UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 29 2005

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Inadvertent Errors in the Clean Air Interstate Rule Preamble and Regulatory Text

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TO: Steven L. Johnson (1101A)
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The Clean Air Interstate Rule (CAIR) was signed on March 10, 2005. A review of the preamble and regulatory text identified a number of technical and other relatively minor, inadvertent errors. In the preamble, errors were found in the introduction and sections I, III, IV, VI and VIII. In the regulatory text, errors were found in part 51 (sections 51.121, 51.123, 51.124); part 78; and part 96 (subparts AA through II, subparts AAA through III, and subparts AAAA through IIII). The corrections for these errors are listed below. You may indicate your approval of these corrections at the bottom of this memorandum. With your approval, these corrections will be made in the version of the CAIR to be published in the Federal Register.

Preamble

Introduction

1. Contacts, page 4. Replace "Elliott Zenick" and "zenick.elliott@epa.gov" with Sonja Petersen and petersen.sonja@epa.gov.

This replaces Elliott Zenick with Sonja Petersen who is the current contact for legal questions.

2. Outline, page 9. Correct outline by deleting current Section III.A.1.c, and changing "Section III.A.1.d" to "Section.III.A.1.c." In addition, on page 109 change heading c. to (c), and on page 120, change heading "d. What is EPA's Final Determination?" to "c. What is EPA's Final Determination?"

These changes are necessary to correct a section numbering mistake in the outline and preamble text.

Section I.

1. Section I, page 18, n.3. Correct "and in 2010 it will reduce NOx by . . ." to read "and in 2015 it will reduce NOx by . . ."

This corrects a typographical error.

Section III

1. Section III.A.c., page 117. Correct "benefits combining NOx with SO2 reductions" to read "benefits of combining NOx with SO2 reductions."

This adds the word "of" to correct a typographical error.

2. Section III.F.3, page 175. Correct "as noted above" to read "as noted below."

This corrects an error and is necessary to make the document consistent.

Section IV

1. Page 184, section IV, correct "and both are lowered in 2015" to read "and both caps are lowered in 2015".

This corrects a typographical error.

2. Page 194, section IV.A.2.a, note 1 to Table IV-1 and note 1 to Table IV-2, correct "plus the DC region" to read "plus DC region".

This corrects typographical errors.

3. Page 225, section IV.A.4.a.ii.(III), correct "As well as some substantial" to read ""as well as some substantial".

This corrects a typographical error.

4. Page 241, section IV.A.4.b.i, correct "propose ozone season reductions in any other State" to read "propose separate ozone season reduction requirements in any other State".

This corrects typographical errors.

5. Page 286, section IV.C.2.c, change"Boilermaker Labor and Installation Timing Analysis." to "Boilermaker Labor and Installation Timing Analysis, (docket no. OAR-2003-0053-2092)."

This is to add the proper docket number to the reference and make it consistent with other references cited in this section.

6. Page 291, section IV.C.2.c.i.(I).(B), at the bottom of the page, the footnote # 23 must be changed to #73, as referenced in the last paragraph on this page.

This is a Word Perfect software glitch, since these footnote numbers are automatically picked by the software.

7. Page 301, section IV.C.2.c.i (II), at the bottom of the page, add at the end of the footnote #75, before the period: (docket no. OAR-2003-0053-2092).

This is to make this footnote consistent with other footnotes in this section.

8. Page 303, section IV.C.2.c.i (II), at the bottom of the page, revise the docket number in the footnote #77, from "(Docket no. OAR-2003-0053)" to "(docket no. OAR-2003-0053-2092)."

This is to make this footnote consistent with other footnotes in this section.

9. Page 332, section IV.D.1, correct "The EPA's analysis supports its proposed compliance schedule" to read "The EPA's analysis supports its compliance schedule".

This corrects a typographical error.

Section VI

1. Page 436, section VI.E,. Correct "EPA plans to propose to include these three states in the CAIR PM2.5 region . . . " to read "EPA plans to include Delaware and New Jersey in the CAIR PM2.5 region . . ." Also correct "assuming Arkansas, Delaware, and New Jersey will become part of . . ." to read "assuming Delaware and New Jersey will become part of . . ."

These changes correct errors and are necessary to make the rule consistent with the preamble and with EPA's decision not to include Arkansas in the CAIR PM2.5 region.

