

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2006 JUL 28 A 10:03

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Dept. of Environmental Protection - Div. of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

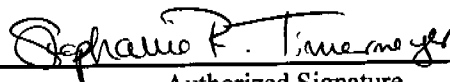
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 40

TITLE OF RULE BEING AMENDED: Control of Ozone Season Nitrogen Oxides Emissions to
Mitigate Interstate Transport of Ozone and Nitrogen Oxides

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

Stephanie R. Timmermeyer, Secretary

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR40 - Control of Ozone Season Nitrogen Oxides
Emissions

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 7, 2006

b. What other notice, including advertising, did you give of the hearing?
Published notice on June 9th in The Charleston Daily Mail and The Charleston Gazette. Posted
on the Department of Environmental Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) or Public Comment Period ended:
July 10, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2006

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499

Phone: 304 926-0499

Fax: 304 926-0488

Fax: 304 926-0488

e-mail: jbenedict@wvdep.org

e-mail: tmowrer@wvdep.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

James Mason, Technical Analyst II
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1200

Fax: 304 926-0479

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

_____ N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR40 - "Control of Ozone Season Nitrogen Oxides Emissions"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be "sunsetting" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively "sunsets" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal

combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

U.S. EPA completed their CAIR rulemaking in final rule signed March 15, 2006. In this final rule, U.S. EPA revises CAIR federal counterpart 40 CFR Part 96, which directly affects language in 45CSR40. U.S. EPA is requiring affected states to revise their CAIR rules include these revisions to the CAIR model rules in order to receive full approval of CAIR. WVDAQ will submit to U.S. EPA a final CAIR SIP revision in Summer 2007.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. To the extent practicable, the proposed rule emulates the model rule contained in the final CAIR rule. Because the proposed rule follows the presumptive federal rules for the source categories to which it applies, the Secretary has determined that the proposed rule is no more or less stringent than the applicable federal counterpart regulations.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its May 31, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - May 31, 2006

1:00 p.m. – 3:00 p.m.

601 57th Street, SE, Charleston, WV

West Virginia Room – 3rd Floor

ATTENDEES:

Advisory Council Members:

Larry Harris

Jackie Hallinan

Rick Roberts

Bill Raney (via conference call)

Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation

Heather A. Connolly, General Counsel

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Jim Mason – WVDEP

Bill Brannon – WVDEP

Carroll Cather – WVDEP

Terrie Sangid – WVDEP

Scott Mandirola – WVDEP

Cliff Whyte – WVDEP

John Morgan – WVDEP

Gary Rogers – WVDEP

Mike Dorsey – WVDEP

Patrick Campbell – WVDEP

Ken Politan – WVDEP

Pam Nixon – WVDEP

VISITORS:

Don Garvin – WVEC

Allan S. Tweddle – WVEC

Adam Webster – WVRC

Tim Mallan – Appalachian Power

Steve Keen – Bright Enterprises

Charlie Burd – IOGA – WV

Tom Boggs – WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

60CSR5 – Antidegradation Implementation Procedures

SUMMARY

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

COMMENTS

Secretary Timmermeyer - Procedural History – 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

Yes

Will there be another comment period after filing with Secretary of State's Office?

Yes

Is this the final list?

Yes

So §6.2 is gone?

Yes

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.

Since rulemaking authority has been taken from EQB how do you appeal?

This is like any other rule, EQB has no appellate jurisdiction.

When does it go into effect?

If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1st time issuances.

47CSR2 – Requirements Governing Water Quality Standards

SUMMARY

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

COMMENTS

Secretary Timmermeyer – Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

We relied on DNR's data to come up with the list.

Was it a scientific study or did it include streams where trout are stocked?

The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.

6 streams are being taken off in this rule because they cannot support trout over time.

How recent are DNR's survey's?

The surveys range from 1975 to present.

We have to maintain waters that "previously sustained trout."

Where is Watershed at in definition?

When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)

There is no definition of "water body" in State Code, only "Waters."

33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants

SUMMARY

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

COMMENTS

Can we give an example?

Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.

47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit

SUMMARY

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

COMMENT

Does this apply to any other industry?

No, it is only coal related.

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

No, it is information contained in other forms.

4.2.f.a WV. Jobs creation

Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

58CSR5 – Recycling Assistance Grant Program

SUMMARY

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

COMMENT

Someone worked really hard on putting this together - Really thinks they did a great job.

The changes are a result of suggestions from grant recipients and the recycling community in general.

45CSR6 – Control of Air Pollution from Combustion of Refuse

SUMMARY

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

COMMENT

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old “prevent and control” new “control” why drop the term “prevent” from the rule?

We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.

The federal government doesn't use the term “prevent” and we are trying to mirror their rules for consistency.

Does it involve timbering operations?

No.

60CSR3 – Voluntary Remediation and Redevelopment Rule

SUMMARY

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate recent changes in toxicological profiles posted by EPA for several constituents.

COMMENT

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.

SUMMARY

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

COMMENT

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

199CSR1 – Surface Mining Blasting Rule

SUMMARY

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fiscal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

3.2.c. 1000 ft requirement for seismograph

3.4. defines where DEP gives up regulatory authority as 40ft.

3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

Modified – Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.

Would that include the convicted felon requirements?

The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.

Any provision for appeals on the convicted felon prohibition?

Not at this time.

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.

4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for “Other structures” and “habitable dwelling”
Shaft and slope (40 ft)

Other structures or “Protective structure” can house people – habitable dwelling one that can house people (snowbird example)- “shaft and slope” DEP worked with miner's health and safety to develop the distance criteria.

We're (WVCA) probably fine with them.

Does OSM require it?

No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.

HOLD OVER FOR NEXT MEETING.

38CSR2 – Surface Mining Reclamation Rule

SUMMARY

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removals duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

COMMENT

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term “databases” specifically

Some of those databases don't exist. We have our own database now.

Has the current notification timeframe changed?

No, it is the same as using the existing spill line.

What about mining related spills?

Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.

Is there anyway to sample water for slurry spills?

Currently DEP Inspectors take stream water samples and that data is on file.

Is there anything dangerous in the slurry to the public?

Not usually. We can get you data on existing samples.

Dialysis system are bothered by trace stuff in the water.

Coal fines are usually what kill fish, not the trace chemicals.

HOLD OVER FOR NEXT AC MEETING

47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES

SUMMARY

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the "Director" are changed to "Secretary" to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

COMMENT

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

Haul roads, storage, etc.

Does this do away with any existing public comment period?

No. These small changes wouldn't require a hearing.

HOLD FOR NEXT MEETING.

35CSR3 – Coalbed Methane Wells Rule –

HOLD FOR NEXT MEETING

33CSR20 – Hazardous Waste Management

HOLD FOR NEXT MEETING

45CSR8 – Ambient Air Quality Standards

SUMMARY

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

COMMENT

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

It's now in 3.1 and adopts federal standards.

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

The federal EPA is currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.

45CSR16 – Standards of Performance for New Stationary Sources

SUMMARY

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

COMMENT

Standard Update of fed requirements.

No Questions.

45CSR34 – Emission Standards for Hazardous Air Pollutants

SUMMARY

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 “Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61” filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

COMMENT

Standard update of fed requirements combining 45CSR___ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

45CSR39 – Control of Annual Nitrogen Oxides Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_x).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_x emission reductions be implemented in two phases. The first phase of NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are

known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind NO_x emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_x Ozone Season Trading Program requirements are set forth in 45CSR40.

COMMENT

Standard update of Fed requirements.

CAIR rules

Picking up EPA rules

Are all the cross-outs just picking up federal standards?

Yes.

No other questions.

45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions

SUMMARY

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which

effectively “sunset” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

COMMENT

These changes have they resulted in any change in stringency?

No we are simply streamlining the CAIR rules

We haven't lost any ground?

No.

45CSR1 – Control of Annual Sulfur Dioxide Emissions

SUMMARY

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO₂ Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO₂).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO₂ reduce annual emissions based upon the implementation of retirement ratios for SO₂ allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO₂ emission reductions be implemented in two phases. The first phase of SO₂ reductions starts in 2010 and requires retiring SO₂ allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO₂ allowances at a 2.86:1 ratio, and continues thereafter. The SO₂ emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO₂ emission allowances from or to other program participants. Reducing upwind SO₂ emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

COMMENT

No questions.

OTHER BUSINESS

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn -- Bill Raney seconds.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR40 - "Control of Ozone Season Nitrogen Oxides Emissions"

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Although the rule will increase the resources required for implementation compared to current regulations, the net difference should be marginal and offset by Title V fee income.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2007 Increase/Decrease (use "-")	2008 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	\$ 12,400	\$ 14,900	\$ 14,900
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR40 - "Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Costs anticipated to be incurred during implementation of this rule in FY 2007 are approximately 16.7% of 1 FTE plus benefits and office costs. In fiscal years 2008 and upon full implementation, personal costs increase to 20% of 1 FTE due to annual agency allocation responsibilities under the program.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 5, 2006

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

FILED

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE DIVISION OF AIR QUALITY

2006 JUL 28 A 10:04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 40
~~CONTROL OF OZONE SEASON NITROGEN OXIDE OXIDES EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF OZONE AND NITROGEN OXIDES~~

§45-40-1. General.

1.1. Scope. -- This rule establishes:

1.1.a. General provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x). The Secretary of the Department of Environmental Protection authorizes the Administrator of the United States Environmental Protection Agency to assist the Secretary in implementing the multi-state CAIR NO_x Ozone Season Trading Program in West Virginia by carrying out the functions set forth for the Administrator in this rule and 40 CFR Part 51. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39;

1.1.b. General provisions and the definitions, applicability, ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for emissions of NO_x from affected stationary internal combustion engines set forth in section 90. These engines are not subject to or eligible for participation in the CAIR NO_x Ozone Season Trading Program provided in sections 4 through 88; and

1.1.c. General provisions and the definitions, applicability, standard requirements, reporting, monitoring, recordkeeping and exemption requirements for emissions of NO_x from applicable cement manufacturing kilns set

forth in section 100. These cement manufacturing kilns are not subject to or eligible for participation in the CAIR NO_x Ozone Season Trading Program provided in sections 4 through 88.

1.2. Numbering and text breakdown. -- This rule generally meets the numbering, indentation and text breakdown requirements set forth in 153CSR6. However, its numbering structure intentionally follows the numbering structure of 40 CFR Part 96, Subparts AAAA through IIII, resulting in several minor areas of nonconformity with 153CSR6.

1.3. Repeal of former rules. -- Effective April 30, 2009, this rule will repeal and replace 45CSR1 "Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors" filed April 21, 2006 and effective May 1, 2006, and 45CSR26 "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units" filed April 21, 2003 and effective June 1, 2003. This allows for the continuation of certain provisions under 45CSR1 and 45CSR26 until such time as the CAIR NO_x Ozone Season Trading Program established by this rule commences. In the period between the effective date of this rule and the date 45CSR1 and 45CSR26 are repealed, certain provisions of this rule apply.

1.4. Authority. -- W.Va. Code §22-5-4.

1.5. Filing Date. -- ~~April 28, 2006.~~

1.6. Effective Date. -- ~~May 1, 2006.~~

1.7. Former Rules. -- This legislative rule amends 45CSR40 "Control of Ozone Season

Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides” which was filed April 28, 2006, and which became effective May 1, 2006.

§45-40-2. Definitions.

2.1. “Account number” means the identification number given by the Administrator to each CAIR NO_x Ozone Season Allowance Tracking System account.

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

2.3. “Acid Rain Program” means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

2.4. “Administrator” means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Administrator’s duly authorized representative.

2.5. “Allocate” or “allocation” means, with regard to CAIR NO_x Ozone Season allowances ~~issued under sections 40 through 42, the determination by the Secretary or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, or a new unit set-aside and, with regard to CAIR NO_x Ozone Season allowances issued under section 88, or 40 CFR §51.123(aa)(2)(iii)(A), the determination by the Secretary of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit or other entity.~~

2.6. “Allowance transfer deadline” means, for an ozone season, midnight of ~~March 1~~ November 30, (if it is a business day), or, ~~if March 1 is not a business day, midnight of the first business day thereafter (if November 30 is not a business day),~~ immediately following the ozone season and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season

source’s compliance account in order to be used to meet the source’s CAIR NO_x Ozone Season emissions limitation for such ozone season in accordance with section 54.

2.7. “Alternate CAIR designated representative” means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with sections 10 through 14 and sections 80 through 88, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source under 45CSR41, then this natural person will be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x Annual source under 45CSR39, then this natural person will be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person will be the same person as the alternate designated representative under the Acid Rain Program under 45CSR33. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person will be the same person as the alternate Hg designated representative under the Hg Budget Trading Program under 45CSR37.

2.8. “Automated data acquisition and handling system” or “DAHS” means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under sections 70 through ~~76~~ 75, 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 sections 70 through ~~76~~ 75.

