**MEMORANDUM OF AGREEMENT BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGARDING SUBMISSION OF A STATE IMPLEMENTATION PLAN REVISION TO ADDRESS CERTAIN REGIONAL HAZE AND INTERSTATE VISBILITY TRANSPORT REQUIREMENTS PURSUANT TO SECTIONS 169A AND 110 OF THE CLEAN AIR ACT, 42 U.S.C. § 7491; 42 U.S.C. § 7410.**

WHEREAS Clean Air Act (CAA) § 169A(b)(2)(A) requires states to revise their State Implementation Plans (SIPs) to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology" (BART), including larger "fossil fuel-fired steam electric plants" (i.e., electric generating units or EGUs); and

WHEREAS Clean Air Act (CAA) § 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states, and this requirement is referred to as "interstate visibility transport"; and

WHEREAS the Environmental Protection Agency (EPA) issued a limited disapproval of the Texas Regional Haze SIP concerning EGU BART due to Texas' reliance on the Clean Air Interstate Rule (CAIR) (*see* 77 Fed. Reg. 33,641 (August 6, 2012)); and

WHEREAS Texas in its 2009 SIP to address Regional Haze committed to take appropriate action if EPA issues a replacement program that does not address BART; and

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WHEREAS EPA has proposed to remove Texas from Cross State Air Pollution Rule (CSAPR) for $PM_{2.5}$ and if this proposal is finalized BART for $SO_2$ could not be addressed through the CSAPR better-than-BART pathway (*see* 81 Fed. Reg. 78,954 (November 10, 2016)); and

WHEREAS the Texas Commission on Environmental Quality (TCEQ) has expressed concerns regarding its statutory authority to adopt a SIP to require its EGUs to participate in CSAPR; and

WHEREAS TCEQ embraces cooperative federalism and desires to work cooperatively with the EPA, it agrees to adopt and submit a SIP that adequately addresses the BART requirement for EGUs for $SO_2$, PM, and $NO_X$; reasonable progress; and interstate visibility transport for 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour $NO_2$, and 2010 1-hour $SO_2$; and

WHEREAS TCEQ believes that any approach to addressing these requirements should have built-in flexibility because of concerns regarding electric grid reliability and TCEQ needs a sufficient amount of time to develop, adopt, and submit such a program; and

WHEREAS TCEQ believes the useful life of EGUs is often difficult to determine in a competitive market and that the flexibility of a trading program may mitigate that difficulty; and

WHEREAS TCEQ is requesting that the Texas regional haze program, which could be in the format of a Federal Implementation Plan, include an intrastate trading program to address the BART requirement for EGUs



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for $SO_2$, PM, and $NO_X$; reasonable progress; and interstate visibility transport for 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour $NO_2$, and 2010 1-hour $SO_2$ (see Attachments B and C); and

NOW THEREFORE, EPA AND TCEQ AND AGREE AS FOLLOWS:

1. TCEQ agrees in the spirit of cooperative federalism to submit to EPA for action a revision to its SIP to address the Regional Haze requirements for $SO_2$, PM, and $NO_X$ BART established in CAA § 169A, and interstate visibility transport established in CAA § 110(a)(2)(D)(i)(II) for 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour $NO_2$, and 2010 1-hour $SO_2$.
    a. To address the $SO_2$, PM, and $NO_X$ BART obligation, TCEQ agrees to coordinate with the owners and operators of EGUs in the State as listed in Attachment A to develop agreed orders (AOs) establishing requirements appropriate and sufficient to meet $SO_2$, PM, and NOx BART.
    b. TCEQ agrees to ensure that TCEQ and the appropriate EGUs have entered all of these AOs no later than September 30, 2018, and to ensure all of these AOs take effect under state law no later than January 1, 2019.
    c. TCEQ agrees to submit to EPA for action a revision to its SIP to address the Regional Haze requirements pertaining to EGU $SO_2$, PM, and $NO_X$ BART not later than December 31, 2019.
    d. TCEQ intends for this SIP submittal to, to the extent appropriate, incorporate trading program flexibilities.
    e. TCEQ intends to ask EPA to parallel process this SIP submittal.
    f. TCEQ intends for this SIP to meet all outstanding requirements for regional haze under CAA § 169A for $SO_2$, PM, and $NO_X$ BART and reasonable progress, and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour $NO_2$, and 2010 1-hour $SO_2$.

2. EPA agrees to parallel process this SIP submittal and sign a final action on the SIP revision by December 15, 2020.

3. TCEQ and EPA intend to work together to meet the goals of this MOA.

4. This document does not establish binding legal requirements on EPA or TCEQ or any of their officers, employees, other representatives, or any other person. EPA retains all the discretion afforded to it under the CAA and the general principles of administrative law. As required by the Antideficiency Act, 31 U.S.C. § 1341 and 1342, all commitments made by EPA herein are subject to the availability of appropriated funds. Nothing in this document in and of itself obligates EPA to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur other financial obligations. This document does not create any exemption from policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this document will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

5. All commitments made by TCEQ in this agreement are subject to Texas law concerning appropriations. Nothing in this agreement requires TCEQ to expend funds in violation of Texas law.

6. This MOA may be signed in counterparts.

7. This MOA will terminate upon EPA's final rulemaking action on TCEQ's SIP submittal.

Signed this _____ of August 2017.

_____

TCEQ name
TCEQ Title
Texas Commission on
Environmental Quality

_____

Sam Coleman
Acting Regional Administrator
United States Environmental
Protection Agency, Region 6

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**Attachment A** – List of EGUs subject to $SO_2$, PM, and NOx BART (TBD)

**Attachment B**

This document reflects preliminary work by staff; it is not a final product and additional analyses are needed to further develop the concept.

## Regional Haze Best Available Retrofit Technology, Reasonable Progress and Visibility Interstate Transport

The following identifies an option for implementation of Best Available Retrofit Technology (BART) and reasonable progress and visibility transport requirements as focused on the SO2 emissions of Texas Electric Generating Units that is based on an approach similar to the Cross State Air Pollution Rule (CSAPR) and Clean Air Interstate Rule (CAIR).

