**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III Air**

**Chapter 5.** **Permit Procedures**

**§506. ~~Clean Air Interstate Rule Requirements~~Repealed.**

 ~~A. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO~~~~x~~~~) Annual Program. This Subsection is adopted in lieu of 40 CFR 97.141 and 97.142 as promulgated under the CAIR Federal Implementation Plan (FIP) NO~~~~x~~ ~~Annual Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AA-HH, continue to apply, with the exception of §97.141 (Timing Requirements for CAIR NO~~~~x~~ ~~Allowance Allocations) and §97.142 (CAIR NO~~~~x~~ ~~Allowance Allocations). The provisions of this Subsection state how the CAIR NO~~~~x~~ ~~annual allowances shall be allocated in accordance with this Section and 40 CFR 97.144(a).~~

 ~~1. Definitions. The terms used in Subsection A of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), except for those terms defined herein.~~

 *~~Certified Unit~~*~~⎯an electricity-generating unit that has been certified by the LPSC or approved by a municipal authority but was not in operation on, or approved by, December 31, 2004.~~

 *~~Department~~*~~⎯the Louisiana Department of Environmental Quality.~~

 *~~Electric Public Utility~~*~~⎯any person furnishing electric service within this state, including any electric cooperative transacting business in this state, provided, however, that the term shall not be construed to apply to any co-generator who consumes any or all of the electric power and energy that it generates or to any independent power producer who sells its entire production of electric power and energy to an~~ *~~electric public utility~~* ~~as herein defined.~~

 *~~Fuel Types~~*~~⎯for the allocation of allowances under Louisiana's program,~~ *~~fuel types~~* ~~include solid, gaseous, or liquid fuel. The following definitions apply to~~ *~~fuel types~~*~~.~~

 ~~i.~~ *~~Solid Fuel~~*~~⎯includes, but is not limited to, coal and petroleum coke. Any amount of solid fuel that is combusted, alone, in series, or in combination with any other fuel, during any control period shall meet the definition of solid fuel.~~

 ~~ii.~~ *~~Gaseous Fuel~~*~~⎯includes, but is not limited to, natural gas, propane, coal gas, and blast furnace gas. Any mixture containing at least 50 percent of gaseous fuel that is combusted with any liquid fuel during any control period shall meet the definition of gaseous fuel.~~

 ~~iii.~~ *~~Liquid Fuel~~*~~⎯includes, but is not limited to, petroleum-based oils and glycerol.~~

 *~~LPSC~~*~~⎯the Louisiana Public Service Commission.~~

 *~~LPSC~~* ~~or~~ *~~Municipal Certification~~*~~⎯the process under which the LPSC certifies, or the relevant municipal authority approves, construction, conversion, or repowering of an electricity-generating unit as being in the public convenience and necessity. This process includes the certification or approval of long-term contracts that dedicate a portion of the electrical output of any generation facility to a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.~~

 *~~Municipal Authority~~*~~⎯a municipal corporation, public power authority, or other political subdivision including, but not limited to, the Louisiana Energy and Power Authority.~~

 *~~Non-Utility Unit~~*~~⎯an electricity-generating unit that has not been certified by the LPSC or approved by a municipal authority, and that does not have an effective and active long-term contract with a utility unit. This includes, but is not limited to, units owned by independent power producers (IPPs) that are the owners or operators of electricity-generating units that produce electricity for sale, and~~ *~~cogeneration units~~* ~~as defined in 40 CFR Part 97.~~

 *~~Utility Unit~~*~~⎯a certified unit that is in operation, a previously-operational certified unit, a non-utility unit purchased by an electric public utility, or a non-utility unit that has an effective and active long-term contract with a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.~~

 ~~2. Allocation of CAIR NO~~~~x~~ ~~Annual Allowances. Total NO~~~~x~~ ~~allowances allocated per control period shall not be in excess of the CAIR NO~~~~x~~ ~~annual budget as found in 40 CFR 97.140 (35,512 tons per control period from 2009-2014 and 29,593 tons per control period thereafter).~~