2.9. “Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat

and to transfer heat to recirculating water, steam, or other medium.

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

2.11. "CAIR authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with sections 10 through ~~14~~ 15, sections 51 through 57, and sections 80 through 88, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

2.12. "CAIR designated representative" means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with sections 10 through 14 and sections 80 through 88, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source under 45CSR41, then this natural person will be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x Annual source under 45CSR39, then this natural person will be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person will be the same person as the designated representative under the Acid Rain Program under 45CSR33. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person will be the same person as the alternate Hg designated representative under the Hg Budget Trading Program under 45CSR37.

2.13. "CAIR NO_x Annual source" means a source that ~~includes one or more CAIR NO_x Annual units.~~ is subject to the CAIR NO_x Annual Trading Program.

2.14. "CAIR NO_x Annual Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AA through II and 40 CFR §51.123(o)(1) or (2) or established by the Administrator in accordance with 40 CFR Part 97, Subparts AA through II and 40 CFR §§51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

2.15. "~~CAIR NO_x Annual unit~~" ~~means a unit that is subject to the CAIR NO_x Annual Trading Program under 45CSR§39-4 or a CAIR NO_x Annual opt-in unit under sections 80 through 88 of 45CSR39~~ Reserved.

2.16. "CAIR NO_x Ozone Season allowance" means a limited authorization issued by the Secretary or the Administrator ~~under sections 40 through 42 or section 88, or 40 CFR §§51.123(aa)(2)(iii)(A), (bb)(2)(iii) or (iv), or (dd)(3) or (4) provisions of a state implementation plan that are approved under 40 CFR §§51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee), or under 40 CFR Part 97, Subpart EEEE or 40 CFR §97.388~~ to emit one ton of nitrogen oxide oxides during an ozone season of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by the Secretary for an ozone season during 2003 through 2008 under the NO_x Budget Trading Program in accordance with 40 CFR §51.121(p) to emit one ton of nitrogen oxide oxides during an ozone season, provided that the provision in 40 CFR §51.121(b)(2)(i)(E) will §51.121(b)(2)(ii)(E) shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation

plan approved under that meets the requirements of 40 CFR §51.121(p) or 40 CFR §§51.123(aa)(1) or (2); (and (bb)(1)), (bb)(2), or (dd), or (ee), or under 40 CFR Part 97, Subpart EEEE or 40 CFR §97.388 or under the NO_x Budget Trading Program as described in the prior sentence shall will not be a CAIR NO_x Ozone Season allowance.

2.17. “CAIR NO_x Ozone Season allowance deduction” or “deduct CAIR NO_x Ozone Season allowances” means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen ~~oxide~~ oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for an ozone season, determined in accordance with sections 70 through ~~76~~ 75, or to account for excess emissions.

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

2.19. “CAIR NO_x Ozone Season Allowance Tracking System account” means an account in the CAIR NO_x Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x Ozone Season allowances.

2.20. “CAIR NO_x Ozone Season allowances held” or “hold CAIR NO_x Ozone Season allowances” means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with sections 50 through 57, sections 60 through 62, and sections 80 through 88, in a CAIR NO_x Ozone Season Allowance Tracking System account.

2.21. “CAIR NO_x Ozone Season emissions limitation” means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in an ozone season, of the CAIR NO_x Ozone

Season allowances available for deduction for the source under subsections 54.1 and 54.2 for ~~an~~ the ozone season.

2.22. “CAIR NO_x Ozone Season source” means a source that includes one or more CAIR NO_x Ozone Season units.

2.23. “CAIR NO_x Ozone Season Trading Program” means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAAA through IIII and 40 CFR §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) or established by the Administrator in accordance with 40 CFR Part 97, Subparts AAAA through IIII and 40 CFR §§51.123(ee) and 52.35), as a means of mitigating interstate transport of ozone and nitrogen oxides.

2.24. “CAIR NO_x Ozone Season unit” means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under section 4 ~~or~~ and, except for purposes of section 5 and sections 40 through 42, a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88.

2.25. “CAIR permit” means the legally binding and federally enforceable written document, or portion of such document, issued by the Secretary under sections 20 through 24, including any permit revisions, specifying the CAIR NO_x Ozone Season Trading Program requirements applicable to a CAIR NO_x Ozone Season source, to each CAIR NO_x Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

2.26. “CAIR SO₂ source” means a source that includes one or more CAIR SO₂ units is subject to the CAIR SO₂ Trading Program.

2.27. “CAIR SO₂ Trading Program” means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAA through IIII and 40 CFR §51.124(o)(1) or (2) or established by

the Administrator in accordance with 40 CFR Part 97, Subparts AAA through III and 40 CFR §§51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

2.28. ~~“CAIR SO₂ unit” means a unit that is subject to the CAIR SO₂ Trading Program under 45CSR§41-4 or a CAIR SO₂ opt-in unit under sections 80 through 88 of 45CSR41~~ Reserved.

2.29. “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq.

2.30. “Clinker” means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

2.31. “Coal” means any solid fuel classified as anthracite, bituminous, subbituminous or lignite.

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

2.33. “Coal-fired” means:

2.33.a. Except for purposes of sections 40 through 42, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

2.33.b. For purposes of sections 40 through 42, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

2.34. “Cogeneration unit” means a stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine:

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

2.34.b. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

2.34.b.1. For a topping-cycle cogeneration unit,

2.34.b.1.A. Useful thermal energy not less than 5 percent of total energy output; and

2.34.b.1.B. Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output; and

2.34.b.2. For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

2.35. “Combustion turbine” means:

2.35.a. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2.35.b. If the enclosed device under subdivision 2.35.a is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

2.36. “Commence commercial operation” means, with regard to a unit ~~servicing a generator:~~

2.36.a. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 5 and subsection 84.8.

2.36.a.1. For a unit that is a CAIR NO_x Ozone Season unit under section 4 on the later of November 15, 1990 or the date the unit

commences commercial operation as defined in subdivision 2.36.a and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the ~~unit's~~ date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

2.36.a.2. For a unit that is a CAIR NO_x Ozone Season unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.36.a and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivisions 2.36.a; or 2.36.b, or 2.36.c as appropriate.

2.36.b. Notwithstanding subdivision 2.36.a and except as provided in section 5, for a unit that is not a CAIR NO_x Ozone Season unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.36.a and is not a unit under subdivision 2.35.c, the unit's date for commencement of commercial operation will be the date on which the unit becomes a CAIR NO_x Annual Ozone Season unit under section 4.

2.36.b.1. For a unit with a date for commencement of commercial operation as defined in subdivision 2.36.b and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the ~~unit's~~ date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

2.36.b.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.36.b and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of

commercial operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivisions 2.36.a; or 2.36.b, or 2.36.c as appropriate.

2.36.c. ~~Notwithstanding subdivision 2.36.a and except as provided in subsection 84.8 or subdivisions 87.2.d and 87.2.e, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the unit's date for commencement of commercial operation will be the date on which the owner or operator is required to start monitoring and reporting the NO_x emission rate and the heat input of the unit under subdivision 84.2.a.~~

~~2.36.c.1. For a unit with a date for commencement of commercial operation as defined in subdivision 2.36.c and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of commencement of commercial operation.~~

~~2.36.c.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.36.c and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivisions 2.36.a, 2.36.b, or 2.36.c as appropriate.~~

~~2.36.d. Notwithstanding subdivisions 2.36.a through 2.36.c and 2.36.b, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation will shall also be the unit's date of commencement of commercial operation.~~

2.37. "Commence operation" means:

2.37.a. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in ~~section 5~~

subsection 84.8.

2.37.a.1. For a unit that ~~is a CAIR NO_x Ozone Season unit under section 4 on the date the unit commences operation as defined in subdivision 2.37.a and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subdivision 2.37.a,~~ such date will remain the unit's date of commencement of operation of the unit, which shall continue to be treated as the same unit.

2.37.a.2. For a unit that ~~is a CAIR NO_x Ozone Season unit under section 4 on the date the unit commences operation as defined in subdivision 2.37.a and that is subsequently replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 2.37.a,~~ such date shall remain the replaced unit's date of commencement of operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of operation as defined in subdivisions subdivision 2.37.a, 2.37.b paragraphs 2.37.a.1, or 2.37.c 2.37.a.2 as appropriate, except as provided in subsection 84.8.

2.37.b. Notwithstanding subdivision 2.37.a and ~~except as provided in section 5 solely for purposes of sections 70 through 75, for a unit that is not a CAIR NO_x Ozone Season unit under section 4 subsection 4.2 on the later of November 15, 1990 or the date the unit commences operation as defined in subdivision 2.37.a and is not a unit under subdivision 2.37.c that subsequently becomes such a CAIR NO_x Ozone Season unit,~~ the unit's date for commencement of operation will shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under section 4 subsection 4.2.

2.37.b.1. For a unit with a date for of commencement of operation as defined in subdivision 2.37.b and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of

commencement of operation of the unit, which shall continue to be treated as the same unit.

2.37.b.2. For a unit with a date for of commencement of operation as defined in subdivision 2.37.b and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit will shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivisions 2.37.a; or 2.37.b, or 2.37.c as appropriate.

~~2.37.c. Notwithstanding subdivision 2.37.a and except as provided in subsection 84.8 or subdivisions 87.2.d and 87.2.e, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the unit's date for commencement of operation will be the date on which the owner or operator is required to start monitoring and reporting the NO_x emission rate and the heat input of the unit under subdivision 84.2.a.~~

~~2.37.c.1. For a unit with a date for commencement of operation as defined in subdivision 2.37.c and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the unit's date of commencement of operation.~~

~~2.37.c.2. For a unit with a date for commencement of operation as defined in subdivision 2.37.c and that is subsequently replaced by a unit at the source (e.g., repowered), the replacement unit will be treated as a separate unit with a separate date for commencement of operation as defined in subdivisions 2.37.a, 2.37.b, or 2.37.c as appropriate.~~

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

2.39. "Compliance account" means a CAIR

NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under sections 51 through 57 or sections 80 through 88, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for an ozone season in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with section 54.

2.40. "Continuous emission monitoring system" or "CEMS" means the equipment required under sections 70 through ~~76~~ 75 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen ~~oxide~~ oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under sections 70 through ~~76~~ 75:

2.40.a. 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); and

2.40.b. A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm); and

2.40.c. A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NO_x

emission rate, in pounds per million British thermal units (lb/mmBtu); and

2.40.d. A moisture monitoring system, as defined in 40 CFR §75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O; and

2.40.e. A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; ~~or~~ and

2.40.f. An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

2.41. "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with sections 70 through ~~76~~ 75.

2.42. "Excess emissions" means any ton of nitrogen ~~oxide~~ oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during an ozone season that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

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

2.44. "Fossil fuel-fired" means, ~~with:~~

2.44.a. With regard to a unit, combusting any amount of fossil fuel in any calendar year; or

2.44.b. With regard to a unit, solely for purposes of applying the applicability provisions in subsection 4.2:

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

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

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

2.44.b.3.A. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

2.44.b.3.B. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

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

2.46. "General account" means a CAIR NO_x Ozone Season Allowance Tracking System account, established under sections 51 through 57, that is not a compliance account.

2.47. "Generator" means a device that produces electricity.

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

2.49. "Heat input" means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with sections 70 through 76 75 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

2.50. "Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

2.51. "Hg Budget Trading Program" means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance 40 CFR Part 60, Subpart HHHH and 40 CFR §60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

~~2.51:~~ 2.52. "Large NO_x SIP call engine" means a stationary internal combustion engine identified and designated as "large" in the NO_x SIP Call Engine Inventory as emitting more than one ton of NO_x per average ozone season day in 1995.

~~2.52:~~ 2.53. "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:

~~2.52.a.~~ 2.53.a. For the life of the unit;

~~2.52.b.~~ 2.53.b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

~~2.52.c.~~ 2.53.c. 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.

~~2.53.~~ 2.54. "Long dry kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

~~2.54.~~ 2.55. "Long wet kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

~~2.55.~~ 2.56. "Low-NO_x burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing and establish fuel-rich zones for initial combustion.

~~2.56.~~ 2.57. "Maximum design heat input" means, ~~starting from the initial installation of a unit,~~ the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit, ~~or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.~~

~~2.57.~~ 2.58. "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at

an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO_x emissions through:

~~2.57.a.~~ 2.58.a. Burning part of the fuel at a lower temperature; and

~~2.57.b.~~ 2.58.b. Reducing conditions at the solid waste injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

~~2.58.~~ 2.59. "Monitoring system" means any monitoring system that meets the requirements of sections 70 through ~~76~~ 75, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

~~2.59.~~ 2.60. "Most stringent state or federal NO_x emissions limitation" means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

~~2.60.~~ 2.61. "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MW_e) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MW_e) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

~~2.61.~~ 2.62. "NO_x Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator pursuant to 40 CFR §51.121.