Section VIII:

1. Page 551, section VIII.A, correct "States may include their NOx SIP Call sources if they adopt the EPA-administered . . ." to read "States may include their NOx SIP Call trading sources if they adopt the EPA-administered . . .".

This provides additional clarity and is consistent with the language in other parts of the preamble.

2. Page 552, section VIII.A, correct "with simultaneous compliance with . . ." to read "with sequential compliance with . . ."

This provides additional clarity and is consistent with the language in other parts of the preamble.

3. Page 553, section VIII.A, correct "should a State not require all of their SO2 emissions reductions from EGUs in their budget demonstration." to read "should a State that allows an individual unit opt-in mechanism provide CAIR SO2 allowances to an opt-in source."

This corrects language that was erroneously included and changes it to accurately reflect the intended policy and be consistent with other sections of the preamble.

4. Page 558, section VIII.B, correct "for sources that will move into the CAIR NOx ozone-season program." to read "for the beginning of the CAIR NOx ozone-season program in 2009."

This clarifies the language and is consistent with other sections of the preamble.

5. Page 607, section VIII.F, correct "NOx emissions during the first phase of a multi-phase cap and trade program," to read "NOx emissions prior to the first phase of a multi-phase cap and trade program,"

This corrects an error and is consistent with other sections of the preamble.

6. Page 625, section VIII.G.4, correct "This alternative would allow units to opt-in as early as 2010 and receive allocations at their current . . ." to read "This alternative would allow units to opt-in as early as 2009 for NOx and 2010 for SO2 and receive allocations at their current . . ."

This clarifies that the timelines are synchronized with the NOx and SO2 implementation dates and is consistent with other sections of the preamble.

Part 51

1. For §51.121, on page 773, in paragraph (r)(1), replace the words "set for forth the Administrator" with the words "set forth for the Administrator".

This corrects a typographical error.

2. For §51.123:
a. On page 796, in paragraph (e)(4)(iii)(B)(2)(ii), renumber the second sentence of the paragraph as a new paragraph (e)(4)(iii)(B)(2)(iii) and replace the words "under paragraph (e)(4)(iii)(B)(2)(i)" with the words "under paragraph (e)(4)(iii)(A)".

This corrects erroneous paragraph numbering and citation.

b. On page 806, in paragraph (o)(2)(ii)(B), replace the words "January 1, 2000" with the words "January 1, 2001". This correction is also made on pages 806, 822, 825, and 834, in §§ 51.123(o)(2)(ii)(C), (aa)(2)(iii)(C) and (D), (bb)(2)(iv)(B) and (C), and (dd)(4)(ii) and (iii).

This corrects an error. As stated in the preamble at page 589 n.132 "EPA now considers new units to be those that went online after Jan. 1, 2001." This change thus makes this provision consistent with the preamble and with the NO_X model trading rules.

c. On page 806, in paragraph (o)(2)(ii)(B), replace the words "the year 4 years after the notification deadline" with the words "the 4th year after the year of the notification deadline". An analogous correction occurs at pages 822, 825, and 834 in paragraphs (aa)(2)(iii)(C), (bb)(2)(iv)(B), and (dd)(4)(ii).

This corrects an error: missing words are added to clearly refer to "the year" of the notification deadline. This change makes it clear that, starting in 2008, the deadline for providing notification is October 31 of the year 4 years prior to the year in which the allowances will be allocated.

d. On pages 806-7, in paragraph (o)(2)(ii)(C), replace the words "October 31 of the year immediately after the year for which the CAIR NO_X allowances are allocated" with the words "October 31 of the year for which the CAIR NO_X allowances are allocated" .

This corrects an error: the change makes the allowance allocation for new units for a given year (e.g., 2009) occur in that year (2009), consistent with the discussion in the preamble at pages 577-79 (concerning need for issuance of allowances with lead time before the time they can used for compliance) and the model trading rules. Under the

current rule language, new unit allocations for 2009, would not be made until late 2010 and could not be used for compliance for 2009, in effect depriving the sources of an allocation for 2009. This was not the intent of this section.

e. On page 826, in paragraph (bb)(3), replace the words "or by Rhode Island, if the State's" with the words "or by Rhode Island under paragraph (bb)(2) of this section, if the State's".

