CAIR NO_X Ozone Season opt-in unit enters the CAIR NO_X Ozone Season Trading Program under subdivision 7 of 9VAC5-140 2840, and September 1 of each year thereafter, the administrator will record, in the compliance account of the source that includes the CAIR NO_X Ozone Season opt-in unit, the CAIR NO_X Ozone Season allowances allocated by the permitting authority to the CAIR NO_X Ozone Season opt-in unit under subdivision A 2 of this section.

HISTORICAL NOTES:

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REG\VAC\C140p3-CAIR NOx Seasonal