~~2.62:~~ 2.63. "NO_x SIP Call Engine Inventory" means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call Rule, including the Technical Amendments, announced in the March 2, 2000 FR 11222, and the adjustment of the 2007 Budget NO_x Control Efficiency to 82 percent for large gas-fired engines, announced in the April 21, 2004 Federal Register notice for the Phase II NO_x SIP Call Rule.

~~2.63:~~ 2.64. "Oil-fired" means, for purposes of sections 40 through 42, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

~~2.64:~~ 2.65. "Operator" means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and will include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

~~2.65:~~ 2.66. "Owner" means any of the following persons:

~~2.65.a:~~ 2.66.a. With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:

~~2.65.a.1:~~ 2.66.a.1. Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;

~~2.65.a.2:~~ 2.66.a.2. Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or

~~2.65.a.3:~~ 2.66.a.3. Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner will not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such

CAIR NO_x Ozone Season unit; or

~~2.65.b:~~ 2.66.b. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season allowances.

~~2.66:~~ 2.67. "Ozone season" means the period beginning May 1 of a calendar year, except as provided in subdivision 6.3.b. and ending on September 30 of the same year, inclusive.

~~2.67:~~ 2.68. "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

~~2.68:~~ 2.69. "Portland cement kiln" means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

~~2.69:~~ 2.70. "Potential electrical output capacity" means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

~~2.70:~~ 2.71. "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

~~2.71:~~ 2.72. "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

~~2.72:~~ 2.73. "Receive" or "receipt of" means, when referring to the Secretary or the Administrator, to come into possession of a

document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Secretary or the Administrator in the regular course of business.

~~2.73:~~ 2.74. "Recordation", "record", or "recorded" means, with regard to CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

~~2.74:~~ 2.75. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR §75.22.

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

~~2.75:~~ 2.77. "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

~~2.75.a:~~ 2.77.a. Atmospheric or pressurized fluidized bed combustion;

~~2.75.b:~~ 2.77.b. Integrated gasification combined cycle;

~~2.75.c:~~ 2.77.c. Magnetohydrodynamics;

~~2.75.d:~~ 2.77.d. Direct and indirect coal-fired turbines;

~~2.75.e:~~ 2.77.e. Integrated gasification fuel cells; or

~~2.75.f:~~ 2.77.f. As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the

technologies under subdivisions ~~2.75.a~~ 2.77.a through ~~2.75.e~~ 2.77.e and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

~~2.76:~~ 2.78. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

~~2.77:~~ 2.79. "Serial number" means, for a CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season allowance by the Administrator.

~~2.78:~~ 2.80. "Sequential use of energy" means:

~~2.78.a:~~ 2.80.a. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

~~2.78.b:~~ 2.80.b. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

~~2.79:~~ 2.81. "Shutdown" means:

~~2.79.a:~~ 2.81.a. The period of time a unit Portland cement kiln is cooled from its normal operating temperature to cold or ambient temperature; or

~~2.79.b:~~ 2.80.b. The cessation of operation of a Portland cement kiln for any purpose.

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

2.83. "Source" means all buildings, structures,

or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502 (c) of the CAA, a "source," including a "source" with multiple units, will be considered a single "facility."

~~2.80.~~ 2.84. "Startup" means:

~~2.80.a.~~ 2.84.a. The period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer; or

~~2.80.b.~~ 2.84.b. The setting in operation of a Portland cement kiln for any purpose.

~~2.81. "Stationary internal combustion engine" or "engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.~~

~~2.82. "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502 (c) of the CAA, a "source," including a "source" with multiple units, will be considered a single "facility."~~

~~2.83.~~ 2.85. "State" means one of the states or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to 40 CFR §§51.123(aa)(1) or (2), (bb) or (dd).

2.86. "Stationary internal combustion engine" or "engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one location to another and remains at a single site at a building, structure, facility, or installation for

more than 12 consecutive months. Any engine (or engines) that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

~~2.84.~~ 2.87. "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

~~2.84.a.~~ 2.87.a. In person;

~~2.84.b.~~ 2.87.b. By United States Postal Service; or

~~2.84.c.~~ 2.87.c. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline will be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

~~2.85.~~ 2.88. "Title V operating permit" means a permit issued under 45CSR30.

~~2.86.~~ 2.89. "Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides emissions for an ozone season will be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with sections 70 through ~~76~~ 75, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

~~2.87.~~ 2.90. "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

~~2.88.~~ 2.91. "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

~~2.89.~~ 2.92. "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

~~2.90.~~ 2.93. "Unit" means a stationary, fossil fuel-fired boiler or combustion turbine or other stationary, fossil fuel-fired combustion device.

~~2.91.~~ 2.94. "Unit operating day" means a calendar day in which a unit combusts any fuel.

~~2.92.~~ 2.95. "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

~~2.93.~~ 2.96. "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any onsite emission controls).

~~2.94.~~ 2.97. "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

~~2.94.a.~~ 2.97.a. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

~~2.94.b.~~ 2.97.b. Used in a heating application (e.g., space heating or domestic hot water heating); or

~~2.94.c.~~ 2.97.c. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

~~2.95.~~ 2.98. "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

~~2.96.~~ 2.99. Other words and phrases used in this rule, unless otherwise indicated, will have the meaning ascribed to them in W.Va. Code §22-5-1

et seq. and 40 CFR §72.2.

§45-40-3. Measurements, Abbreviations and Acronyms. -- Measurements, abbreviations and acronyms used in this rule are defined as follows:

Btu -- British thermal unit.

CO₂ -- carbon dioxide.

NO_x -- nitrogen oxides.

Hg -- mercury.

hr -- hour.

kW-- kilowatt electrical.

kWh -- kilowatt hour.

mmBtu -- million Btu.

MW_e -- megawatt electrical.

MWh -- megawatt hour.

O₂ -- oxygen.

ppm -- parts per million.

lb -- pound.

scfh -- standard cubic feet per hour.

SO₂ -- sulfur dioxide.

H₂O -- water.

yr -- year.

§45-40-4. Applicability. -- Except for units subject to sections 90 and or 100, and as provided in subsection 4.4, the following units in West Virginia ~~will~~ shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units ~~will~~ shall be a CAIR NO_x Ozone Season source, subject to the requirements of sections ~~5 1~~ through ~~76 75~~:

4.1. Electric generating units. -- ~~Except as~~

~~provided in subdivision 4.1.a, a Any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of a the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW_e producing electricity for sale;~~

~~4.1.a. For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MW_e and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit will be subject to subsection 4.1 starting on the day on which the unit first no longer qualifies as a cogeneration unit; and~~

4.2. Non-electric generating units. -- The following Any stationary, fossil fuel-fired stationary boilers identified as NO_x Budget units under the federal NO_x Budget Trading Program will be CAIR NO_x Ozone Season units on or after May 1, 2009 boiler with a maximum design heat input greater than 250 mmBtu/hr that is not an electric generating unit under subsection 4.1 and that:

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

4.2.b. For ~~units that commenced~~ Commenced operation on or after January 1, 1997 and before January 1, 1999; ~~a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale~~

under a firm contract to the electric grid;

4.2.c. For ~~units that commence~~ Commences operation on or after January 1, 1999; ~~a unit with a maximum design heat input greater than 250 mmBtu/hr that and:~~

4.2.c.1. At no time serves a generator producing electricity for sale; or

4.2.c.2. At any time serves a generator with a nameplate capacity of 25 MW_e or less producing electricity for sale, and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit;

4.2.d. For ~~units commencing~~ Commenced operation before January 1, 1997; ~~a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying qualified as an unaffected unit under 40 CFR §72.6(b)(4) under the Acid Rain Program pursuant to 40 CFR §72.6(b)(4) for 1995 and 1996;~~

4.2.e. For ~~units commencing~~ Commenced operation in 1997 or 1998; ~~a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying qualified as an unaffected unit under 40 CFR §72.6(b)(4) under the Acid Rain Program pursuant to 40 CFR §72.6(b)(4) for 1997 and 1998; and~~

4.2.f. For ~~units commencing~~ Commences operation on or after January 1, 1999; ~~a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying qualifies each year as an unaffected unit under 40 CFR §72.6(b)(4) under the Acid Rain Program for each year pursuant to 40 CFR §72.6(b)(4).~~

4.3. PPG Natrium Plant. -- PPG Industries, Inc. Natrium Plant Unit 002, located in New Martinsville, Marshall County, a unit with a design heat input of 243 mmBtu/hr.

4.4. Exempt units. -- Except as provided in subsection 4.5, any unit in West Virginia that is a CAIR NO_x Ozone Season unit under subsection 4.1 or subdivision 4.5.a and meets any of the following requirements shall not be a CAIR NO_x

Ozone Season unit:

4.4.a. Any unit qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit, and, not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW, supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale;

4.4.b. Any unit commencing operation before January 1, 1985 and qualifying as a solid waste incineration unit with an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis); and

4.4.c. Any unit commencing operation on or after January 1, 1985 and qualifying as a solid waste incineration unit with an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

4.5. Loss of exemption. -- Any unit in West Virginia that is not a CAIR NO_x Ozone Season unit under subsection 4.1, or which qualified for an exemption under subsection 4.4, but subsequently meets any of the following provisions, shall lose its exemption and become a CAIR NO_x Ozone Season unit under subsection 4.1:

4.5.a. If a stationary boiler or stationary combustion turbine that, under subsection 4.1, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MW, producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as

provided in subsection 4.1 on the first date on which it both combusts fossil fuel and serves such generator;

4.5.b. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subdivision 4.4.a for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets all of the requirements under subdivision 4.4.a; and

4.5.c. If a unit qualifies as a solid waste incineration unit and meets the requirements of subdivisions 4.4.b or 4.4.c for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit will become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§45-40-5. Retired Unit Exemption.**5.1. General exemption provisions.**

5.1.a. Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88 shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, ~~section 2, section 3, section 4~~ sections 2 through 4, subdivisions 6.3.d through 6.3.g, ~~section 7, and sections 7 through 14, and~~ sections 40 through 62.

5.1.b. The exemption under subdivision 5.1.a will become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative

will submit a statement to the Secretary and submit a copy of the statement to the Administrator. The statement must state, in a format prescribed by the Secretary, that the unit was permanently retired on a specific date and will comply with the requirements of subsection 5.2.

5.1.c. After receipt of the statement under subdivision 5.1.b, the Secretary will amend any permit under sections 20 through 24 covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 5.1.a and subsection 5.2.

5.2. Special provisions.

5.2.a. A unit exempt under subdivision 5.1.a must not emit any nitrogen oxides, starting on the date that the exemption takes effect.

5.2.b. The Secretary will allocate CAIR NO_x Ozone Season allowances under sections 40 through 42 to a unit exempt under subdivision 5.1.a.

5.2.c. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subdivision 5.1.a must 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 Secretary or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

5.2.d. The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under subdivision 5.1.a must comply with the requirements of the CAIR NO_x Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

5.2.e. A unit exempt under subdivision 5.1.a and located at a source that is required, or

but for this exemption would be required, to have a Title V operating permit must not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 22 for the unit not less than 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2009 or the date on which the unit resumes operation.

5.2.f. On the earlier of the following dates, a unit exempt under subdivision 5.1.a will lose its exemption:

5.2.f.1. The date on which the CAIR designated representative submits a CAIR permit application for the unit under subdivision 5.2.e;

5.2.f.2. The date on which the CAIR designated representative is required under subdivision 5.2.e to submit a CAIR permit application for the unit; or

5.2.f.3. The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

5.2.g. For the purpose of applying monitoring, reporting, and recordkeeping requirements under sections 70 through ~~76~~ 75, a unit that loses its exemption under subdivision 5.1.a will be treated as a unit that commences ~~operation and~~ commercial operation on the first date on which the unit resumes operation.

§45-40-6. Standard Requirements.

6.1. Permit requirements.

6.1.a. The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a Title V operating permit and each CAIR NO_x Ozone Season unit required to have a Title V operating permit at the source will:

6.1.a.1. Submit to the Secretary a complete CAIR permit application under section 22 in accordance with the deadlines specified in ~~subsections 21.1 and 21.2~~ section 21; and

6.1.a.2. Submit in a timely manner any supplemental information that the Secretary determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

6.1.b. The owners and operators of each CAIR NO_x Ozone Season source required to have a Title V operating permit and each CAIR NO_x Ozone Season unit required to have a Title V operating permit at the source will have a CAIR permit issued by the Secretary under sections 20 through 24 for the source and operate the source and the unit in compliance with such CAIR permit.

6.1.c. Except as provided in sections 80 through 88, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a Title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a Title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under sections 20 through 24 for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.

6.2. Monitoring, reporting, and recordkeeping requirements.

6.2.a. The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source will comply with the monitoring, reporting, and recordkeeping requirements of sections 70 through ~~76~~ 75.

6.2.b. The emission measurements recorded and reported in accordance with sections 70 through ~~76~~ 75 will be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under subsection 6.3.