This adds a missing citation referring to a preceding paragraph.

f. On page 828, in paragraph (cc) (definition of "electric generating unit", replace the words "the start-up of a unit's" with the words "the start-up of the unit's" and replace the words "If a unit that qualifies" with the words "If a unit qualifies". These grammatical corrections also occur at pages 853, 920-21, 1039-40, and 1149 in §§ 51.124 (cc), 96.104, 96.204, and 96.304.

g. On page 829, in paragraph (cc) (definition of "maximum design heat input"), replace the word "with" with the word "from" whenever it occurs and replace the words "on a steady state basis as of such completion" with the words "in a steady state basis," whenever they occur. This correction also occurs at pages 853-54, § 51.124(cc).

This makes the wording consistent with the analogous language in the definition of "nameplate capacity" and removes redundant language that is not in definitions of the same terms in the model trading rules.

h. On page 830, in paragraph (cc) (definition of "NAAQS"), replace the word "Qir" with the word "Air". This spelling correction is also made at page 854 in § 51.124(cc).

i. On page 830, in paragraph (cc) (definition of "NO_X Budget Trading Program"), replace the words "nitrogen oxide" with the words "nitrogen oxides". This grammatical correction also occurs at pages 898, 908, 910, 919, 925-26, 1039, 1126-27, 1137, 1139, 1149, and 1154-55 in §§ 96.102, 96.103, 96.106(c) and (c)(5), 96.203, 96.302, 96.303, and 96.306(c) and (c)(5).

This makes the wording in the references to "initial installation" and to "subsequent physical change" consistent with similar references in the definition of "maximum design heat input."

j. On page 830, in paragraph (cc) (definition of "nameplate capacity"), replace the words "starting from any subsequent physical change" with the words "starting from the completion of any subsequent physical change". This correction is also made at pages 854, 812-13, 1032, and 1141, in §§51.124(cc) and in §§ 96.102, 96.202, and 96.302.

This makes the wording in the references to "initial installation" and to "subsequent physical change"consistent in the definition of "nameplate capacity" with similar references in the definition of "maximum design heat input".

3. For § 51.124, on page 848, in paragraph (a)(4), replace the words "paragraph (o)(2)(ii) " with the words "paragraph (o)(2)".

This corrects an erroneous citation.

Part 78

1. For § 78.1:

a. On page 884, in the new paragraph (b)(7)(i), replace the words "§ 96.141(a)(2), (b)(2), or (c)(2)" with the words "§ 96.141(b)(2) or (c)(2)".
This removes a citation to a non-existent section (§ 96.141(a)(2)).

b. On page 885, in the new paragraph (b)(9)(i), replace the words "§ 96.341(a)(2), (b)(2), or (c)(2)" with the words "§ 96.341(b)(2) or (c)(2)".
This removes a citation to a non-existent section (§ 96.141(a)(2)).

2. For § 78.3:

a. On page 886, in amendment a, replace the words "or the CAIR designated representative, or CAIR NO_X authorized account representative, CAIR SO_2 authorized account representative, or CAIR NO_X Ozone Season authorized account representative" with the words "or the CAIR designated representative or CAIR authorized account representative".

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

b. On page 887, revise paragraph c to read: "In paragraph (d)(3), add, after the words "under the NO_X Budget Trading Program", the words "or on an account certificate of representation submitted by a CAIR designated representative or an application for a general account submitted by a CAIR authorized account representative under subparts AA through II, subparts AAA through III, or subparts AAAA through IIII of part 96 of this chapter".

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

c. On page 887, in paragraph (a)(4)(i), replace the words "CAIR NO_X authorized representative" with the words "CAIR authorized representative" .

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

d. On page 888, in paragraph (a)(5)(i), replace the words "CAIR SO_2 authorized representative" with the words "CAIR authorized representative".

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

e. On page 888, in paragraph (a)(6)(i), replace the words "CAIR NO_X Ozone Season authorized representative" with the words "CAIR authorized representative".

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

f. On page 888, in paragraphs (d)(5), replace the words "through HH" with the words "II".

This corrects an erroneous citation.

g. On page 888-89, in paragraphs (d)(6), replace the words "through HHH" with the words "III".