### Coal-Fired BART Units

*Sulfur Dioxide ($SO_2$) BART*

BART-eligible coal-fired electric generating units (EGUs) would comply with mass-based source or system caps that would be equivalent to the $SO_2$ allocations the units received under the CSAPR, as outlined in Table 1.

- A source cap would apply to all the BART-eligible sources located at a given site.
- A system cap would apply to all the BART-eligible sources at one or more sites under common ownership and control.
- An intrastate trading option would also allow companies to trade between sites or systems within Texas.

The EPA has already determined that CSAPR is better than BART, and the approach, while not applying to all EGUs that were subject to CSAPR, would apply to the majority of $SO_2$ emissions from EGUs in Texas (see Table 3 below). Approximately 60% of the State EGU $SO_2$ emissions come from the BART-eligible sources. In combination with the additional sources discussed below (Table 2), the approach would apply to sources responsible for 94% of the State EGU $SO_2$ emissions. Therefore, the EPA's CSAPR-better-than-BART determination should satisfy the requirement that BART alternatives show greater reasonable progress under this approach. The overall strategy is also meant to address reasonable progress for these sources and address visibility transport requirements, i.e., help ensure that Texas emissions do not interfere with visibility program measures of neighboring states. To demonstrate this, the emission reductions from this program must meet the level of emission reductions relied on by other states during consultation and in development of their reasonable progress goals.

**Table 1: BART-Eligible Coal-Fired EGU and co-located BART-Eligible gas/fuel oil-fired EGUs $SO_2$ Allocations and 2016 Emissions**

| Company | Site | Annual Allocation[1] (tons) | 2016 Emissions (tons) |
|---|---|---|---|
| AEP | Welsh Power Plant (Units 1 & 2[2]) | 13,546 | 6,005 |
| CPS Energy | JT Deely (Units 1 & 2) and Sommers (Units 1 & 2) | 12,314 | 7,627 |
| Dynegy | Coleto Creek (Unit 1) | 9,057 | 8,231 |
| LCRA | Fayette/Sam Seymour (Units 1 & 2) | 15,998 | 877 |
| Luminant | Big Brown (Units 1 & 2) | 17,032 | 42,470 |
| | Martin Lake (Units 1 – 3) | 35,840 | 25,471 |
| | Monticello (Units 1 – 3) | 29,609 | 24,958 |
| | Luminant Subtotal | 82,481 | 92,899 |
| NRG | WA Parish (Units WAP4, WAP5 & WAP6) | 18,483 | 21,841 |
| Xcel | Harrington (Units 061B & 062B) | 10,616 | 8,869 |
| Total All BART-Subject Units | | 162,495 | 146,349 |



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*Nitrogen Oxides ($NO_X$) BART*

Texas' participation in the Ozone Season $NO_X$ CSAPR Program satisfies $NO_X$ BART for the BART-subject units.

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[1] EPA CSAPR allocations after tolling: https://www.epa.gov/sites/production/files/2016-05/unitlevelallocations_tolled- 2.xls. Allocations DO NOT INCLUDE allowances distributed to existing units from the New Unit Set Aside (NUSA) pool after allocation to new units. Including NUSA allowances would increase allocations by approximately 3.5%; however, the amount of NUSA allowances distributed to these units is variable, changing year-to-year. Red indicates the source or system allocation is deficit to the 2016 emissions.

[2] Welsh Unit 2 was BART eligible and would have been subject to BART if the unit had not been retired in April 2016. Welsh Unit 2 is included to allow AEP to take credit for the shutdown.

*Particulate Matter (PM) BART*

The EPA's interpretation of the July 19, 2006 guidance memorandum regarding BART determinations is not correct and the TCEQ's original SIP submittal screening out PM from EGUs for BART purposes should be approved by the EPA. The July 19, 2006 guidance memo states that EPA does not generally recommend a pollutant specific screening approach, however, it may be appropriate for PM in certain situations. The memo provides the situation of a state relying on the Clean Air Interstate Rule as an example where pollutant specific screening for PM may be appropriate. The approach proposed here for SO2 BART and the Ozone Season NOX CSAPR Program are BART alternatives. Therefore, the EPA's interpretation of the 2006 memorandum is not applicable under this suggested alternative to source-specific BART. See TCEQ's comments dated May 5, 2017 for additional detail. Sources covered by the SO2 BART and the Ozone Season NOX CSAPR Program BART alternatives screen out of PM BART as demonstrated in the TCEQ's original SIP submittal.

## Gas-Fired and Gas/Oil-Fired BART Units

EPA's analysis identified certain gas-fired and gas/oil-fired EGUs that are not co-located with BART-eligible coal-fired EGUs as being subject-to-BART (see Table 2 below). We will evaluate the results of this analysis and address the BART requirements for SO2 and PM BART for these sources, as appropriate. These EGUs could be incorporated into the above approach for $SO_2$ and PM or fuel restrictions may be a more practical approach for satisfying PM and $SO_2$ BART on these units. Texas' participation in the Ozone Season $NO_x$ CSAPR Program satisfies $NO_x$ BART for these units.

**Table 2: EPA identified subject-to-BART gas-fired and gas/oil-fired EGUs SO2 Allocations and 2016 Emissions**

| Company | Site | Annual Allocation[1] (tons) | 2016 Emissions (tons) |
|---|---|---|---|
| Luminant | Graham Unit 2 | 226 | 0.3 |
| Luminant | Stryker Creek Unit ST2 | 145 | 0.5 |
| El Paso Electric | Newman Units 2,3,&4 | 4 | 3.2 |
| AEP | Wilkes Units 1,2, & 3 | 19 | 2.0 |

## Combined BART/Reasonable Progress/Visibility Interstate Transport

A limited expansion of the $SO_2$ approach outlined above for coal-fired BART-eligible units is needed for the alternative BART approach described above, reasonable progress purposes, and. to ensure that the emissions reductions are at least the same as what was relied on by other states for the visibility interstate transport purposes. The inclusion of all these non-BART sources would address emissions from sources having significant potential contributions to visibility impairment due to their potential emissions and location and their inclusion with the BART-eligible sources would result in a coverage of approximately 94% of the EGU SO2 emissions in the state. This expanded approach would use source or system caps for the BART-eligible EGUs (Table 1) and the non-BART EGUs (Table 3), and would allow companies to trade between source or system caps via an intrastate trading program. Table 5 provides a complete summary of source and system caps for all included units.

**Table 3: Non-BART Coal-Fired EGUs, $SO_2$ Allocations and 2016 Emissions**

| Company | Site | Annual Allocation[1] (tons) | 2016 Emissions (tons) |
|---|---|---|---|
| Luminant | Sandow (Unit 4) | 8,370 | 12,105 |
| NRG | Limestone (Units 1 & 2) | 24,374 | 20,801 |
| San Miguel Electric Cooperative | San Miguel (Unit 1) | 6,271 | 6,815 |
| Xcel | Tolk Station (Units 171B & 172B) | 13,962 | 14,977 |
| AEP | Welsh Power Plant (Unit 3) | 7,208 | 5,042 |
| AEP | H W Pirkey Power Plant | 8,882 | 4,441 |
| AEP | Oklaunion Power Plant | 4,386 | 1,530 |
| Xcel | Harrington (Unit 063B) | 5,055 | 5,386 |
| NRG | WA Parish (Unit WAP7, WAP8) | 11,724 | 12,296 |
| LCRA | Fayette/Sam Seymour (Unit 3) | 2,955 | 231 |
| Total All Units | | 93,187 | 83,623 |

**Table 4: Combined BART-Eligible and Non-BART EGUs, $SO_2$ Allocations and 2016 Emissions**

| Approach | Annual Allocation[1] (tons) | 2016 Emissions (tons) | % of Total Texas EGU Emissions |
|---|---|---|---|
| BART-Eligible Coal-Fired Units | 162,495 | 146,349 | 60% |
| Non-BART Units | 93,187 | 83,623 | 34% |
| Combined Total | 255,682 | 229,972 | 94% |
| Total Texas EGU Emissions | 279,740* | 245,737 | |

*Total CSAPR allocation for existing units

**Table 5: System summary: Combined BART-Eligible, and Additional Non-BART units, $SO_2$ Allocations and 2016 Emissions**

| Company | Site | Annual Allocation[1] (tons) | 2016 Emissions (tons) |
|---|---|---|---|
| AEP | Welsh Power Plant (Unit 3) | 7,208 | 5,042 |
| | Welsh Power Plant (Units 1 & 2[2]) | 13,546 | 6,005 |
| | H W Pirkey Power Plant | 8,882 | 4,441 |
| | Oklaunion Power Plant | 4,386 | 1,530 |
| | *AEP subtotal* | *34,022* | *17,018* |
| CPS Energy | JT Deely (Units 1 & 2) and Sommers (Units 1 & 2) | 12,314 | 7,627 |
| Dynegy | Coleto Creek (Unit 1) | 9,057 | 8,231 |
| LCRA | Fayette/Sam Seymour (Units 1 & 2) | 15,998 | 877 |

| | | | |
|---|---|---|---|
| | Fayette/Sam Seymour (Unit 3) | 2,955 | 231 |
| | *LCRA subtotal* | *18,953* | *1,108* |
| Luminant | Big Brown (Units 1 & 2) | 17,032 | 42,470 |
| | Martin Lake (Units 1 – 3) | 35,840 | 25,471 |
| | Monticello (Units 1 – 3) | 29,609 | 24,958 |
| | Sandow (Unit 4) | 8,370 | 12,105 |
| | *Luminant subtotal* | *90,851* | *105,004* |
| NRG | Limestone (Units 1 & 2) | 24,374 | 20,801 |
| | WA Parish (Units WAP4, WAP5 & WAP6) | 18,483 | 21,841 |
| | WA Parish (Unit WAP7, WAP8) | 11,724 | 12,296 |
| | *NRG subtotal* | *54,643* | *54,940* |
| San Miguel Electric | San Miguel (Unit 1) | 6,271 | 6,815 |
| Xcel | Tolk Station (Units 171B & 172B) | 13,962 | 14,977 |
| | Harrington (Units 061B & 062B) | 10,616 | 8,869 |
| | Harrington (Unit 063B) | 5,055 | 5,386 |
| | *Xcel subtotal* | *29,633* | *29,232* |

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**Attachment C**
**DRAFT Trading Program Rules**

## 40 CFR Part 97 - FEDERAL NOX BUDGET TRADING PROGRAM, CAIR NOX AND SO2 TRADING PROGRAMS, CSAPR NOX AND SO2 TRADING PROGRAMS, And Texas SO2 Trading Program

Subpart FFFFF - Texas SO2 Trading Program

40 CFR 97.901 Purpose – This part sets forth the general, designated representative, allowance, and monitoring provisions for the Texas $SO_2$ Trading Program under section 110 of the Clean Air Act and 40 CFR XXXX, as a means of addressing the BART alternative and interstate visibility transport requirements as they relate to sulfur dioxide emissions.

40 CFR 97.902 Definitions

The terms used in this subpart shall have the meanings set forth in this section as follows:

*Acid Rain Program* means a multi-state $SO_2$ and $NO_X$ air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

*Administrator* means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

*Allocate* or *allocation* means, with regard to Texas SO2 Trading Program allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart and any SIP revision submitted by the State to meet the requirements of 40 CFR XXXX and approved by the Administrator, of the amount of such Texas SO2 Trading Program allowances to be initially credited, at no cost to the recipient, to a Texas SO2 Trading Program unit.

*Allowance Management System* means the system by which the Administrator records allocations, transfers, and deductions of Texas SO2 Trading Program allowances under the Texas SO2 Trading Program. Such allowances are allocated, recorded, held, transferred, or deducted only as whole allowances.

*Allowance Management System account* means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Texas SO2 Trading Program allowances.

*Allowance transfer deadline* means, for a control period in a given year, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately after such control period and is the deadline by which a Texas SO2 Trading Program allowance transfer must be submitted for recordation in a Texas SO2 Trading Program source's compliance account in order to be available for use in complying with the source's Texas SO2 Trading Program emissions limitation for such control period in accordance

with §§97.906 and 97.924.

*Alternate designated representative* means, for a Texas SO2 Trading Program source and each Texas SO2 Trading Program 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 this subpart, to act on behalf of the designated representative in matters pertaining to the Texas SO2 Trading Program. If the Texas SO2 Trading Program source is also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

*Authorized account representative* means, for a Texas SO2 Trading Program source's compliance account, the designated representative of the source.

*Automated data acquisition and handling system* or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, 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 this subpart.

*Business day* means a day that does not fall on a weekend or a federal holiday.

*Certifying official* means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

*Clean Air Act* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

*Compliance account* means an Allowance Management System account, established by the Administrator for a Texas SO2 trading Program source under this subpart, in which any Texas SO2 trading program allowance allocations to the Texas SO2 Trading Program units at the source are recorded and in which are held any Texas SO2 Trading Program allowances available for use for a control period in a given year in complying with the source's Texas SO2 Trading Program emissions limitation in accordance with §§97.906 and 97.924.

*Continuous emission monitoring system* or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of $SO_2$ emissions, stack gas volumetric flow rate, stack gas moisture content, and $O_2$ or $CO_2$ concentration (as applicable), in a manner consistent with part 75 of this chapter and §§97.930 through 97.935. The following systems are the principal types of continuous emission monitoring systems:

(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);



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(2) A $SO_2$ monitoring system, consisting of a $SO_2$ pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of $SO_2$ emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in §75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent $H_2O$;

(4) A $CO_2$ monitoring system, consisting of a $CO_2$ pollutant concentration monitor (or an $O_2$ 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

(5) An $O_2$ 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* means the period starting January 1 of a calendar year, except as provided in §97.906(c)(3), and ending on December 31 of the same year, inclusive.

*CSAPR $NO_X$ Ozone Season Group 2 Trading Program* means a multi-state $NO_X$ air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and §52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under §52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under §52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and $NO_X$.

*Designated representative* means, for a Texas SO2 Trading Program source and each Texas SO2 Trading Program 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 this subpart, to represent and legally bind each owner and operator in matters pertaining to the Texas SO2 Trading Program. If the Texas SO2 Trading Program source is also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

*Emissions* means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

*Excess emissions* means any ton of emissions from the Texas SO2 Trading Program units at a Texas SO2 Trading Program source during a control period in a given year that exceeds the Texas SO2 Trading Program emissions limitation for the source for such control period.

*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 2005 or any calendar year thereafter.

*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 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

*Monitoring system* means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

*Natural person* means a human being, as opposed to a legal person, which may be a private (i.e., business entity or non-governmental organization) or public (i.e., government) organization.

*Operate* or *operation* means, with regard to a unit, to combust fuel.

*Operator* means, for a Texas SO2 Trading Program source or a Texas SO2 Trading Program unit at a source respectively, any person who operates, controls, or supervises a Texas SO2 Trading Program unit at the source or the Texas SO2Trading Program unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

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*Owner* means, for a Texas SO2 Trading Program source or a Texas SO2 Trading Program unit at a source, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a Texas SO2 Trading Program unit at the source or the Texas SO2 Trading Program unit;

(2) Any holder of a leasehold interest in a Texas SO2 Trading Program unit at the source or the Texas SO2 Trading Program unit, 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 Texas SO2Trading Program unit; and

(3) Any purchaser of power from a Texas SO2 Trading Program unit at the source or the Texas SO2 Trading Program unit under a life-of-the-unit, firm power contractual arrangement.

*Permanently retired* means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

*Permitting authority* means “permitting authority” as defined in §§70.2 and 71.2 of this chapter.

*Receive* or *receipt of* means, when referring to 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 Administrator in the regular course of business.

*Recordation, record,* or *recorded* means, with regard to Texas SO2Trading Program allowances, the moving of Texas SO2Trading Program allowances by the Administrator into, out



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of, or between Allowance Management 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 §75.22 of this chapter.

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

*Serial number* means, for a Texas SO2 Trading Program allowance, the unique identification number assigned to each Texas SO2Trading Program allowance by the Administrator.

*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. This definition does not change or otherwise affect the definition of "major source", "stationary source", or "source" as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

*State* means Texas.

*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;

(4) Provided that compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

*Unit* means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

*Unit operating day* means, with regard to a unit, a calendar day in which the unit combusts any fuel.

*Unit operating hour or hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

40 CFR 97.903 Measurements, Units, Abbreviations

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

Btu—British thermal unit

$CO_2$—carbon dioxide

CSAPR—Cross-State Air Pollution Rule

$H_2O$—water

hr—hour

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
SIP—State implementation plan
$SO_2$—sulfur dioxide
TR—Transport Rule
yr—year

40 CFR 97.904 Applicability.

(a) The following listed units in Texas shall be a Texas SO2 Trading Program

(b) Table 1

| System | Units | ORIS Code |
|---|---|---|
| AEP | Welsh Power Plant Unit 1 | |
| | Welsh Power Plant Unit 2 | |
| | Welsh Power Plant Unit 3 | |
| | H W Pirkey Power Plant Unit 1 | |
| | Oklaunion Power Plant Unit 1 | |
| CPS Energy | JT Deely Unit 1 | |
| | JT Deely Unit 2 | |
| | Sommers Unit 1 | |
| | Sommers Unit 2 | |
| Dynegy | Coleto Creek Unit 1 | |
| LCRA | Fayette / Sam Seymour Unit 1 | |
| | Fayette / Sam Seymour Unit 2 | |
| | Fayette / Sam Seymour Unit 3 | |
| Luminant | Big Brown Unit 1 | |
| | Big Brown Unit 2 | |
| | Martin Lake Unit 1 | |
| | Martin Lake Unit 2 | |
| | Martin Lake Unit 3 | |
| | Monticello Unit 1 | |
| | Monticello Unit 2 | |
| | Monticello Unit 3 | |
| | Sandow Unit 4 | |

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| | | |
|---|---|---|
| NRG | Limestone Unit 1 | |
| | Limestone Unit 2 | |
| | WA Parish Unit WAP4 | |
| | WA Parish Unit WAP5 | |
| | WA Parish Unit WAP6 | |
| | WA Parish Unit WAP7 | |
| | WA Parish Unit WAP8 | |
| San Miguel Electric Cooperative | San Miguel Unit 1 | |
| Xcel | Tolk Station Unit 171B | |
| | Tolk Station Unit 172B | |
| | Harrington Unit 061B | |
| | Harrington Unit 062B | |
| | Harrington Unit 063B | |

(c) Opt-In Provisions

1. Only the units identified in the Table below can opt-into the Texas Visibility trading Program. [INSERT TABLE OF OPT-IN ELIGIBLE UNITS – Intent of this section is to identify which units are eligible to opt-in to the Texas SO2 Trading Program. Only sources initially covered under CSAPR are eligible opt-in units.]
2. Opt-in applications must be submitted in a manner specified by the Administrator no later than October 1 of the year preceding the start of the next control period
3. The Administrator will review applications for opt-in units and respond in writing to the owner or operator and the designated representative and alternate designated representative within 30 business days.
4. Once accepted into the Texas Visibility Trading Program, the unit will be considered an applicable unit of the Texas Visibility Trading Program starting on the January 1 of the control period immediately following the submittal of the opt-in application. The unit will remain subject to the requirements of subpart FFFFF of Part 97 for the life of the source, with the exception for retired units under 40 CFR 97.905.
5. Opt-in units will receive allowance allocations per the table in paragraph 97.911(b). These allocations will be recorded into a unit's compliance account per the recordation schedule in 97.921.

40 CFR 97.905 Retired Unit Exemptions

(a)(1) Any Texas SO2Trading Program unit that is permanently retired shall be exempt from 97.906(b) and (c)(1), 97.924, and 97.930 through 97.935.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Texas SO2 Trading Program unit is permanently retired. Within 30 days of the

unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any $SO_2$, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Texas SO2Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. A retired unit that resumes operation will not receive an allowance allocation under 97.904 or 97.911. This unit must request allowances through 97.912. All other provisions of Subpart FFFFF regarding monitoring, reporting, recordkeeping and compliance will apply on the first date on which the unit resumes operation.

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40 CFR 97.906 General Provisions.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§97.913 through 97.918.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each Texas SO2 Trading Program source and each Texas SO2 Trading Program unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§97.930 through 97.935.

(2) The emissions data determined in accordance with §§97.930 through 97.935 shall be used to determine compliance with the Texas SO2 Trading Program emissions limitation under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§97.930 through 97.935 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *$SO_2$ emissions requirements*—(1) *Texas SO2 Trading Program.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each Texas SO2 Trading Program source and each Texas SO2Trading Program unit at the source shall hold, in the source's compliance account, Texas SO2 Trading Program allowances available for deduction for such control period under §97.924(a) in an amount not less than the tons of total

$SO_2$ emissions for such control period from all Texas SO2 Trading Program units at the source.

(ii) If total $SO_2$ emissions during a control period in a given year from the Texas SO2 Trading Program units at a TexasSO2 Trading Program source are in excess of the Texas SO2 Trading Program emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each Texas SO2 Trading Program unit at the source shall hold the Texas SO2 Trading Program allowances required for deduction under §97.924(d); and

(B) The owners and operators of the source and each Texas SO2 Trading Program unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *Compliance periods.* A Texas SO2 Trading Program unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2019 or the deadline for meeting the unit's monitor certification requirements under §97.930(b) and for each control period thereafter.

(3) *Vintage of Texas SO2 Trading Program allowances held for compliance.* (i) A Texas SO2 Trading Program allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a Texas SO2 Trading Program allowance that was allocated for such control period or a control period in a prior year.

(ii) A Texas SO2 Trading Program allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (2)(i) through (iii) of this section for a control period in a given year must be a Texas SO2 Trading Program allowance that was allocated for a control period in a prior year or the control period in the given year or in the immediately following year.

(4) *Allowance Management System requirements.* Each Texas SO2 Trading Program allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(5) *Limited authorization.* A Texas SO2 Trading Program allowance is a limited authorization to emit one ton of $SO_2$ during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the Texas SO2Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(6) *Property right.* A Texas SO2 Trading Program allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of Texas SO2 Trading Program allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report $SO_2$ emissions using

a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under §75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§97.930 through 97.935 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each Texas SO2 Trading Program source and each Texas SO2 Trading Program unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under §97.916 for the designated representative for the source and each Texas SO2 Trading Program 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 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under §97.916 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the Texas SO2 Trading Program.

(2) The designated representative of a Texas SO2 Trading Program source and each Texas SO2 Trading Program unit at the source shall make all submissions required under the Texas SO Trading Program, except as provided in §97.918. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the Texas SO2Trading Program that applies to a Texas SO2Trading Program source or the designated representative of a Texas SO2 Trading Program source shall also apply to the owners and operators of such source and of the Texas SO2 Trading Program units at the source.

(2) Any provision of the Texas SO2 Trading Program that applies to a Texas SO2 Trading Program unit or the designated representative of a Texas SO2Trading Program unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the Texas SO2Trading Program or exemption under §97.905 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a Texas SO2 Trading Program source or Texas SO2 Trading Program unit from compliance with any other provision of the applicable, approved



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State implementation plan, a federally enforceable permit, or the Clean Air Act.

40 CFR 97.907 Computation of time.

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

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

(c) Unless otherwise stated, if the final day of any time period, under the Texas SO2Trading Program, is not a business day, the time period shall be extended to the next business day.

40 CFR 97.908 Administrative Appeal Procedures.

The administrative appeal procedures for decisions of the Administrator under the Texas SO2Trading Program are set forth in part 78 of this chapter.

40 CFR 97.909 [RESERVED]

40 CFR 97.910 Texas SO2 Trading Program and Electric Reliability Emergency Pool Budgets

(a) The budgets for the Texas SO2 Trading Program and Texas Electric Reliability Emergency Pool for the control periods in 2019 and thereafter are as follows:

(1) Texas SO2 Trading Program budget for 2019 and each future control period is XXX,XXX tons.

(2) Texas Electric Reliability Emergency Pool for control period in 2019 and each future control period is X,XXX tons.

40 CFR 97.911 Texas SO2 Trading Program allowance allocations.

(a) Texas SO2 Trading Program allowances are allocated, for the control periods in 2019 and each year thereafter, as provided in the following table:

| System | Units | Allowances (tpy) |
|---|---|---|
| AEP | Welsh Power Plant Unit 1 | 6,496 |
| | Welsh Power Plant Unit 2 | 7,050 |
| | Welsh Power Plant Unit 3 | 7,208 |
| | H W Pirkey Power Plant Unit 1 | 8,882 |
| | Oklaunion Power Plant Unit 1 | 4,386 |
| CPS Energy | JT Deely Unit 1 | 6,170 |
| | JT Deely Unit 2 | 6,082 |
| | Sommers Unit 1 | 55 |
| | Sommers Unit 2 | 7 |
| Dynegy | Coleto Creek Unit 1 | 9,057 |
| LCRA | Fayette / Sam Seymour Unit 1 | 7,979 |
| | Fayette / Sam Seymour Unit 2 | 8,019 |

| | | |
|---|---|---|
| | Fayette / Sam Seymour Unit 3 | 2,955 |
| Luminant | Big Brown Unit 1 | 8,473 |
| | Big Brown Unit 2 | 8,559 |
| | Martin Lake Unit 1 | 12,024 |
| | Martin Lake Unit 2 | 11,580 |
| | Martin Lake Unit 3 | 12,236 |
| | Monticello Unit 1 | 8,598 |
| | Monticello Unit 2 | 8,795 |
| | Monticello Unit 3 | 12,216 |
| | Sandow Unit 4 | 8,370 |
| NRG | Limestone Unit 1 | 12,081 |
| | Limestone Unit 2 | 12,293 |
| | WA Parish Unit WAP4 | 3 |
| | WA Parish Unit WAP5 | 9,580 |
| | WA Parish Unit WAP6 | 8,900 |
| | WA Parish Unit WAP7 | 7,653 |
| | WA Parish Unit WAP8 | 4,071 |
| San Miguel Electric Cooperative | San Miguel Unit 1 | 6,271 |
| Xcel | Tolk Station Unit 171B | 6,900 |
| | Tolk Station Unit 172B | 7,062 |
| | Harrington Unit 061B | 5,361 |
| | Harrington Unit 062B | 5,255 |
| | Harrington Unit 063B | 5,055 |

(b) The following units are opt-in units for the Texas SO2 Trading Program. These units will receive the following allowances for each control period indicated below. [INSERT OPT-In ALLOCATION TABLE – this will need to be updated when units opt-into the program – 97.904(b) includes a table of possible opt-in units; the intent of this section is to identify which units are actually part of the program and include their allocations.]

(b) Notwithstanding paragraph (a) of this section, if a unit provided an allocation pursuant to the table in paragraph (a) of this section does not operate, starting after 2018, during the control period in two consecutive years, such unit will not be allocated the Texas SO2 Trading Program allowances provided in paragraph (a) of this section for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All Texas SO2 Trading Program allowances that would otherwise have been allocated to such unit will be allocated under the Texas Electric Reliability Emergency Pool under 40 CFR 97.912.

(c) *Units incorrectly allocated Texas SO2 Trading Program allowances.* (1) For each control period in 2019 and thereafter, if the Administrator determines that Texas SO2 Trading Program allowances were incorrectly allocated under paragraph (a) of this section, or under a provision of a SIP revision approved pursuant to XXXX of this chapter, then the Administrator



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will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such Texas SO2 Trading Program allowances under §97.921.

(3) If the Administrator already recorded such Texas SO2 Trading Program allowances under §97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under §97.924(b) for such control period, then the Administrator will deduct from the account in which such Texas SO2Trading Program allowances were recorded an amount of Texas SO2 Trading Program allowances allocated for the same or a prior control period equal to the amount of such already recorded Texas SO2Trading Program allowances. The authorized account representative shall ensure that there are sufficient Texas SO2 Trading Program allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such Texas SO2Trading Program allowances under §97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under §97.924(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded Texas SO2 Trading Program allowances.

(5) With regard to the Texas SO2 Trading Program allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will transfer such Texas SO2 Trading Program allowances to the Texas Electric Reliability Emergency Pool under 40 CFR 97.912.

40 CFR 97.912 Texas SO2Trading Program Electric Reliability Emergency Pool Allowance Allocations

(a) For each control period in 2019 and thereafter, the Administrator will allocate Texas SO2 Trading Program Electric Reliability Emergency Pool Allowance Allocations:

(1) Units must submit a request by September 31 of the applicable control period in a manner specified by the Administrator.

(2) The Administrator will shall consider the appropriate amount of allowances allocated for each application submitted on a case-by-case basis.

(b) The Administrator may not allocate more allowances than available. The total amount of allowances in the Electric Reliability Compliance Pool is equal to the budget provided under 40 CFR 97.910 and allowances from retired units pursuant to 40 CFR 97.911(b).

(c) Unallocated allowances will be retired as an environmental benefit.

40 CFR 97.913 Authorization of designated representative and alternate designated representative.

(a) Except as provided under §97.915, each Texas SO2 Trading Program source, including all Texas SO2 Trading Program units at the source, shall have one and only one

designated representative, with regard to all matters under the Texas SO2Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO2 Trading Program units at the source and shall act in accordance with the certification statement in §97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.916:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each Texas SO2 Trading Program unit at the source in all matters pertaining to the Texas SO2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each Texas SO2 Trading Program unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under §97.915, each Texas SO2 Trading Program source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO2 Trading Program units at the source and shall act in accordance with the certification statement in §97.916(a)(4)(iii).

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(2) Upon and after receipt by the Administrator of a complete certificate of representation under §97.916,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each Texas SO2 Trading Program unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, §97.902, and §§97.914 through 97.918, whenever the term "designated representative" is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

40 CFR 97.914 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under §97.918 concerning delegation of authority to make submissions, each submission under the Texas SO2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each Texas SO2 Trading Program source and Texas SO2 Trading Program unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate 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."

(b) The Administrator will accept or act on a submission made for a Texas SO2 Trading Program source or a Texas SO2 Trading Program unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and §97.918.

40 CFR 97.915 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the Texas SO2 Trading Program source and the Texas SO2 Trading Program units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the Texas SO2Trading Program source and the Texas SO2 Trading Program units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a Texas SO2 Trading Program source or a Texas SO2 Trading Program unit at the source is not included in the list of owners and operators in the certificate of representation under §97.916, 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 designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a Texas SO2 Trading Program source or a Texas SO2 Trading Program unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under §97.916 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a Texas SO2 Trading Program source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under §97.916 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

40 CFR 97.916 Certificate of representation.

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

(1) Identification of the Texas SO2 Trading Program source, and each Texas SO2 Trading Program unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual date of commencement of commercial operation.

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

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

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

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

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas SO2 Trading Program on behalf of the owners and operators of the source and of each Texas SO2Trading Program unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit."

(iii) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Texas SO2 Trading Program unit, or where a utility or industrial customer purchases power from a Texas SO2 Trading Program 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 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Texas

SO2Trading Program unit at the source; and Texas SO2 Trading Program allowances and proceeds of transactions involving Texas SO2Trading Program 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 Texas SO2 Trading Program allowances by contract, Texas SO2 Trading Program allowances and proceeds of transactions involving Texas SO2 Trading Program allowances will be deemed to be held or distributed in accordance with the contract."

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

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

40 CFR 97.917 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under §97.916 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under §97.916 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the Texas SO2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of Texas SO2Trading Program allowance transfers.

40 CFR 97.918 Delegation by designated representative and alternate designated representative.

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

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

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate 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 designated representative or alternate designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) "I agree that any electronic submission to the Administrator that is made 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 designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(d) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(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 40 CFR 97.918 is terminated.".

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate 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 designated representative or alternate 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 paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

40 CFR 97.919 [RESERVED]

40 CFR 97.920 Establishment of compliance accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under §97.916, the Administrator will establish a compliance account for the Texas Visibility Trading Program source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) of this section.

40 CFR 97.921 Recordation of Texas SO2 Trading Program allowance allocations.

(a) By July 1, 2018, the Administrator will record in each Texas SO2 Trading Program source's compliance account the Texas SO2 Trading Program allowances allocated to the Texas SO2 Trading Program units at the source in accordance with §97.911(a) for the control periods in 2019 and 2020, and 2021, and 2022, unless the EPA has approved a complete SIP revision



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submitted by the State of Texas SIP r meeting the requirements of XXXX of this chapter. For each control period, EPA will record the allocated allowances unless and until EPA has approved a Texas SIP revision as meeting the requirements of XXXX.

(b) By July 1, 2019 and July 1 of each year thereafter, the Administrator will record in each Texas Visibility Trading Program source's compliance account the Texas Visibility Trading Program allowances allocated to the Texas Visibility Trading Program units at the source in accordance with §97.911(a) for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph, unless the State of Texas notifies the Administrator in writing by May 1, 2018 of the State's intent to submit to the Administrator a complete SIP revision by October 1, 2018 meeting the requirements of XXXX of this chapter.

(c) By November 1, 2019 and November 1 of each year thereafter, the Administrator will record in each Texas Visibility Trading Program source's compliance account the Texas Electric Reliability Emergency Pool allowances allocated in accordance with §97.912, or with a SIP revision approved under XXXX for the control period in the year of the applicable recordation deadline under this paragraph.

(d) By January 1, 2019 and January 1 of each year thereafter, the Administrator will record in each Texas Visibility Trading Program source's compliance account the Texas Visibility Trading Program allowances allocated to the opt-in units under 40 CFR 97.904(b) and 97.911(b), unless the State of Texas notifies the Administrator in writing by May 1, 2018 of the State's intent to submit to the Administrator a complete SIP revision by October 1, 2018 meeting the requirements of XXXX of this chapter.

(d) When recording the allocation of Texas Visibility Trading Program allowances to a Texas Visibility Trading Program unit in an Allowance Management System account, the Administrator will assign each Texas Visibility Trading Program allowance a unique identification number that will include digits identifying the year of the control period for which the Texas Visibility Trading Program allowance is allocated.

40 CFR 97.922 Submission of Texas SO2 Trading Program allowance transfers.

(a) An authorized account representative seeking recordation of a Texas SO2 Trading Program allowance transfer shall submit the transfer to the Administrator.

(b) A Texas SO2 Trading Program allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each Texas SO2 Trading Program allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each Texas SO2 Trading Program allowance identified by serial number in the transfer.

40 CFR 97.923 Recordation of Texas SO2 Trading Program allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Texas SO2 Trading Program allowance transfer that is correctly submitted under

§97.922, the Administrator will record a Texas SO2 Trading Program allowance transfer by moving each Texas SO2 Trading Program allowance from the transferor account to the transferee account as specified in the transfer.

(b) A Texas SO2 Trading Program allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Texas SO2Trading Program allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under §97.924 for the control period immediately before such allowance transfer deadline.

(c) Where a Texas SO2Trading Program allowance transfer is not correctly submitted under §97.922, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a Texas SO2 Trading Program allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a Texas SO2 Trading Program allowance transfer that is not correctly submitted under §97.922, the Administrator will notify the 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 non-recordation.