6.3. Nitrogen oxides ozone season emission requirements.

6.3.a. As of the allowance transfer deadline for the 2009 ozone season and each ozone season

thereafter, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source must hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the ozone season under subsection 54.1 in an amount not less than the tons of total nitrogen oxides emissions for the ozone season from all CAIR NO_x Ozone Season units at the source, as determined in accordance with sections 70 through ~~76~~ 75.

6.3.b. A CAIR NO_x Ozone Season unit will be subject to the requirements under subdivision 6.3.a for the ozone season starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under ~~subdivision subdivisions~~ subdivisions 70.2.a, ~~subsection~~ subsection 70.2.b, 70.2.c, or ~~subsection 70.2.c~~ 70.2.g and for each ozone season thereafter.

6.3.c. A CAIR NO_x Ozone Season allowance will not be deducted, for compliance with the requirements under subdivision 6.3.a, for an ozone season in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.

6.3.d. CAIR NO_x Ozone Season allowances will be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with sections ~~40 through 42~~ 50 through 62, and 80 through 88.

6.3.e. A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen ~~oxide~~ oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under section 5 and no provision of law will be construed to limit the authority of the state or the United States to terminate or limit such authorization.

6.3.f. A CAIR NO_x Ozone Season allowance does not constitute a property right.

6.3.g. Upon recordation by the

Administrator under subdivision 43.3.c, sections 51 through 57, sections 60 through 62, or sections 80 through 88, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season ~~unit's~~ source's compliance account is incorporated automatically in any CAIR permit of the source ~~that includes the CAIR NO_x Ozone Season unit.~~

6.4. Excess emissions requirements. --

~~6.4.a.~~ If a CAIR NO_x Ozone Season source emits nitrogen oxides during any ozone season in excess of the CAIR NO_x Ozone Season emissions limitation, then:

~~6.4.a.1.~~ 6.4.a. The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source will surrender the CAIR NO_x Ozone Season allowances required for deduction under subdivision 54.4.a and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the CAA or W.Va. Code §22-5-1 et seq; and

~~6.4.a.2.~~ 6.4.b. Each ton of such excess emissions and each day of such ozone season will constitute a separate violation of this rule, the CAA, and W.Va. Code §22-5-1 et seq.

6.5. Recordkeeping and reporting requirements.

6.5.a. Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source must keep on site at the source each of the following documents 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 Secretary or the Administrator.

6.5.a.1. The certificate of representation under section 13 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation;

provided that the certificate and documents will be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under section 13 changing the CAIR designated representative;

6.5.a.2. All emissions monitoring information, in accordance with sections 70 through ~~76~~ 75, provided that to the extent that sections 70 through ~~76~~ 75 provides for a 3-year period for recordkeeping, the 3-year period will apply;

6.5.a.3. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program; and

6.5.a.4. Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.

6.5.b. The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source will submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under sections 70 through ~~76~~ 75.

6.6. Liability.

6.6.a. Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit must meet the requirements of the CAIR NO_x Ozone Season Trading Program.

6.6.b. Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source will also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.

6.6.c. Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a

CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit will also apply to the owners and operators of such unit.

6.7. Effect on other authorities. -- No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under section 5 will be construed as exempting or excluding the owners and operators, or and the CAIR designated representative of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved state implementation plan, a state or federally enforceable permit, order, or the CAA.

§45-40-7. Computation of Time.

7.1. Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin on the occurrence of an act or event will begin on the day the act or event occurs.

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

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

§45-40-8. Appeal Procedures.

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

§45-40-10. Authorization and Responsibilities of the CAIR Designated Representative.

10.1. Except as provided under section 11, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source,

will have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.

10.2. The CAIR designated representative of the CAIR NO_x Ozone Season source will be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and will act in accordance with the certification statement in paragraph 13.1.d.4.

10.3. Upon receipt by the Administrator of a complete certificate of representation under section 13, the CAIR designated representative of the source will represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators will be bound by any decision or order issued to the CAIR designated representative by the Secretary, the Administrator, or a court regarding the source or unit.

10.4. No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under section 13 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.

10.5. Each submission under the CAIR NO_x Ozone Season Trading Program will be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission must include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators

of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

10.6. The Secretary and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with subsection 10.5.

§45-40-11. Alternate CAIR Designated Representative.

11.1. A certificate of representation under section 13 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected will include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

11.2. Upon receipt by the Administrator of a complete certificate of representation under section 13, any representation, action, inaction, or submission by the alternate CAIR designated representative will be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

11.3. Except in this section, section 2, subsections 10.1 and 10.4, sections 12, 13, 15, 51 and 82, whenever the term “CAIR designated representative” is used in sections 4 1 through 88, the term will be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§45-40-12. Changing the CAIR Designated Representative and Alternate CAIR Designated Representative; Changes in Owners and Operators.

12.1. Changing CAIR designated representative. -- The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

12.2. Changing alternate CAIR designated representative. -- The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

12.3. Changes in owners and operators.

12.3.a. In the event a new owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under section 13, such new owner or operator will be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the

decisions and orders of the Secretary, the Administrator, or a court, as if the new owner or operator were included in such list.

12.3.b. Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative will submit a revision to the certificate of representation under section 13 amending the list of owners and operators to include the change.

§45-40-13. Certificate of Representation.

13.1. A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative will include the following elements in a format prescribed by the Administrator:

13.1.a. Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit;

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

13.1.c. A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source;

13.1.d. The following certification statements by the CAIR designated representative and any alternate CAIR designated representative:

13.1.d.1. "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source.";

13.1.d.2. "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.";

13.1.d.3. "I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the Secretary, or a court regarding the source or unit.";

13.1.d.4. "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract."; ~~and~~

13.1.e. The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

13.2. Unless otherwise required by the Secretary or the Administrator, documents of

agreement referred to in the certificate of representation will not be submitted to the Secretary or the Administrator. Neither the Secretary nor the Administrator will be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§45-40-14. Objections Concerning the CAIR Designated Representative.

14.1. Once a complete certificate of representation under section 13 has been submitted and received, the Secretary and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under section 13 is received by the Administrator.

14.2. Except as provided in subsections 12.1 or 12.2, no objection or other communication submitted to the Secretary or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative will affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the Secretary or the Administrator under the CAIR NO_x Ozone Season Trading Program.

14.3. Neither the Secretary nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

§45-40-15. Delegation by CAIR Designated Representative and Alternate CAIR Designated Representative.

15.1 A CAIR 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 rule.

15.2 An alternate CAIR 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 rule.

15.3 In order to delegate authority to make an electronic submission to the Administrator in accordance with subsections 15.1 or 15.2, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

15.3.a. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

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

15.3.c. For each such natural person, a list of the type or types of electronic submissions under subsections 15.1 or 15.2 for which authority is delegated to him or her; and

15.3.d. The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

15.3.d.1. "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection 15.4 shall be deemed to be an electronic submission by me."

15.3.d.2. "Until this notice of delegation is superseded by another notice of delegation under subsection 15.4, 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 section 15 is terminated.”

15.4 A notice of delegation submitted under subsection 15.3 shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

15.5 Any electronic submission covered by the certification in paragraph 15.3.d.1 and made in accordance with a notice of delegation effective under subsection 15.4 shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

§45-40-20. General CAIR NO_x Ozone Season Trading Program Permit Requirements.

20.1. For each CAIR NO_x Ozone Season source required to have a Title V operating permit or required, under sections 80 through 88, to have a Title V operating permit or other federally enforceable permit, such permit must include a CAIR permit administered by the Secretary for the Title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the Title V operating permit or other federally enforceable permit as applicable will be administered in accordance with 45CSR30 and any other applicable rule, except as provided otherwise by section 5, sections 20 through 24 and sections 80 through 88.

20.2. Each CAIR permit will contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program

requirements, CAIR NO_x Annual Trading Program requirements, and CAIR SO₂ Trading Program requirements and will be a complete and separable portion of the Title V operating permit or other federally enforceable permit under subsection 20.1.

§45-40-21. Submission of CAIR Permit Applications.

21.1. Duty to apply. -- The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a Title V operating permit will submit to the Secretary a complete CAIR permit application under section 22 for the source covering each CAIR NO_x Ozone Season unit at the source at least 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences commercial operation, except as provided in subsection 83.1.

21.2. Duty to reapply. -- For a CAIR NO_x Ozone Season source required to have a Title V operating permit, the CAIR designated representative will submit a complete CAIR permit application under section 22 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with 45CSR30, except as provided in subsection 83.2.

§45-40-22. Information Requirements for CAIR Permit Applications.

22.1. A complete CAIR permit application will include the following elements concerning the CAIR NO_x Ozone Season source for which the application is submitted, in a format prescribed by the Secretary:

22.1.a. Identification of the CAIR NO_x Ozone Season source;

22.1.b. Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source;

22.1.c. The standard requirements under section 6; and

22.1.d. A copy of the complete certificate of representation submitted to the Administrator under subsection 10.3.

§45-40-23. CAIR Permit Contents and Term.

23.1. Each CAIR permit will contain, in a format prescribed by the Secretary, all elements required for a complete CAIR permit application under section 22.

23.2. Each CAIR permit is deemed to incorporate automatically the definitions of terms under section 2 and, upon recordation by the Administrator under subdivision 43.3.c, sections 51 through 57, sections 60 through 62, or sections 80 through 88, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.

23.3. The term of the CAIR permit will be set by the Secretary, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's Title V operating permit or other federally enforceable permit as applicable.

§45-40-24. CAIR Permit Revisions.

24.1. Except as provided in subsection 23.2, the Secretary will revise the CAIR permit, as necessary, in accordance with 45CSR30 or any other applicable rule addressing permit revisions.

§45-40-30. Reserved.

§45-40-40. CAIR NO_x Ozone Season Trading Budget.

40.1. The West Virginia CAIR NO_x Ozone Season trading budget for allocations of CAIR NO_x Ozone Season allowances to applicable electric generating units (EGUs) and non-electric generating units (non-EGUs) for the ozone seasons of 2009 through 2014 and 2015 and thereafter are respectively as follows:

CAIR NO _x Ozone Season Trading Budget	2009-2014	2015 and thereafter
EGUs	26,859 tons	26,525 tons
Non-EGUs	2184 tons	2184 tons
Total	29,043 tons	28,709 tons

40.2. CAIR NO_x Ozone Season units under subsection 4.1 will be subject to the CAIR NO_x Ozone Season trading budget for EGUs set forth in subsection 40.1.

40.3. In accordance with 40 CFR §51.123(aa)(2)(iii)(A), CAIR NO_x Ozone Season units under subsection 4.2 will be subject to the CAIR NO_x Ozone Season trading budget for non-EGUs set forth in subsection 40.1.

40.4. Notwithstanding the budget applicability set forth in subsections 40.1 through 40.3, the CAIR NO_x Ozone Season unit under subsection 4.3 shall be allocated CAIR NO_x Ozone Season allowances pursuant to section 43.

§45-40-41. Timing Requirements for CAIR NO_x Ozone Season Allowance Allocations.

41.1. By October 31, 2006, the Secretary will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1 and 42.2, for the ozone seasons in 2009, 2010, 2011, 2012, 2013 and 2014.

41.2. By October 31, 2009 and October 31 of each year thereafter, the Secretary will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1 and 42.2, for the ozone season in the sixth year after the year of the applicable deadline for submission under this section. ~~If the Secretary fails to submit to the Administrator the CAIR NO_x Ozone Season allowance allocations in accordance with this subsection, the Administrator will assume that the allocations of CAIR NO_x Ozone Season allowances for the~~

~~applicable ozone season are the same as for the ozone season that immediately precedes the applicable ozone season, except that, if the applicable ozone season is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the ozone season that immediately precedes the applicable ozone season.~~

41.3. By July 31, 2009 and July 31 of each year thereafter, the Secretary will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1, 42.3 and 42.4, for the ozone season in the year of the applicable deadline for submission under this section. ~~If the Secretary fails to submit to the Administrator the CAIR NO_x Ozone Season allowance allocations in accordance with this subsection, the Administrator will assume that the allocations of CAIR NO_x Ozone Season allowances for the applicable ozone season are the same as for the ozone season that immediately precedes the applicable ozone season, except that, if the applicable ozone season is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the ozone season that immediately precedes the applicable ozone season and except that any CAIR NO_x Ozone Season unit that would otherwise be allocated CAIR NO_x Ozone Season allowances under subsections 42.1 and 42.2, as well as under subsections 42.1, 42.3 and 42.4, for the applicable ozone season will be assumed to be allocated no CAIR NO_x Ozone Season allowances under subsections 42.1, 42.3 and 42.4 for the applicable ozone season.~~

§45-40-42. CAIR NO_x Ozone Season Allowance Allocations.