 ~~a. Non-Utility Units. For each CAIR non-utility unit, the NO~~~~x~~ ~~allowances shall be equal to the average of the actual NO~~~~x~~ ~~annual emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The actual NO~~~~x~~ ~~annual emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO~~~~x~~ ~~emissions for calendar years 2002, 2003, and 2004. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO~~~~x~~ ~~annual emissions data are available for only two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO~~~~x~~ ~~annual emissions data for those two years shall be used. When actual reported NO~~~~x~~ ~~annual emissions data are available for only one of the three calendar years, the actual reported NO~~~~x~~ ~~annual emissions data for that one year shall be used. When no actual reported NO~~~~x~~ ~~annual emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.~~

 ~~b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated NO~~~~x~~ ~~allowances for the control period in which the unit will begin operation, and for each successive control period, for which no NO~~~~x~~ ~~allowances have been previously allocated until operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three calendar years of operating data immediately preceding the allocation submittal deadline, the converted heat input as calculated in Clause A.2.b.i or ii of this Section shall be used to allocate allowances for the unit. The certified unit shall be treated as a utility unit for the purposes of this allocation, except that converted heat input shall be used instead of adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Converted heat input is calculated as follows.~~

 ~~i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.~~

 ~~ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.~~

 ~~c. Utility Units. The department shall allocate CAIR NO~~~~x~~ ~~allowances to each CAIR utility unit by multiplying the CAIR NO~~~~x~~ ~~budget for Louisiana (40 CFR 97.140), minus the allowances allocated under Subparagraph A.2.a of this Section, by the ratio of the adjusted heat input of the CAIR utility unit to the total amount of adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The adjusted heat input (in MMBTU) used with respect to the CAIR NO~~~~x~~ ~~annual allowance for each CAIR utility unit shall be established as follows.~~

 ~~i. The average of the unit's control period adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period adjusted heat input for calendar years 2002, 2003, and 2004), with the control period adjusted heat input for each year calculated as follows.~~

 ~~(a). If the unit is solid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 100 percent.~~

 ~~(b). If the unit is liquid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 60 percent.~~

 ~~(c). If the unit is not subject to Subclause A.2.c.i.(a) or (b) of this Section, the unit's control period heat input for the year shall be multiplied by 40 percent.~~

 ~~ii. A unit's control period heat input, fuel type, and total tons of NO~~~~x~~ ~~emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.~~

 ~~3. Timing Requirements for CAIR NO~~~~x~~ ~~Annual Allowance Allocations~~

 ~~a. By April 30, 2007, the department shall submit to the administrator the CAIR NO~~~~x~~ ~~annual allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph A.2 of this Section, for the control periods in 2009, 2010, and 2011.~~

 ~~b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator CAIR NO~~~~x~~ ~~annual allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph A.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.~~

 ~~4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.~~

 ~~B. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO~~~~x~~~~) Ozone Season Program. This Subsection is adopted in lieu of 40 CFR 97.341 and 97.342 as promulgated under the CAIR Federal Implementation Plan (FIP) NO~~~~x~~ ~~Ozone Season Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AAAA–HHHH, continue to apply, with the exception of §97.341 (Timing Requirements for CAIR NO~~~~x~~ ~~Ozone Season Allowance Allocations) and §97.342 (CAIR NO~~~~x~~ ~~Ozone Season Allowance Allocations). The provisions of this Subsection state how the CAIR NO~~~~x~~ ~~ozone season allowances shall be allocated in accordance with this Section and 40 CFR 97.343(a).~~

 ~~1. Definitions. The terms used in Subsection B of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), and in Paragraph A.1 of this Section.~~

 ~~2. Allocation of CAIR NO~~~~x~~ ~~Ozone Season Allowances. Total NO~~~~x~~ ~~ozone season allowances allocated per control period shall not be in excess of the CAIR NO~~~~x~~ ~~ozone season budget as found in 40 CFR 97.340 (17,085 tons per control period from 2009-2014 and 14,238 tons per control period thereafter).~~