This corrects an erroneous citation.

h. On page 889, add a new paragraph (d)(7) to read "(7) Any provision or requirement of subparts AAAA through IIII of part 96, including the standard requirements under § 96.306 of this chapter and any emission monitoring or reporting requirements.".

This completes an inadvertently incomplete reference to the model trading rules: subparts AA through II and AAA through III are cited, but subparts AAAA through IIII were inadvertently left out.

3. <u>For § 78.4</u>, on page 889, in paragraph (a), replace "CAIR NO_X allowances in a general account shall be signed by the CAIR NO_X authorized account representative. Any filings on behalf of persons with an interest in CAIR SO_2 allowances in a general account shall be signed by the CAIR SO_2 authorized account representative. Any filings on behalf of persons with an interest in CAIR NO_X Ozone Season allowances in a general account shall be signed by the CAIR NO_X Ozone Season authorized account representative." with the words "CAIR NO_X allowances, CAIR

SO_2 allowances, or CAIR Ozone Season allowances in a general account shall be signed by the CAIR authorized account representative."

This corrects erroneous terminology: for both CAIR NO_X and SO_2, the authorized account representative is referred to in the model trading rules as simply as the "CAIR authorized account representative".

Part 96

Subparts AA through II

1. For § 96.102:

a. On pages 904 and 907, in paragraph (3) of the definitions of "commence commercial operation" and "commence operation", replace the words "under § 96.184(b)(i)(1)" with the words "under § 96.184(b)(1)(i)". This citation correction is also made at pages 1024, 1027, 1033, and 1036, in §§ 96.202 and 96.302.

b. On page 909, in the definition of "continuous emission monitoring system," paragraph (5), replace the words "a automated" with the words "an automated".

c. On page 911, in the definition of "life-of-the-unit, firm power contractual arrangement", replace the words "under which a customer reserves" with the words "under which a utility or industrial customer reserves" and replace the words "from any specified unit" with the words "generated by any specified unit". This correction is also made at pages 1030 and 1139-40, in §§ 96.202 and 96.302.

This corrects an error by making the wording of these phrases essentially the same as similar phrases in the definition of the same term in section 402(27) of title IV of the Clean Air Act and § 72.2 of the Acid Rain Program regulations.

2. For § 96.105, on page 921 , in paragraph (a)(3), replace the words "receipt of the notice under paragraph (a)(2)" with the words "receipt of the statement under paragraph (a)(2)". This correction is also made at pages 1041 and 1150, in §§ 96.205(a)(3) and 96.305(a)(3).

This correction makes the wording in paragraphs (a)(2) and (a)(3) consistent.

3. For § 96.110, on page 930, in paragraph (b), replace the words "in § 96.113(a)(5)(iv)" with the words "in § 96.113(a)(4)(iv)". An analogous, citation correction is also made on pages 1050 and 1160, in §§ 96.210(b) and 96.310(b) (corrected to reference §§ 96.213(a)(4)(iv) and 96.313(a)(4)(iv) respectively).

4. For § 96.141, on pages 943, in paragraphs (c)(1) and (2), replace the words "§ 96.142(c) and (d)" with the words "§ 96.142(a), (c), and (d)" whenever they occur.

This corrects erroneous citations.

5. For § 96.142:

a. On pages 945-46, in paragraphs (a)(2)(ii)(B) and (C), replace the words "total heat energy of the steam" with the words "total heat energy (in Btu) of the steam". This correction is also made at pages 1175-76, in § 96.341(a)(2)(ii)(B) and (C).

This adds a missing reference to the measurement units implied by the calculation, which requires that the amount be divided by 1,000,000 Btu/mmBtu, and stated in the preamble at pages 588-89.

b. On page 946, in paragraph (b)(2), replace the words "such unit" with the words "such CAIR NO_X unit" and replace the words "all CAIR NO_X units" with the words "all such CAIR NO_X units".

This corrects an error: the pool of allowances for existing units should be divided by the total heat input of existing units, not all units. Under the current wording, the allowance pool that is to be allocated to existing units will never be fully distributed when there are any new units covered by the new unit set-aside. This is inconsistent with the establishment of the State NO_X budget amounts for total allowance allocations each year in § 96.140 of the model NO_X trading rule.

c. On page 947-48, in paragraphs (c)(2) and (c)(4)(ii), replace the words "March 1" with the words "July 1".

This corrects an error: the emissions data needed for the submission (for which this is a deadline) will not likely be available in March and should be available by July, and so the correction gives owners and operators more time to submit.

d. On page 949, in paragraph (c)(4)(iv), replace the words "by the number of" with the words "by the amount of". This correction is also made at page 1179, in § 96.342(c)(4)(iv).

This error correction makes the reference to the "amount" of allowances, consistent with the wording in the rest of the paragraph.

6. For § 96.143, on pages 952-53, in paragraphs (b)(2), (c)(1), and (d), replace the words "May 31" with the words "July 1".

> This corrects an error: the emissions data needed for the submission (for which this is a deadline) will not likely be available in May and should be available by July, and so the correction gives owners and operators more time to submit.

7. For § 96.151, on page 956, in paragraph (b)(1)(ii)(C) and (D), replace the words "allowances" with the words "CAIR NO_X allowances". Analogous corrections of terminology are made at pages 1061-62, and 1182-83 , in §§ 96.251(b)(1)(ii)(C) and (D), and 96.351(b)(1)(ii)(C) and (D).

8. For § 96.153,

a. On page 962, in paragraph (a), replace the words "January 1, 2007" with the words "December 1, 2006". This correction is also made at page 1188, § 96.353(a).

> This error correction sets a consistent date (December 1) for all EPA recordations of annual allowance allocations throughout the model trading rules, rather than a January 1 date. A January 1 date falls immediately after (and is itself) a federal holiday, which will prevent necessary interaction between States and EPA concerning the appropriate amounts of allowances to allocate. EPA does not need more than 1 month to record allowance allocations provided by States by the October 31 submission deadline. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

b. On page 963, in paragraph (b), replace the words "January 1, 2010" with the words "December 1, 2009". This correction is also made at page 1188, § 96.353(b).

> This error correction sets a consistent date (December 1) for all EPA recordations of annual allowance allocations throughout the model trading rules, rather than a January 1 date. A January 1 date falls immediately after (and is itself) a federal holiday, which will prevent necessary interaction between States and EPA concerning the appropriate amounts of allowances to allocate. EPA does not need more than 1 month to record allowance allocations provided by States by the October 31 submission deadline. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

c. On page 963, in paragraph (c), replace the words "By January 1, 2011 and January 1 of each year" with the words "In 2011 and each year".

This corrects an error: the action (i.e., completion of compliance deductions of allowances) that EPA must take before this deadline (January 1) cannot occur until sometime after March 1.

d. On page 963, in paragraph (d), replace the words "January 1, 2010 and January 1" with the words "December 1, 2009 and December 1" and replace the words "for the control period in the year immediately before the year" with the words "for the control period in the year".

This error correction sets a consistent date (December 1) for all EPA recordations of annual allowance allocations throughout the model trading rules, rather than a January 1 date. A January 1 date falls immediately after (and is itself) a federal holiday, which will prevent necessary interaction between States and EPA concerning the appropriate amounts of allowances to allocate. The December 1 date gives owners and operators more time to trade allowances before the March 1 compliance deadline, and EPA does not need more than 1 month to record allowance allocations provided by States by the October 31 submission deadline. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

9. For § 96.170, on page 973, in paragraph (b)(5), replace the words "§ 96.184(h)" with the words "§ 96.184(g)". Analogous citation corrections occur at pages 1082 and 1202, in §§ 96.270(b)(5) and 96.370(b)(7).

10. For § 96.171,

a. On page 983, in paragraph (d)(3)(v)(A), replace the words "§ 75.20(a)(4)(iii), § 75.20(b)(5)," with the words "§ 75.20(a)(4)(iii)," This citation correction also occurs at pages 1092 and 1211 in §§ 96.271(d)(3)(v)(A) and 96.371(d)(3)(v)(A).

b. On page 983, in paragraph (d)(3)(v)(A)(3), replace the words "sections 2.1.3.1, and 2.1.3.2, and 2.1.5 of" with the words "section 2.1.5, 2.1.3.1, and 2.1.3.2 of ". This citation correction also occurs at pages 1092 and 1212 in §§ 96.271(d)(3)(v)(A)(3) and 96.371(d)(3)(v)(A)(3).