42.1. Determination of baseline heat input. -- The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for ~~established~~ units under subsection 42.2 for each CAIR NO_x Ozone Season unit will be:

42.1.a. For ~~established~~ units commencing

operation before January 1, 2001, the average of the 3 highest amounts of the unit's adjusted ozone season heat input for 2000 through 2004, with the adjusted ozone season heat input for each year calculated as follows:

42.1.a.1. If the unit is coal-fired during the year, or a unit under subsection 4.2, the unit's ozone season heat input for such year is multiplied by 100 percent;

42.1.a.2. If the unit is oil-fired during the year, the unit's ozone season heat input for such year is multiplied by 60 percent; and

42.1.a.3. If the unit is not subject to paragraphs 42.1.a.1 or 42.1.a.2, the unit's ozone season heat input for such year is multiplied by 40 percent;

42.1.b. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years:

42.1.b.1. For units under subsection 4.1, the average of the 3 highest amounts of the unit's total converted ozone season heat input over the first such 5 years; and

42.1.b.2. For units under subsection 4.2, the average of the 3 highest amounts of the unit's ozone season heat input over the first such 5 years.

42.1.c. A unit's ozone season heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subdivision 42.1.a, and a unit's total tons of NO_x emissions during an ozone season in a calendar year under subdivision 42.3.c, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Secretary for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year; and

42.1.d. A unit's converted ozone season heat input for a calendar year specified under

paragraph 42.1.b.1 equals:

42.1.d.1. Except as provided in paragraphs 42.1.d.2 or 42.1.d.3, the ozone season gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total ozone season heat input of such units for the year;

42.1.d.2. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the ozone season, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

42.1.d.3. For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the ozone season gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the ozone season ~~multiplied~~ divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

42.2. CAIR NO_x Ozone Season allowance allocation ~~season NO_x allowance allocations for established units.~~

42.2.a. Available CAIR NO_x Ozone Season allowances for electric generating units. -- For each ozone season in 2009 and thereafter, the Secretary will allocate to all CAIR NO_x Ozone Season units under subsection 4.1 that have a baseline heat input (as determined under subsection 42.1) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for

an ozone season during 2009 through 2014, and 97 percent for an ozone season during 2015 and thereafter, of the trading budget for EGUs under subsections 40.1 and 40.2 (except as provided in subsection 42.4).

42.2.b. Calculation of CAIR NO_x Ozone Season allowance allocations allocation for electric generating units. -- The Secretary will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under subdivision 42.2.a in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under subdivision 42.2.a by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in West Virginia and rounding to the nearest whole allowance as appropriate.

42.2.c. Available CAIR NO_x Ozone Season allowances for non-electric generating units. -- For each ozone season in 2009 and thereafter, the Secretary will allocate to all CAIR NO_x Ozone Season units under subsection 4.2 that have a baseline heat input (as determined under subsection 42.1) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent of the trading budget for non-EGUs under subsections 40.1 and 40.3 (except as provided in subsection 42.4).

42.2.d. Calculation of CAIR NO_x Ozone Season allowance allocations allocation for non-electric generating units. -- The Secretary will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under subdivision 42.2.c ~~in an amount equaling 0.17 lb/mmBtu multiplied by the unit's baseline heat input determined under subsection 42.1, divided by 2000 lb/ton and rounded by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in West Virginia and rounding~~ to the nearest whole allowance as appropriate.

42.2.e. ~~If the initial total number of CAIR NO_x Ozone Season allowances allocated to all~~

~~CAIR NO_x Ozone Season units under subdivision 42.2.d does not equal 95 percent of the trading budget for non-EGUs under subsections 40.1 and 40.3, the Secretary will adjust the total number of CAIR NO_x Ozone Season allowances allocated to all such CAIR NO_x Ozone Season units for each ozone season under subdivision 42.2.d so that the total number of CAIR NO_x Ozone Season allowances allocated equals 95 percent of the trading budget for non-EGUs. This adjustment will be made by multiplying each unit's allocation by 95 percent of the trading budget for non-EGUs under subsections 40.1 and 40.3, dividing by the total number of CAIR NO_x Ozone Season allowances allocated under subdivision 42.2.d for the ozone season, and rounding to the nearest whole allowance as appropriate.~~

42.3. New unit set-aside allocation. -- For each ozone season in 2009 and thereafter, the Secretary will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in West Virginia that ~~commenced operation on or after January 1, 2001 and are not allocated CAIR NO_x Ozone Season allowances under subsection 42.2 because the units do not yet have a baseline heat input (as determined under subsection 42.1) or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subsection 42.2 for the ozone season are already allocated,~~ in accordance with the following procedures:

42.3.a. The Secretary will establish two separate new unit set-asides for each ozone season as follows:

42.3.a.1. ~~EGU new~~ New unit set-aside for electric generating units. -- Each new unit set-aside for CAIR NO_x Ozone Season units under subsections 4.1 and 42.3 will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for an ozone season in 2009 through 2014, and 3 percent for an ozone season in 2015 and thereafter, of the total amount of tons of NO_x emissions in the CAIR NO_x Ozone Season trading budget for EGUs under subsections 40.1 and 40.2; and

42.3.a.2. ~~Non-EGU new~~ New unit set-

aside for non-electric generating units. -- Each new unit set-aside for CAIR NO_x Ozone Season units under subsections 4.2 and 42.3 will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent of the total amount of tons of NO_x emissions in the CAIR NO_x Ozone Season trading budget for non-EGUs under subsections 40.1 and 40.3;

42.3.b. The CAIR designated representative of ~~such~~ a CAIR NO_x Ozone Season unit under subsection 42.3 may submit to the Secretary a request, in a format specified by the Secretary, to be allocated CAIR NO_x Ozone Season allowances from a new unit set-aside under paragraph 42.3.a.1 or 42.3.a.2, starting with the later of the ozone season in 2009 or the first ozone season after the ozone season in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first ozone season for which the unit is allocated CAIR NO_x Ozone Season allowances under subsection 42.2. The A separate CAIR NO_x Ozone Season allowance allocation request for each ozone season for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before ~~April~~ February 1 before the such ozone season for which the CAIR NO_x Ozone Season allowances ~~are requested~~ and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation;

42.3.c. In a CAIR NO_x Ozone Season allowance allocation request under subdivision 42.3.b, the CAIR designated representative may request for an ozone season CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the ozone season immediately before such ozone season; and

42.3.d. The Secretary will review each CAIR NO_x Ozone Season allowance allocation request under subdivision 42.3.b and will allocate CAIR NO_x Ozone Season allowances from each new unit set-aside under subdivision 42.3.a for each ozone season pursuant to such request as follows:

42.3.d.1. The Secretary will accept an

allowance allocation request only if the request meets, or is adjusted by the Secretary as necessary to meet, the requirements of subdivisions 42.3.b and 42.3.c;

42.3.d.2. On or after ~~April~~ February 1 before the ozone season, and for each new unit set-aside under subdivision 42.3.a, the Secretary will separately determine the respective sum of the CAIR NO_x Ozone Season allowances requested ~~by units under subsection 4.1 and subsection 4.2 from the new unit set-asides under paragraphs 42.3.a.1 and 42.3.a.2~~ (as adjusted under paragraph 42.3.d.1) in all allowance allocation requests accepted under paragraph 42.3.d.1 for the ozone season;

42.3.d.3. If the amount of CAIR NO_x Ozone Season allowances in a new unit set-aside under subdivision 42.3.a for the ozone season is greater than or equal to the respective sum under paragraph 42.3.d.2, then the Secretary will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph 42.3.d.1) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph 42.3.d.1;

42.3.d.4. If the amount of CAIR NO_x Ozone Season allowances in a new unit set-aside under subdivision 42.3.a for the ozone season is less than the respective sum under paragraph 42.3.d.2, then the Secretary will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph 42.3.d.1 the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph 42.3.d.1), multiplied by the amount of CAIR NO_x Ozone Season allowances in the respective new unit set-aside for the ozone season, divided by the respective sum determined under paragraph 42.3.d.2, and rounded to the nearest whole allowance as appropriate; and

42.3.d.5. The Secretary will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the ozone season to the CAIR NO_x Ozone Season unit covered by the request.

42.4. Unallocated new unit set-aside NO_x allowances. -- If, after completion of the procedures under subdivision 42.3.d for an ozone season, any unallocated CAIR NO_x Ozone Season allowances remain in a new unit set-aside under subdivision 42.3.a for the ozone season, the Secretary will allocate to each CAIR NO_x Ozone Season unit an amount of CAIR NO_x Ozone Season allowances equal to:

42.4.a. For a CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under subdivision 42.2.b, the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances ~~remaining in the EGU new unit set-aside under paragraph 42.3.a.1~~, multiplied by the unit's allocation under subdivision 42.2.b, divided by 95 percent for an ozone season during 2009 through 2014, and 97 percent for an ozone season during 2015 and thereafter, of the ~~total~~ amount of tons of NO_x emissions in the CAIR NO_x Ozone Season trading budget for EGUs under subsections 40.1 and 40.2, and rounded to the nearest whole allowance as appropriate; and

42.4.b. For a CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under subdivision 42.2.d, the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances ~~remaining in the non-EGU new unit set-aside under paragraph 42.3.a.2~~, multiplied by the unit's allocation under subdivision 42.2.d, divided by 95 percent of the ~~total~~ amount of tons of NO_x emissions in the CAIR NO_x Ozone Season trading budget for non-EGUs under subsections 40.1 and 40.3, and rounded to the nearest whole allowance as appropriate.

§45-40-43. CAIR NO_x Ozone Season Allowance Allocation for PPG Unit 002.

43.1. The CAIR NO_x Ozone Season unit under subsection 4.3 shall be allocated CAIR NO_x Ozone Season allowances as set forth in this section.

43.2. Baseline Heat Input and Baseline NO_x

Emission Rate. -- Based on the information monitored and reported for the 2002 ozone season, and for purposes of calculation of the CAIR NO_x Ozone Season allowance allocation under subsection 43.4, the unit's baseline heat input shall be 892,161 mmBtu, and the unit's baseline NO_x emission rate shall be 1.04 lb/mmBtu.

43.3. Timing Requirements.

43.3.a. Notwithstanding the timing requirement provisions of section 41, by April 1, 2009, and April 1 of each year thereafter, the Secretary will determine by order the CAIR NO_x Ozone Season allowance allocation for the unit in accordance with subsection 43.4 and submit the allocation to the Administrator for recordation in accordance with subdivision 43.3.c.

43.3.b. The Secretary will make available to the public each determination of the CAIR NO_x Ozone Season allowance allocation under subdivision 43.3.a and provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with subsection 43.4. Based on any such objections, the Secretary will adjust each determination to the extent necessary to ensure that it is in accordance with subsection 43.4.

43.3.c. Notwithstanding the recordation provisions of section 53, the Administrator shall record in the compliance account of the source that includes the unit, the CAIR NO_x Ozone Season allowances allocated by the Secretary to the unit under subdivision 43.3.a by April 15, 2009, and by April 15 of each year thereafter.

43.4. CAIR NO_x Ozone Season Allowance Allocation. -- For each ozone season beginning in 2009, PPG Unit 002 will be allocated CAIR NO_x Ozone Season allowances in accordance with the following procedures:

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

43.4.a.1. The unit's baseline heat input as set forth in subsection 43.2; or

43.4.a.2. The unit's heat input, as determined in accordance with sections 70 through 75, for the ozone season in the year prior to the year of the ozone season for which the CAIR NO_x Ozone Season allowance allocation is being calculated; and

43.4.b. The Secretary will allocate CAIR NO_x Ozone Season allowances to the unit in an amount equaling the heat input (in mmBtu) determined under subdivision 43.4.a multiplied by the lesser of the unit's baseline NO_x emission rate (in lb/mmBtu) as set forth in subsection 43.2; or the most stringent state or federal NO_x emission limitation applicable to the unit during the ozone season, divided by 2000 lb/ton and rounded to the nearest whole number of CAIR NO_x Ozone Season allowances as appropriate.

§45-40-50. Reserved.

§45-40-51. Establishment of Accounts.

51.1. Compliance accounts. -- Except as provided in subsection 84.5, upon receipt of a complete certificate of representation under section 13, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

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

51.2.a. A complete application for a general account will be submitted to the Administrator and must include the following elements in a format prescribed by the Administrator:

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

51.2.a.2. Organization name and type of organization, if applicable;

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

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

51.2.a.5. The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

51.2.b. Unless otherwise required by the Secretary or the Administrator, documents of

agreement referred to in the application for a general account will not be submitted to the Secretary or the Administrator. Neither the Secretary nor the Administrator will be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

51.3. Authorization of CAIR authorized account representative or alternate CAIR authorized account representative. -- Upon receipt by the Administrator of a complete application for a general account under subsection 51.2:

51.3.a. The Administrator will establish a general account for the person or persons for whom the application is submitted;

51.3.b. The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account will represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person will be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account; and

51.3.c. Any representation, action, inaction, or submission by any alternate CAIR authorized account representative will be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

51.4. Each submission concerning the general account under subsection 51.2 must be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general

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

51.5. The Administrator will accept or act on a submission concerning ~~a~~ the general account under subsection 51.2 only if the submission has been made, signed, and certified in accordance with subsection 51.4.