 ~~a. Non-Utility Units. For each CAIR non-utility unit, the NO~~~~x~~ ~~allowances shall be equal to the average of the actual NO~~~~x~~ ~~ozone season emissions of the three calendar years immediately preceding the year in which the control period allocations are submitted to the administrator. The actual NO~~~~x~~ ~~ozone season emissions as reported in the emission inventory required by LAC 33:III.919 shall be used, except that the allowances submitted in 2007 shall use the actual NO~~~~x~~ ~~emissions for calendar years 2002, 2003, and 2004 that were reported to the Federal Acid Rain Program. When data is not available in the emission inventory, data reported to the Federal Acid Rain Program shall be used. When actual reported NO~~~~x~~ ~~ozone season emissions data are available for only two of the three calendar years immediately preceding the deadline for submission of the control period allocations, the average of the actual reported NO~~~~x~~ ~~ozone season emissions data for those two years shall be used. When actual reported NO~~~~x~~ ~~ozone season emissions data are available for only one of the three calendar years, the actual reported NO~~~~x~~ ~~ozone season emissions data for that one year shall be used. When no actual reported NO~~~~x~~ ~~ozone season emissions data for any of the three calendar years are available, no allocations shall be made under this Paragraph.~~

 ~~b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated NO~~~~x~~ ~~allowances for the ozone season of the control period in which the unit will begin operation, and for each successive ozone season in a control period, for which no NO~~~~x~~ ~~allowances have been previously allocated until ozone season operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three years of ozone season operating data preceding the allocation submittal deadline, the converted heat input as calculated in Clause B.2.b.i or ii of this Section shall be used to allocate ozone season allowances for the unit. The certified unit shall be treated as a utility unit for purposes of this allocation, except that ozone season converted heat input shall be used instead of ozone season adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Ozone season converted heat input is calculated as follows.~~

 ~~i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.~~

 ~~ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.~~

 ~~c. Utility Units. The department shall allocate CAIR NO~~~~x~~ ~~ozone season allowances to each CAIR utility unit by multiplying the CAIR NO~~~~x~~ ~~ozone season budget for Louisiana (40 CFR 97.340), minus the allowances allocated under Subparagraph B.2.a of this Section, by the ratio of the ozone season adjusted heat input of the CAIR utility unit to the total amount of ozone season adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The ozone season adjusted heat input (in MMBTU) used with respect to the CAIR NO~~~~x~~ ~~ozone season allowance for each CAIR utility unit shall be established as follows.~~

 ~~i. The average of the unit's control period ozone season adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period ozone season adjusted heat input for calendar years 2002, 2003, and 2004), with the control period ozone season adjusted heat input for each year calculated as follows.~~

 ~~(a). If the unit is solid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 100 percent.~~

 ~~(b). If the unit is liquid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 60 percent.~~

 ~~(c). If the unit is not subject to Subclause B.2.c.i.(a) or (b) of this Section, the unit's control period ozone season heat input for the year shall be multiplied by 40 percent.~~

 ~~ii. A unit's control period ozone season heat input, fuel type, and total tons of NO~~~~x~~ ~~ozone season emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.~~

 ~~3. Timing Requirements for CAIR NO~~~~x~~ ~~Ozone Season Allowance Allocations~~

 ~~a. By April 30, 2007, the department shall submit to the administrator the CAIR NO~~~~x~~ ~~ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control periods in 2009, 2010, and 2011.~~

 ~~b. By October 31, 2008, for the year 2012, and by October 31 of each year thereafter, the department shall submit to the administrator the CAIR NO~~~~x~~ ~~ozone season allowance allocations, in a format prescribed by the administrator and in accordance with Paragraph B.2 of this Section, for the control period in the fourth year after the year of the applicable deadline for submission under this Section.~~

 ~~4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.~~

 ~~C. Annual Sulfur Dioxide. Except as specified in this Section, the federal SO~~~~2~~ ~~model Rule, published in the~~ *~~Code of Federal Regulation~~* ~~at 40 CFR 96, July 1, 2015, is hereby incorporated by reference, except for subpart III-CAIR SO~~~~2~~ ~~opt-in units and all references to opt-in units.~~

 ~~D. The volumes containing those federal regulations incorporated by reference may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 or their website, www.gpoaccess.gov/cfr/index.html.~~

 ~~E. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 96) to be provided to "the Administrator" shall be provided to the Office of Environmental Services by the person required to make the submission to "the Administrator."~~

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30.2054.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), repromulgated LR 36:2551 (November 2010), amended LR 37:2989 (October 2011), LR 38:1229 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1276 (May 2013), LR 40:1334 (July 2014), LR 42:1085 (July 2016); repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 50: