

could be made) and any CAIR SO₂ allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 97.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the general account any CAIR SO₂ allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR SO₂ allowances.* When recording the allocation of CAIR SO₂ allowances issued by a permitting authority under § 97.288, the Administrator will assign each such CAIR SO₂ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

§ 97.254 Compliance with CAIR SO₂ emissions limitation.

(a) *Allowance transfer deadline.* The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given calendar year only if the CAIR SO₂ allowances:

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

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under §§ 97.260 and 97.261 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.261, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO₂ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:

(1) For a CAIR SO₂ source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO₂ allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO₂ allowances, not issued by a permitting authority under § 97.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO₂ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or

(B) If there are insufficient CAIR SO₂ allowances to complete the deductions

in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under §97.288) remain in the compliance account.

(2) For a CAIR SO₂ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under §97.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or

(ii) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under §97.288) remain in the compliance account.

(c)(1) *Identification of CAIR SO₂ allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO₂ source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO₂ allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO₂ allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out

(FIFO) accounting basis in the following order:

(i) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO₂ allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO₂ allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO₂ allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO₂ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under §97.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section 3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO₂ allowances required to be deducted under paragraph (b)(1)(ii) of this section.

§ 97.255

40 CFR Ch. I (7–1–07 Edition)

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(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 and subpart III.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO₂ Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.255 Banking.

(a) CAIR SO₂ allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under § 97.254, § 97.256, or subpart GGG or III of this part.

§ 97.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may

submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.260 and 97.261 for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO₂ allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO₂ allowances into the account under §§ 97.260 and 97.261 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

**Subpart GGG—CAIR SO₂
Allowance Transfers**

§ 97.260 Submission of CAIR SO₂ allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO₂ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO₂ allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by