51.6. Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.

51.6.a. The CAIR authorized account representative for a general account ~~under subsection 51.2~~ may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subsection 51.2. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

51.6.b. The alternate CAIR authorized

account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subsection 51.2. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

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

51.6.d. Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of ~~persons~~ a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative will submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account to include the change.

51.7. Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.

51.7.a. Once a complete application for a general account under subsection 51.2 has been submitted and received, the Administrator will rely on the application unless and until a

superseding complete application for a general account under subsection 51.2 is received by the Administrator.

51.7.b. Except as provided in subdivision 51.6.a or 51.6.b, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any ~~alternative~~ alternate CAIR authorized account representative for a general account will affect any representation, action, inaction, or submission of the CAIR authorized account representative or any ~~alternative~~ alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.

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

51.8 Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

51.8.a. A CAIR authorized account 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 sections 51 through 62.

51.8.b. An alternate CAIR authorized account 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 sections 51 through 62.

51.8.c. In order to delegate authority to make an electronic submission to the Administrator in accordance with subdivisions

51.8.a and 51.8.b, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

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

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

51.8.c.3. For each such natural person, a list of the type or types of electronic submissions under subdivisions 51.8.a and 51.8.b for which authority is delegated to him or her;

51.8.c.4. The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 45CSR§40-51.8.d shall be deemed to be an electronic submission by me."; and

51.8.c.5. The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 45CSR§40-51.8.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 45CSR§40-51.8 is terminated.".

51.8.d. A notice of delegation submitted

under subdivision 51.8.c shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

51.8.e. Any electronic submission covered by the certification in paragraph 51.8.c.4 and made in accordance with a notice of delegation effective under subdivision 51.8.d shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

~~51.8:~~ 51.9. Account identification. -- The Administrator will assign a unique identifying number to each account established under subsections 51.1 or 51.2.

§45-40-52. Responsibilities of CAIR Authorized Account Representative.

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

§45-40-53. Recordation of CAIR NO_x Ozone Season Allowance Allocations.

53.1. ~~The~~ By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at ~~a~~ the source, as submitted by the Secretary in

accordance with subsection 41.1, for the ozone seasons in 2009, 2010, 2011, 2012, 2013 and 2014.

53.2. By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the Secretary ~~or as determined by the Administrator~~ in accordance with subsection 41.2, for the ozone season in 2015.

53.3. ~~In 2011 and~~ By December 1, 2010 and December 1 of each year thereafter, ~~after the Administrator has made all deductions (if any) from a CAIR NO_x Ozone Season source's compliance account under section 54;~~ the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the Secretary ~~or determined by the Administrator~~ in accordance with subsection 41.2, for the ozone season in the sixth year after the year of the ~~ozone season for which such deductions were or could have been made~~ applicable deadline for recordation under this subsection.

53.4. By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the Secretary ~~or determined by the Administrator~~ in accordance with subsection 41.3, for the ozone season in the year of the applicable deadline for recordation under this subsection.

53.5. Serial numbers for allocated CAIR NO_x Ozone Season allowances. -- When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the ozone season for which the CAIR NO_x Ozone Season allowance is

allocated.

§45-40-54. Compliance with CAIR NO_x Ozone Season Emissions Limitation.

54.1. Allowance transfer deadline. -- The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for an ozone season in a given calendar year only if the CAIR NO_x Ozone Season allowances:

54.1.a. Were allocated for the ozone season in the year or a prior year; and

54.1.b. Are held in the compliance account as of the allowance transfer deadline for the ozone season or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under ~~section~~ sections 60 and 61 by the allowance transfer deadline for the ozone season; and

~~54.1.c. Are not necessary for deduction for excess emissions for a prior ozone season under subsection 54.4.~~

54.2. Deductions for compliance. -- Following the recordation, in accordance with section 61, of CAIR NO_x Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for an ozone season, the Administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under subsection 54.1 in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the ozone season as follows:

54.2.a. Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with sections 70 through ~~76~~ 75, from all CAIR NO_x Ozone Season units at the source for the ozone season; or

54.2.b. If there are insufficient CAIR

NO_x Ozone Season allowances to complete the deductions in subdivision 54.2.a, until no more CAIR NO_x Ozone Season allowances available under subsection 54.1 remain in the compliance account.

54.3. Identification of CAIR NO_x Ozone Season allowances by serial number.

54.3.a. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for an ozone season in accordance with subsections 54.2 or 54.4. Such request must be submitted to the Administrator by the allowance transfer deadline for the ozone season and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.

54.3.b. First-in, first-out. -- The Administrator will deduct CAIR NO_x Ozone Season allowances under subsections 54.2 or 54.4 from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under subdivision 54.3.a, on a first-in, first-out accounting basis in the following order:

54.3.b.1. Any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

54.3.b.2. Any CAIR NO_x Ozone Season allowances that were allocated to any ~~unit~~ entity and transferred and recorded in the compliance account pursuant to sections 60 through 62, in the order of recordation.

54.4. Deductions for excess emissions.

54.4.a. After making the deductions for compliance under subsection 54.2, for an ozone season in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's

compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the ozone season in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

54.4.b. Any allowance deduction required under subdivision 54.4.a will not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the CAA or W.Va. Code §22-5-1 et seq.

54.5. Recordation of deductions. -- The Administrator will record in the appropriate compliance account all deductions from such an account under subsections 54.2 ~~or~~ and 54.4, and sections 80 through 88.

54.6. Administrator's action on submissions.

54.6.a. The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

54.6.b. The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 54.6.a, and record such deductions and transfers.

§45-40-55. Banking.

55.1. CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection 55.2.

55.2. Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under

sections 54, 56, or sections 60 through 62 or sections 80 through 88.

§45-40-56. Account Error.

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

§45-40-57. Closing of General Accounts.

57.1. The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which must include a correctly submitted allowance transfer under ~~section~~ sections 60 and 61 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.

57.2. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under ~~section~~ sections 60 and 61 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.

§45-40-60. Submission of CAIR NO_x Ozone Season Allowance Transfers.

60.1. A CAIR authorized account representative seeking recordation of a CAIR NO_x Ozone Season allowance transfer will submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x Ozone Season

allowance transfer must include the following elements, in a format specified by the Administrator:

60.1.a. The account numbers of for both the transferor and transferee accounts;

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

60.1.c. The name and signature of the CAIR authorized account representative of the transferor and transferee accounts and the dates signed.

§45-40-61. U.S. EPA Recordation.

61.1. Within 5 business days (except as provided in subsection 61.2) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

61.1.a. The transfer is correctly submitted under section 60; and

61.1.b. The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.

61.2. CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for an ozone season and that includes any CAIR NO_x Ozone Season allowances allocated for any ozone season before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under section 54 for the ozone season immediately before such allowance transfer deadline.

61.3. Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of subsection 61.1, the Administrator will not record such transfer.

§45-40-62. Notification.

62.1. Notification of recordation. -- Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under section 61, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

62.2. Notification of non-recordation. -- Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of subsection 61.1, the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

62.2.a. A decision not to record the transfer; and

62.2.b. The reasons for such non-recordation.

62.3. Nothing in this section will preclude the submission of a CAIR NO_x Ozone Season allowance transfer for recordation following notification of non-recordation.

§45-40-70. General Monitoring and Reporting Requirements. -- The owners and operators, and to the extent applicable, the CAIR designated representative of a CAIR NO_x Ozone Season unit, must comply with the monitoring, recordkeeping and reporting requirements as provided in sections 70 through ~~76~~ 75 and Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 2 and in 40 CFR §72.2 will apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 will be deemed to refer to the terms "CAIR NO_x Ozone Season unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in section 2. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under 40 CFR §75.72(b)(2)(ii) must comply with the same monitoring, recordkeeping and reporting requirements as a CAIR NO_x Ozone Season unit.

70.1. Requirements for installation, certification and data accounting. -- The owner or operator of each CAIR NO_x Ozone Season unit will:

70.1.a. Install all monitoring systems required under sections 70 through ~~76~~ 75 for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with 40 CFR §§75.71 and 75.72);

70.1.b. Successfully complete all certification tests required under section 71 and meet all other requirements of sections 70 through ~~76~~ 75 and 40 CFR Part 75 applicable to the monitoring systems under subdivision 70.1.a; and

70.1.c. Record, report and quality-assure the data from the monitoring systems under subdivision 70.1.a.

70.2. Compliance deadlines. -- ~~The~~ Except as provided in subsection 70.5, the owner or operator must meet the monitoring system certification and other requirements of subdivisions 70.1.a and 70.1.b on or before the following dates. The owner or operator will record, report, and quality-assure the data from the monitoring systems under subdivision 70.1.a on and after the following dates:

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

70.2.b. For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under subsection 74.4, by the later of the following dates:

70.2.b.1. 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

~~70.2.b.2. May 1, 2008, if the compliance date under paragraph 70.2.b.1 is before May 1, 2008.~~

70.2.c. For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an ozone season basis under paragraph 74.4.b.2, by the later of the following dates:

70.2.c.1. 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

70.2.c.2. If the compliance date under paragraph 70.2.c.1 is not during an ozone season, May 1 immediately following the compliance date under paragraph 70.2.c.1.

70.2.d. For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under subdivisions 70.2.a, 70.2.b, 70.2.f or 70.2.g and that reports on an annual basis under subsection 74.4, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls;

70.2.e. For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph subdivisions 70.2.a, 70.2.c, 70.2.f or 70.2.g and that reports on an ozone season basis under paragraph 74.4.b.2, by the later of the following dates:

70.2.e.1. 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or

70.2.e.2. If the compliance date under

paragraph 70.2.e.1 is not during an ozone season, May 1 immediately following the compliance date under paragraph 70.2.e.1.

70.2.f. Notwithstanding the dates in subdivisions 70.2.a, 70.2.b, and 70.2.c for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, by the date specified in subsection 84.2; and

70.2.g. Notwithstanding the dates in subdivisions 70.2.a, 70.2.b and 70.2.c, ~~and solely for purposes of subdivision 6.3.b,~~ for the owner or operator of a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88, by the date on which the CAIR NO_x Ozone Season Trading Program as provided in subsection 84.7.

70.3. Reporting data.

~~70.3.a. Except as provided in subdivision 70.3.b, the~~ -- The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in subsection 70.2 for any monitoring system under subdivision 70.1.a will, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with 40 CFR §§75.31(b)(2) or (c)(3), section 2.4 of Appendix D to 40 CFR Part 75, or section 2.5 of Appendix E to 40 CFR Part 75, as applicable.

~~70.3.b. The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in subdivision 70.2.d for any monitoring system under subdivision 70.1.a will, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR §75.74(c)(7) or Subpart D or Subpart H of, or Appendix D or Appendix E to, 40 CFR Part 75, in lieu of the maximum potential~~

~~(or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision 70.2.d.~~

70.4. Prohibitions.

70.4.a. No owner or operator of a CAIR NO_x Ozone Season unit will use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of sections 70 through ~~76~~ 75 without having obtained prior written approval in accordance with section 75.

70.4.b. No owner or operator of a CAIR NO_x Ozone Season unit will operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of sections 70 through ~~76~~ 75 and 40 CFR Part 75.

70.4.c. No owner or operator of a CAIR NO_x Ozone Season unit will disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of sections 70 through ~~76~~ 75 and 40 CFR Part 75.

70.4.d. No owner or operator of a CAIR NO_x Ozone Season unit will retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under sections 70 through ~~76~~ 75, except under any one of the following circumstances:

70.4.d.1. During the period that the unit is covered by an exemption under section 5 that is in effect;

70.4.d.2. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of sections 70 through 76 75 and 40 CFR Part 75, by the Secretary for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

70.4.d.3. The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with paragraph 71.4.c.1.

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

§45-40-71. Initial Certification and Recertification Procedures.

71.1. The owner or operator of a CAIR NO_x Ozone Season unit will be exempt from the initial certification requirements of this section for a monitoring system under subdivision 70.1.a if the following conditions are met:

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

71.1.b. The applicable quality-assurance and quality-control requirements of 40 CFR §75.21 and Appendix B, Appendix D, and Appendix E to 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 71.1.a.

71.2. The recertification provisions of this section will apply to a monitoring system under subdivision 70.1.a exempt from initial certification requirements under subsection 71.1.

71.3. If the Administrator has previously approved a petition under 40 CFR §§75.17(a) or (b) for apportioning the NO_x emission rate

measured in a common stack or a petition under 40 CFR §75.66 for an alternative to a requirement in 40 CFR §§75.12; or 75.17, ~~or Subpart H of 40 CFR Part 75~~; the CAIR designated representative will resubmit the petition to the Administrator under subsection 75.1 to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.