11. For § 96.188:

a. On page 1006, in paragraph (a)(2), replace the words "October 31 after" with the words "October 31 of". This correction also occurs at page 1114 , in § 96.288(a)(2).

This corrects an error: the change makes the allowance allocation for opt-in units for a given year (e.g., 2010) occur in that year so that the allowances can be used for compliance in that year. The current language would deprive the source of an allocation for the first year of the trading program. This was not the intent of ths section. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

b. On page 1007, in paragraph (b)(1)(ii), replace the words "for immediately prior" with the words "for the immediately prior". This grammatical correction also occurs at pages 1115 and 1238, in §§ 96.288(b)(1)(ii) and 96.388(b)(1)(ii).

c. On page 1009, in paragraph (c)(2)(ii)(A), replace the words "0.12 lb/mmBtu" with the words "0.15 lb/mmBtu". This correction is also made at page 1139, in § 96.388(c)(2)(ii)(A).

> This error correction makes the rule consistent with the preamble at page 629. This was a last minute change that was changed in the preamble but was inadvertently not changed in the regulatory text.

d. On page 1010, in paragraph (d)(2), replace the words "January 1, after the control period" with the words "December 1 of the control period" and the words "January 1 of each year therefter" with the words "December 1 of each year thereafter". This correction is also made at page 1118 , in § 96.288(d)(2).

> This error correction sets a consistent date (December 1) for all EPA recordations of annual allowance allocations throughout the model trading rules, rather than a January 1 date. A January 1 date falls immediately after (and is itself) a federal holiday, which will prevent necessary interaction between States and EPA concerning the appropriate amounts of allowances to allocate. The December 1 date gives owners and operators more time to trade allowances before the March 1 compliance deadline, and EPA does not need more than 1 month to record allowance allocations provided by States by the October 31 submission deadline. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allowances.

Subparts AAA through III

1. For § 96.253, on page 1068, in paragraph (a)(2), replace the words "at any source, for" with the words "at any source for".

> This removes an erroneous ",".

2. For § 96.254, on page 1072, in paragraphs (b)(2) and (b)(2)(ii), replace the words "those issued by a permitting authority under § 96.288" with the words "any issued by a permitting authority under § 96.288".

> This correction makes the wording of this phrase consistent throughout § 96.254.

3. For § 96.280, on page 1099, in paragraph (e), replace the words "subpart HH" with the words "subpart HHH". This correction is also made at page 1102, in § 96.284(a).

This corrects a citation.

4. For § 96.287, on page 1115, in paragraph (b)(1)(ii), replace the words "under § 96.284(h)" with the words "under § 96.284(g)".

This corrects a citation.

Subparts AAAA through IIII

1. For § 96.301, on pages 1121-22, replace the words "§ 51.123(aa)(1) or (2) of this chapter" with the words "§ 51.123(aa)(1) or (2), (bb), or (dd) of this chapter" whenever they appear. This correction also occurs at page 1146, in § 96.302.

This adds missing citations.

2. For § 96.302:

a. On pages 1126, in the definition of "CAIR NO_X Ozone Season allowance", replace the words "or (dd)(3) or (4)(i) of this chapter" with the words "or (dd)(3) or (4) of this chapter" and replace the words "§ 51.121(p) or § 51.123(aa)(1) or (2), (bb)(2) and (3), or (d)" with the words "§ 51.121(p) of this chapter, or § 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) of this chapter,".

This adds missing citations and corrects erroneous citations.

b. On page 1127, in the definition of "CAIR NO_X Ozone Season allowances held", replace the words "subparts FF, G, and II" with the words "subparts FFFF, GGGG, and IIII". Analogous changes to reference the subparts in the CAIR NO_X Ozone Season rule, rather than to subparts in the CAIR NO_X Annual rule or CAIR SO_2 rule also occur at various pages, in this section and §§ 96.306(a)(2) and (3), 96.311(c), 96.320(a), 96.354(c)(2)(ii), and 96.355(b).

c. On page 1143, in the definition of "potential electrical output capacity", replace the words "3,413 mmBtu/kWh" with the words "3,413 Btu/kWh".

This corrects an error and makes the provision consistent with the same definitions in part 72, appendix D of the Acid Rain regulations and in the other model trading rules, which refer to 3,413 Btu/kWh.