40 CFR 97.924 Compliance with Texas SO2 Trading Program emissions limitations.

(a) *Availability for deduction for compliance.* Texas SO2 Trading Program allowances are available to be deducted for compliance with a source's Texas SO2Trading Program emissions limitation for a control period in a given year only if the Texas SO2 Trading Program allowances:

(1) Were allocated for such control period or for the control period immediately prior; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with §97.923, of Texas SO2 Trading Program allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account Texas SO2 Trading Program allowances available under paragraph (a) of this section in order to determine whether the source meets the Texas SO2Trading Program emissions limitation for such control period, as follows:

(1) Until the amount of Texas SO2 Trading Program allowances deducted equals the number of tons of total $SO_2$ emissions from all Texas SO2 Trading Program units at the source for such control period; or

(2) If there are insufficient Texas SO2 Trading Program allowances to complete the deductions in paragraph (b)(1) of this section, until no more Texas SO2 Trading Program allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of Texas SO2 Trading Program allowances by serial number.* The authorized account representative for a source's compliance account may request that specific



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Texas SO2 Trading Program allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas SO2 Trading Program source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct Texas SO2 Trading Program allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of Texas SO2Trading Program allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any Texas SO2 Trading Program allowances that were recorded in the compliance account pursuant to §97.921 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other Texas SO2 Trading Program allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the Texas SO2 Trading Program source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Texas SO2 Trading Program allowances, allocated for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

40 CFR 97.925 [RESERVED]

40 CFR 97.926 Banking.

(a) A Texas SO2 Trading Program allowance is valid for compliance in the control period of issuance or may be banked for future use or transfer in a compliance account or in accordance with paragraph (b) of this section.

(b) Any Texas SO2 Trading Program allowance that is held in a compliance account will remain in such account unless and until the Texas SO2 Trading Program allowance is deducted or transferred under §97.911(c), §97.923, §97.924, §97.925, §97.927, or §97.928.

(c ) Allowances provided under the Texas Electric Reliability Emergency Pool at 97.912 are valid only for the control period of issuance and may not be banked for future use.

40 CFR 97.927 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

40 CFR 97.928 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the Texas SO2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct Texas SO2 Trading Program allowances from or transfer Texas SO2 Trading Program allowances to a compliance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

40 CFR 97.929 [RESERVED]

40 CFR 97.930 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a Texas Visibility Trading Program unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions in §97.902 and in §72.2 of this chapter shall apply, the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "Texas Visibility Trading Program unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") respectively as defined in §97.902.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Texas SO2 Trading Program unit shall:

(1) Install all monitoring systems required under this subpart for monitoring $SO_2$ mass emissions and individual unit heat input (including all systems required to monitor $SO_2$ concentration, stack gas moisture content, stack gas flow rate, $CO_2$ or $O_2$ concentration, and fuel flow rate, as applicable, in accordance with §§75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under §97.931 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a Texas SO2Trading Program unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after January 1, 2019.

(c) *Reporting data.* The owner or operator of a Texas SO2 Trading Program unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for $SO_2$ concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine $SO_2$ mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a Texas SO2 Trading Program unit shall



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use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with §97.735.

(2) No owner or operator of a Texas SO2 Trading Program unit shall operate the unit so as to discharge, or allow to be discharged, $SO_2$ to the atmosphere without accounting for all such $SO_2$ in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a Texas SO2 Trading Program unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording $SO_2$ mass 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 subpart and part 75 of this chapter.

(4) No owner or operator of a Texas SO2 Trading Program unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under §97.905 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The 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 §97.931(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a Texas SO2Trading Program unit is subject to the applicable provisions of §75.4(d) of this chapter concerning units in long-term cold storage.

40 CFR 97.931 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a Texas SO2 Trading Program unit shall be exempt from the initial certification requirements of this section for a monitoring system under §97.930(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of §75.21 of this chapter and appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under §97.930(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a Texas

SO2 Trading Program 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 appendix D to part 75 of this chapter) under §97.930(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under §75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under §97.930(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §97.930(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under §97.930(a)(1) that may significantly affect the ability of the system to accurately measure or record $SO_2$ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. 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 §75.20(b) of this chapter. 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 system under §97.930(a)(1) is subject to the recertification requirements in §75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under §97.930(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in §75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words "certification" and "initial certification" are replaced by the word "recertification" and the word "certified" is replaced by with the word "recertified".

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with §97.933.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.



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(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Texas SO2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator 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 Administrator.

(iv) *Certification application approval process.* The Administrator 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 paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Texas SO2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator 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 Administrator 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 §75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with §97.732(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) 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 §75.20(a)(4)(iii), §75.20(g)(7), or §75.21(e) of this chapter and continuing until the

applicable date and hour specified under §75.20(a)(5)(i) or (g)(7) of this chapter:

*(1)* For a disapproved $SO_2$ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of $SO_2$ and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

*(2)* 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 part 75 of this chapter.

*(3)* For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in 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 §75.19 of this chapter shall meet the applicable certification and recertification requirements in §§75.19(a)(2) and 75.20(h) of this chapter. 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 §75.20(g) of this chapter.

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(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of §75.20(f) of this chapter.

40 CFR 97.932 Monitoring system out-of-control periods.

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or appendix D to part 75 of this chapter.

(b) *Audit decertification.* 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 §97.931 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, 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 §97.931 for each disapproved monitoring system.

40 CFR 97.933 Notifications concerning monitoring.

The designated representative of a Texas SO2 Trading Program unit shall submit written notice to the Administrator in accordance with §75.61 of this chapter.

40 CFR 97.934 Recordkeeping and reporting.

(a) *General provisions.* The designated representative of a Texas SO2 Trading unit shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of §97.914(a).

(b) *Monitoring plans.* The owner or operator of a Texas SO2 Trading Program unit shall comply with the requirements of §75.62 of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under §97.931, including the information required under §75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the $SO_2$ mass emissions data and heat input data for a Texas SO2 Trading Program unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2019 through March 31, 2019; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under §97.930(b).

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in §75.64 of this chapter.

(3) For Texas SO2 Trading Program units that are also subject to the Acid Rain Program or CSAPR $NO_X$ Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the $SO_2$ mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the

quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

(e) *Compliance certification.* The 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 subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on $SO_2$ emission controls and for all hours where $SO_2$ data are substituted in accordance with §75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate $SO_2$ emissions.

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40 CFR 97.935 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a Texas SO2Trading Program unit may submit a petition under §75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§97.930 through 97.934.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.