71.4. Except as provided in subsection 71.1, the owner or operator of a CAIR NO_x Ozone Season unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under Appendices D and E to 40 CFR Part 75) under subdivision 70.1.a. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR §75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 must comply with the procedures in subsections 71.5 or 71.6, respectively.

71.4.a. Requirements for initial certification. -- The owner or operator will ensure that each continuous monitoring system under subdivision 70.1.a (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR §75.20 by the applicable deadline in subsection 70.2. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of sections 70 through 76 75 in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR §75.20 is required.

71.4.b. Requirements for recertification. -- Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subdivision 70.1.a that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR §75.21 or Appendix B to 40 CFR Part 75, the owner or

operator will recertify the monitoring system in accordance with 40 CFR §75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator will recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR §75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO_x monitoring system under Appendix E to 40 CFR Part 75, under subdivision 70.1.a are subject to the recertification requirements in 40 CFR §75.20(g)(6).

71.4.c. Approval process for initial certification and recertification. -- Paragraphs 71.4.c.1 through 71.4.c.4 apply to both initial certification and recertification of a continuous monitoring system under subdivision 70.1.a. For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified", and follow the procedures in 40 CFR §§75.20(b)(5) and (g)(7) in lieu of the procedures in paragraph 71.4.c.5.

71.4.c.1. Notification of certification. -- The CAIR designated representative will submit to the Secretary, U.S. EPA Region III, and the Administrator written notice of the dates of certification testing, in accordance with section 73.

71.4.c.2. Certification application. -- The CAIR designated representative will submit to the Secretary a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR §75.63.

71.4.c.3. Provisional certification date. -- The provisional certification date for a

monitoring system will be determined in accordance with 40 CFR §75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR NO_x Ozone Season Trading Program for a period not to exceed 120 days after receipt by the Secretary of the complete certification application for the monitoring system under paragraph 71.4.c.2. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Secretary 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 Secretary.

71.4.c.4. Certification application approval process. -- The Secretary 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 71.4.c.2. In the event the Secretary does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CAIR NO_x Ozone Season Trading Program.

71.4.c.4.A. Approval notice. -- If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Secretary will issue a written notice of approval of the certification application within 120 days of receipt.

71.4.c.4.B. Incomplete application notice. -- If the certification application is not complete, then the Secretary will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date,

then the Secretary may issue a notice of disapproval under subparagraph 71.4.c.4.C. The 120-day review period will not begin before receipt of a complete certification application.

71.4.c.4.C. Disapproval notice. -- If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR Part 75 or if the certification application is incomplete and the requirement for disapproval under subparagraph 71.4.c.4.B is met, then the Secretary 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 Secretary and the data measured and recorded by each uncertified monitoring system will not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR §75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph 71.4.c.5 for each monitoring system that is disapproved for initial certification.

71.4.c.4.D. Audit decertification. -- The Secretary, or for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 72.2.

71.4.c.5. Procedures for loss of certification. -- If the Secretary or the Administrator issues a notice of disapproval of a certification application under subparagraph 71.4.c.4.C or a notice of disapproval of certification status under subparagraph 71.4.c.4.D, then:

71.4.c.5.A. The owner or operator will substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR §§75.20(a)(4)(iii), 75.20(g)(7), or ~~40 CFR §75.21(e)~~ and continuing until the applicable date and hour specified under

40 CFR §§75.20(a)(5)(i) or 75.20(g)(7):

71.4.c.5.A.1. For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in 40 CFR §72.2;

71.4.c.5.A.2. For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of Appendix A to 40 CFR Part 75;

71.4.c.5.A.3. For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of Appendix A to 40 CFR Part 75;

71.4.c.5.A.4. For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of Appendix D to 40 CFR Part 75;

71.4.c.5.A.5. For a disapproved excepted NO_x monitoring system under Appendix E to 40 CFR Part 75, the fuel-specific maximum potential NO_x emission rate, as defined in 40 CFR §72.2;

71.4.c.5.B. The CAIR designated representative must submit a notification of certification retest dates and a new certification application in accordance with paragraphs 71.4.c.1 and 71.4.c.2; and

71.4.c.5.C. The owner or operator will repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Secretary's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

71.5. Initial certification and recertification

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

71.6. Certification and recertification procedures for alternative monitoring systems. -- The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the Secretary under Subpart E of 40 CFR Part 75 must comply with the applicable notification and application procedures of 40 CFR §75.20(f).

§45-40-72. Out of Control Periods.

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

72.2. 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 section 71 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Secretary, or for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the Administrator will issue a notice of disapproval of the certification status of such monitoring system.

For the purposes of this subsection, an audit will be either a field audit or an audit of any information submitted to the Secretary or the Administrator. By issuing the notice of disapproval, the Secretary or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will 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 must follow the applicable initial certification or recertification procedures in section 71 for each disapproved monitoring system.

§45-40-73. Notifications.

73.1. The CAIR designated representative for a CAIR NO_x Ozone Season unit will submit written notice to the Secretary and the Administrator in accordance with 40 CFR §75.61; ~~except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Secretary.~~

§45-40-74. Recordkeeping and Reporting.

74.1. General provisions. -- The CAIR designated representative must comply with all recordkeeping and reporting requirements under this section, the applicable recordkeeping and reporting requirements under 40 CFR §75.73, and the requirements of subsection 10.5.

74.2. Monitoring plans. -- The owner or operator of a CAIR NO_x Ozone Season unit must comply with the requirements of 40 CFR §§75.73(c) and (e) and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the requirements of section 83 and subsection 84.1.

74.3. Certification applications. -- The CAIR designated representative must submit an application to the Secretary within 45 days after

completing all initial certification or recertification tests required under section 71, including the information required under 40 CFR §75.63.

74.4. Quarterly reports. -- The CAIR designated representative must submit quarterly reports, as follows:

74.4.a. If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under sections 70 through 76 75, the CAIR designated representative will meet the requirements of Subpart H of 40 CFR Part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and will report the NO_x mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

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

74.4.a.2. For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection 70.2, unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting will commence in the quarter covering May 1, 2008 through June 30, 2008;

74.4.a.3. Notwithstanding paragraphs 74.4.a.1 and 74.4.a.2, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, the calendar quarter corresponding to the date specified in subsection 84.2; and

74.4.a.4. Notwithstanding paragraphs 74.4.a.1 and 74.4.a.2, for a CAIR NO_x Ozone

Season opt-in unit under sections 80 through 88, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in subsection 84.7.

74.4.b. If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative will either:

74.4.b.1. Meet the requirements of Subpart H of 40 CFR Part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with subdivision 74.4.a; or

74.4.b.2. Meet the requirements of Subpart H of 40 CFR Part 75 for the ozone season (including the requirements in 40 CFR §75.74(c)) and report NO_x mass emissions data and heat input data (including the data described in 40 CFR §75.74(c)(6)) for such unit only for the ozone season of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

74.4.b.2.A. For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

74.4.b.2.B. For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection 70.2, unless that date is not during an ozone season, in which case reporting will commence in the quarter that includes May 1 through June 30 of the first year after such date;

74.4.b.3.A. Notwithstanding subparagraphs 74.4.b.2.A and 74.4.b.2.B, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections

80 through 88, the calendar quarter corresponding to the date specified in subsection 84.2; and

74.4.b.3.B. Notwithstanding subparagraphs 74.4.b.2.A and 74.4.b.2.B, for a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in subsection 84.7.

74.4.c. The CAIR designated representative will submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports must be submitted in the manner specified in 40 CFR §75.73(f); and

74.4.d. For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, or CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports will include the applicable data and information required by Subparts F through H I of 40 CFR Part 75 as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by sections 70 through ~~76~~ 75.

74.5. Compliance certification. -- The CAIR designated representative will 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 must state that:

74.5.a. The monitoring data submitted were recorded in accordance with the applicable requirements of sections 70 through ~~76~~ 75 and 40 CFR Part 75, including the quality assurance procedures and specifications;

74.5.b. For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with 40 CFR

§75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance and quality control program under Appendix B to 40 CFR Part 75 and the substitute data values do not systematically underestimate NO_x emissions; and

74.5.c. For a unit that is reporting on an ozone season basis under paragraph 74.4.b.2, the NO_x emission rate and NO_x concentration values substituted for missing data under Subpart D of 40 CFR Part 75 are calculated using only values from an ozone season and do not systematically underestimate NO_x emissions.

§45-40-75. Petitions.

75.1. Except as provided in subsection 75.3, the CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Administrator requesting approval to apply an alternative to any requirement of sections 70 through ~~76~~ 75. Application of an alternative to any requirement of sections 70 through ~~76~~ 75 is in accordance with sections 70 through ~~76~~ 75 only to the extent that the petition is approved in writing by the Administrator, in consultation with the Secretary.

75.2. The CAIR designated representative of a CAIR NO_x Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Secretary and the Administrator requesting approval to apply an alternative to any requirement of sections 70 through ~~76~~ 75. Application of an alternative to any requirement of sections 70 through ~~76~~ 75 is in accordance with sections 70 through ~~76~~ 75 only to the extent that the petition is approved in writing by both the Secretary and the Administrator.

75.3. The CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Secretary and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR §75.72. Application of an

alternative to any such requirement is in accordance with sections 70 through ~~76 75~~ only to the extent that the petition is approved in writing by both the Secretary and the Administrator.

~~§45-40-76. Additional Requirements to Provide Heat Input Data.~~

~~76.1. The owner or operator of a CAIR NO_x Ozone Season unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow monitoring system will also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR Part 75 Reserved.~~

§45-40-80. CAIR NO_x Ozone Season Opt-In Unit Applicability.

80.1. A CAIR NO_x Ozone Season opt-in unit must be a unit that:

80.1.a. Is located in West Virginia;

80.1.b. Is not a CAIR NO_x Ozone Season unit under section 4 and is not covered by a retired unit exemption under section 5 that is in effect;

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

80.1.d. Has or is required or qualified to have a Title V operating permit or other federally enforceable permit; and

80.1.e. Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of sections 70 through 76 75.

~~80.2. Any unit in West Virginia identified as an opt-in unit under the NO_x Budget Trading Program may be a CAIR NO_x Ozone Season opt-in unit. Such units will be subject to and must complete all requirements under sections 80 through 88 in order to be a CAIR NO_x Ozone Season opt-in unit.~~

§45-40-81. Opt-in General Requirements.

81.1. Except as otherwise provided in sections 1 through 4, sections 6 through 8, sections 10 through 14, sections 20 through 24 and sections 51 through ~~76 75~~, a CAIR NO_x Ozone Season opt-in unit will be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections.

81.2. Solely for purposes of applying, as provided in sections 80 through 88, the requirements of sections 70 through ~~76 75~~ to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, such unit will be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§45-40-82. CAIR Designated Representative.

82.1. Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under sections 80 through 88, located at the same source as one or more CAIR NO_x Ozone Season units will have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone Season units.

§45-40-83. Applying for CAIR Opt-in Permit.

83.1. Applying for initial CAIR opt-in permit.
-- The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in section 80 may apply for an initial CAIR opt-in permit at any time, except as provided under subsections 86.6 and 86.7, and, in order to apply, must submit to the Secretary the following:

83.1.a. A complete CAIR permit application under section 22;

83.1.b. A certification, in a format specified by the Secretary, that the unit:

83.1.b.1. Is not a CAIR NO_x Ozone Season unit under section 4 and is not covered by

a retired unit exemption under section 5 that is in effect;

83.1.b.2. Is not covered by a retired unit exemption under 40 CFR §72.8 that is in effect;

83.1.b.3. Vents all of its emissions to a stack; and

83.1.b.4. Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under section 22;

83.1.c. A monitoring plan in accordance with section 70 through ~~76~~ 75;

83.1.d. A complete certificate of representation under section 13 consistent with section 82, if no CAIR designated representative has been previously designated for the source that includes the unit; and

83.1.e. A statement, in a format specified by the Secretary, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under ~~subsection~~ subsections 88.2 or 88.3 (subject to the conditions in subsections 84.8 and 86.7). If an allocation under subsection 88.3 is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

83.2. Duty to reapply.

83.2.a. The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit must submit a complete CAIR permit application under section 22 to renew the CAIR opt-in unit permit in accordance with 45CSR30 or any other applicable rule, addressing permit renewal.

83.2.b. Unless the Secretary issues a notification of acceptance of withdrawal of the CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program in

accordance with section 86 or the unit becomes a CAIR NO_x Ozone Season unit under section 4, the CAIR NO_x Ozone Season opt-in unit will remain subject to the requirements for a CAIR NO_x Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_x Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under subdivision 83.2.a.