3. For § 96.341, on page 1173, in paragraphs (c)(1) and (2), replace the words "§ 96.342(c) and (d)" with the words "§ 96.342(a), (c), and (d)" whenever they occur.

This corrects erroneous citations.

4. For § 96.342:

a. On page 1177, in paragraph (b)(2), replace the words "such unit" with the words "such CAIR NO_X Ozone Season unit" and replace the words "all CAIR NO_X Ozone Season units" with the words "all such CAIR NO_X Ozone Season units".

This corrects an error: the pool of allowances for existing units should be divided by the total heat input of existing units, not all units. Under the current wording, the allowance pool that is to be allocated to existing units will never be fully distributed when there are any new units covered by the new unit set-aside. This is inconsistent with the establishment of the State NO_X budget amounts for total allowance allocations each year in § 96.340 of the model NO_X trading rule.

b. On pages 1178-79, in paragraphs (c)(2) and (c)(4)(ii), replace the words "March 1 of the" with the words "April 1 before the".

This corrects an error: the emissions data needed for the submission (for which this is a deadline) will likely not be available in March, and so the correction gives owners and operators more time to submit. Further, April 1 (and March 1) are before, not in, the ozone season.

5. For § 96.353:

a. On pages 1188-89, in paragraph (c), replace the words "By January 1, 2011 and January 1 of each year" with the words "In 2011 and each year".

This corrects an error: the action (i.e., completion of compliance deductions of allowances) that EPA must take before this deadline (January 1) will likely not occur by January 1.

b. On page 1189, in paragraph (d), replace the words "October 1, 2009 and October 1" with the words "September 1, 2009 and September 1".

This error correction sets EPA's time to record allocations at 1 month from receipt of the allocation information from States, consistent with the time period in the NO_X annual model trading rule. The October 1 date gives owners and operators more time to trade

allowances before the November 30 compliance deadline, and EPA does not need more than 1 month to record allowance allocations provided by States by the July 31 submission deadline. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

6. For § 96.370, on page1200, in paragraph (b)(3)(ii), add the words "of this section" after each paragraph citation and on pages 1202, in paragraph (c)(2), replace the words "paragraph (b)(3)" with the words "paragraph (b)(4)," and replace the words "procedures in subpart D or subpart H" with the words "procedures in § 75.74(c)(7) of this chapter or subpart D or subpart H".

This corrects citations, and provides more specific citations.

7. For § 96.384, on page 1228, in paragraph (g), replace the words "January 1" with the words "May 1".

This correction reflects the fact that the ozone season begins on May 1, not January 1.

8. For § 96.386, on pages 1230 and 1232, in paragraphs (a)(2) and (c), replace the words "December 31" with the words "September 30".

This corrections reflects the fact that the ozone season ends on September 30, not December 31.

9. For § 96.388,

a. On page 1237, in paragraph (a)(2), replace the words "October 31 after" with the words "July 31 of" and "October 31 of" with the words "July 31 of".

This corrects an error: the change makes the allowance allocation for opt-in units for a given ozone season occur in that ozone season so that the allowances can be used for compliance in that ozone season. The change also ensures that owners and operators of opt-in units will have the same amount of time (3 months after EPA recordation of the allocations) to trade allowances before the compliance deadline (November 30) as owners and operators of other units in the model trading programs. The current language would deprive the source of an allocation for the first year of the trading program. This was not the intent of ths section.

b. On page 1237, in paragraph (b), replace the words "authority allocate" with the words "authority will allocate".

This corrects a typographical error.

c. On page 1241, in paragraph (d)(2), replace the words "January 1 after" with the words "September 1 of " and the words "January 1 of" with the words "September 1 of".

This corrects an error and shortens the time given to EPA to record allocations. This change is necessary to ensure that owners and operators of opt-in units will have the same amount of time (3 months after EPA recordation of the allocations) to trade allowances before the compliance deadline (November 30) as owners and operators of other units in the model trading programs. The current language would deprive the source of an allocation for the first year of the trading program. This was not the intent of ths section. There do not appear to be any parties that would have a basis for objecting to EPA taking less time to record allocations.

We recommend that you correct these inadvertent errors and approve these changes by signing and dating below.

Steven L. Johnson
Acting Administrator

APR 17 2004
Date