§45-40-84. Opt-in Process. -- The Secretary will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under section 83 is submitted in accordance with ~~this section~~: the following:

84.1. Interim review of monitoring plan. -- The Secretary and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under section 83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emission rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with sections 70 through ~~76~~ 75. A determination of sufficiency will not be construed as acceptance or approval of the monitoring plan.

84.2. Monitoring and reporting.

84.2.a. If the Secretary and the Administrator determine that the monitoring plan is sufficient under subsection 84.1, the owner or operator must monitor and report the NO_x emission rate and the heat input of the unit and all other applicable parameters, in accordance with sections 70 through ~~76~~ 75, starting on the date of certification of the appropriate monitoring systems under sections 70 through ~~76~~ 75 and continuing until a CAIR opt-in permit is denied under subsection 84.6 or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with section 86.

84.2.b. The monitoring and reporting under subdivision 84.2.a must include the entire ozone season immediately before the date on

which the unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7, during which period monitoring system availability must not be less than 90 percent under sections 70 through ~~76~~ 75 and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

84.2.c. To the extent the NO_x emission rate and the heat input of the unit are monitored and reported in accordance with sections 70 through ~~76~~ 75 for one or more ozone seasons, in addition to the ozone season under subdivision 84.2.b, during which ozone seasons monitoring system availability is not less than 90 percent under sections 70 through ~~76~~ 75 and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and which ozone seasons begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7, such information will be used as provided in subsections 84.3 and 84.4.

84.3. Baseline heat input. -- The unit's baseline heat input will equal:

84.3.a. If the unit's NO_x emission rate and heat input are monitored and reported for only one ozone season, in accordance with subdivisions 84.2.a and 84.2.b, the unit's total heat input (in mmBtu) for the ozone season; ~~or~~

84.3.b. If the unit's NO_x emission rate and heat input are monitored and reported for more than one ozone season, in accordance with subdivisions 84.2.a, 84.2.b and 84.2.c, the average of the amounts of the unit's total heat input (in mmBtu) for the ozone ~~season under subdivision 84.2.b and for the ozone seasons under subdivision~~ subdivisions 84.2.b and 84.2.c.

84.4. Baseline NO_x emission rate. -- The unit's baseline NO_x emission rate will equal:

84.4.a. If the unit's NO_x emission rate and heat input are monitored and reported for only one ozone season, in accordance with subdivisions 84.2.a and 84.2.b, the unit's NO_x

emission rate (in lb/mmBtu) for the ozone season;

84.4.b. If the unit's NO_x emission rate and heat input are monitored and reported for more than one ozone season, in accordance with subdivisions 84.2.a, 84.2.b and 84.2.c, and the unit does not have add-on NO_x emission controls during any such ozone seasons, the average of the amounts of the unit's NO_x emission rate (in lb/mmBtu) for the ozone ~~season under subdivision 84.2.b and the ozone seasons under subdivision~~ subdivisions 84.2.b and 84.2.c; ~~or~~

84.4.c. If the unit's NO_x emission rate and heat input are monitored and reported for more than one ozone season, in accordance with subdivisions 84.2.a, 84.2.b and 84.2.c, and the unit has add-on NO_x emission controls during any such ozone seasons, the average of the amounts of the unit's NO_x emission rate (in lb/mmBtu) for such ozone ~~season~~ seasons during which the unit has add-on NO_x emission controls; ~~or~~

84.5. Issuance of CAIR opt-in permit. -- After calculating the baseline heat input and the baseline NO_x emission rate for the unit under subsections 84.3 and 84.4, and if the Secretary determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in section 80 and meets the elements certified in subdivision 83.1.b, the Secretary will issue a CAIR opt-in permit. The Secretary will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.

84.6. Issuance of denial of CAIR opt-in permit. -- Notwithstanding subsections 84.1 through 84.5, if at any time before issuance of a CAIR opt-in permit for the unit, the Secretary determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in section 80 or meets the elements certified in subdivision 83.1.b, the Secretary will issue a denial of a CAIR NO_x Ozone Season opt-in permit for the unit.

84.7. Date of entry into CAIR NO_x Ozone Season Trading Program. -- A unit for which an initial CAIR opt-in permit is issued by the Secretary will become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first year ozone season during which such CAIR opt-in permit is issued.

84.8. Repowered CAIR NO_x Ozone Season opt-in unit.

84.8.a. If the CAIR designated representative requests, and the Secretary issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under subsection 88.3 and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under subsection 84.7, the repowered unit will be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

84.8.b. Notwithstanding subsections 84.3 and 84.4, as of the date of start-up under subdivision 84.8.a, the repowered unit will be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit will no longer be treated as a CAIR NO_x Ozone Season opt-in unit or a CAIR NO_x Ozone Season unit.

§45-40-85. CAIR Opt-in Permit Contents.

85.1. Each CAIR opt-in permit must contain:

85.1.a. All elements required for a complete CAIR permit application under section 22;

85.1.b. The certification in subdivision 83.1.b;

85.1.c. The unit's baseline heat input under subsection 84.3;

85.1.d. The unit's baseline NO_x emission rate under subsection 84.4;

85.1.e. A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under subsection subsections 88.2 or 88.3 (subject to the conditions in subsections 84.8 and 86.7);

85.1.f. A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with section 86; and

85.1.g. A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of section 87.

85.2. Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 and, upon recordation by the Administrator under sections 51 through 57, ~~or~~ sections 60 through 62, or sections 80 through 88, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.

85.3. The CAIR opt-in permit shall be included, in a format specified by the Secretary, in the CAIR permit for the source where the CAIR NO_x Ozone Season opt-in unit is located and in a Title V operating permit or other federally enforceable permit for the source.

§45-40-86. Withdrawal from CAIR NO_x Ozone Season Trading Program. -- Except as provided under subsection 86.7, a CAIR NO_x Ozone Season opt-in unit may withdraw from the CAIR NO_x Ozone Season Trading Program, but only if the Secretary issues a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit in accordance with subsection 86.4.

86.1. Requesting withdrawal. -- In order to withdraw a CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading

Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit must submit to the Secretary a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under subsection 84.7. The request must be submitted no later than 90 days before the requested effective date of withdrawal.

86.2. Conditions for withdrawal. -- Before a CAIR NO_x Ozone Season opt-in unit covered by a request under subsection 86.1 may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under subsection 86.5, the following conditions must be met:

86.2.a. For the ozone season ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the requirement to hold CAIR NO_x Ozone Season allowances under subsection 6.3 and cannot have any excess emissions; and

86.2.b. After the requirement for withdrawal under subdivision 86.2.a is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in ~~number~~ amount to and allocated for the same or a prior ozone season as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under section 88 for any ozone season for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System account in accordance with sections 60 through 62.

86.3. Notification.

86.3.a. After the requirements for withdrawal under subsections 86.1 and 86.2 are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the Secretary will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

86.3.b. If the requirements for withdrawal under subsections 86.1 and 86.2 are not met, the Secretary will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_x Ozone Season opt-in unit will continue to be a CAIR NO_x Ozone Season opt-in unit.

86.4. Permit amendment. -- After the Secretary issues a notification under subdivision 86.3.a that the requirements for withdrawal have been met, the Secretary will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision 86.3.a. The unit will continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and will comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any ozone seasons for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

86.5. Reapplication upon failure to meet conditions of withdrawal. -- If the Secretary denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with subsections 86.1 and 86.2.

86.6. Ability to reapply to the CAIR NO_x Ozone Season Trading Program. -- Once a CAIR NO_x Ozone Season opt-in unit withdraws from

the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under subsection 86.4, the CAIR designated representative may not submit another application for a CAIR opt-in permit under section 83 for such CAIR NO_x Ozone Season opt-in unit before the date that is four years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under section 84.

86.7. Inability to withdraw. -- Notwithstanding subsections 86.1 through 86.6, a CAIR NO_x Ozone Season opt-in unit will not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit requests, and the Secretary issues a CAIR NO_x Ozone Season opt-in permit providing for, allocation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under subsection 88.3.

§45-40-87. Change in Regulatory Status.

87.1. Notification. -- If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4, then the CAIR designated representative will ~~provide written notification to~~ notify in writing the Secretary and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.

87.2. Secretary's and Administrator's actions.

87.2.a. If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4, the Secretary will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under section 23, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4.

87.2.b. The Administrator will deduct from the compliance account of the source that includes a the CAIR NO_x Ozone Season opt-in

unit that becomes a CAIR NO_x Ozone Season unit under section 4, CAIR NO_x Ozone Season allowances equal in number amount to and allocated for the same or a prior ozone season as:

87.2.b.1. Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under section 88 for any ozone season after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4; and

87.2.b.2. If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under section 88 for the ozone season that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4, multiplied by the ratio of the number of days, in the ozone season, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4 divided by the total number of days in the ozone season and rounded to the nearest whole allowance as appropriate.

87.2.c. The CAIR designated representative must ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x Ozone Season unit under section 4 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under subdivision 87.2.b.

87.2.d. For every ozone season after the date on which a the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4, the CAIR NO_x Ozone Season opt-in unit will be ~~treated, solely for purposes of CAIR NO_x Ozone Season allowance allocations under section 42, as a unit that commences operation on the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4 and will be~~ allocated CAIR NO_x Ozone Season allowances under section 42.

87.2.e. Notwithstanding subdivision 87.2.d, if the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4 is not May 1, the following number amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under section 42 for the ozone season that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4:

87.2.e.1. The number amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under section 42 for the ozone season multiplied by;

87.2.e.2. The ratio of the number of days, in the ozone season, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under section 4, divided by the total number of days in the ozone season; and

87.2.e.3. Rounded to the nearest whole allowance as appropriate.

§45-40-88. CAIR NO_x Ozone Season Allowance Allocations to CAIR NO_x Ozone Season Opt-in Units.

88.1. Timing requirements.

88.1.a. When the CAIR opt-in permit is issued under subsection 84.5, the Secretary will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the ozone season in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7, in accordance with subsections 88.2 or 88.3.

88.1.b. By no later than July 31 of the ozone season in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7; and July 31 of each year thereafter, the Secretary will allocate CAIR NO_x Ozone Season allowances

to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the ozone season that includes such submission deadline and in which the unit is a CAIR NO_x Ozone Season opt-in unit, in accordance with subsections subsection 88.2 or 88.3.

88.2. Calculation of allocation. -- For each ozone season for which a CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the Secretary will allocate in accordance with the following procedures:

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

88.2.a.1. The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under subsection 84.3; or

88.2.a.2. The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with sections 70 through ~~76~~ 75, for the immediately prior ozone season, except when the allocation is being calculated for the ozone season in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7;

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

88.2.b.1. The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emission rate determined under subsection 84.4 and multiplied by 70 percent; or

88.2.b.2. The most stringent state or federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the ozone season for which CAIR NO_x Ozone Season allowances are to be allocated; and

88.2.c. The Secretary will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under subdivision 88.2.a, multiplied

by the NO_x emission rate under subdivision 88.2.b, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

88.3. Allocation to repowered units. -- Notwithstanding subsection 88.2, and if the CAIR designated representative requests, and the Secretary issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this subsection (subject to the conditions in subsections 84.8 and 86.7), the Secretary will allocate to the CAIR NO_x Ozone Season opt-in unit as follows:

88.3.a. For each ozone season in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in subdivision 88.2.a. The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:

88.3.a.1. The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emission rate determined under subsection 84.4; or

88.3.a.2. The most stringent state or federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the ozone season in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7;

88.3.b. The Secretary will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under subdivision 88.3.a, multiplied by the NO_x emission rate under subdivision 88.3.a, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate;

88.3.c. For each ozone season in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the heat input (in

mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in subdivision 88.2.a. The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:

88.3.c.1. 0.15 lb/mmBtu;

88.3.c.2. The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emission rate determined under subsection 84.4; or

88.3.c.3. The most stringent state or federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the ozone season for which CAIR NO_x Ozone Season allowances are to be allocated; and

88.3.d. The Secretary will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under subdivision 88.3.c, multiplied by the NO_x emission rate under subdivision 88.3.c, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

88.4. Recordation.

88.4.a. The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the Secretary to the CAIR NO_x Ozone Season opt-in unit under subdivision 88.1.a.

88.4.b. By September 1 of the ozone season in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under subsection 84.7, and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the Secretary to the CAIR NO_x Ozone Season opt-in unit under subdivision 88.1.b.

§45-40-90. Ozone Season NO_x Reduction Requirements for Stationary Internal

Combustion Engines.

90.1. Any large NO_x SIP Call engine or any affected engine or affected NO_x emitting equipment under subsection 90.4 will not be eligible for allowances from the CAIR NO_x Ozone Season trading budget under subsection 40.1 or subject to the CAIR NO_x Ozone Season Trading Program requirements under sections 4 through 88.

90.2. Applicability. -- Effective May 1, 2009, the requirements of section 90 will apply to the owner or operator of any large NO_x SIP Call engine.

90.3. Ozone season NO_x reduction. -- Effective May 1, 2009, the following owners or operators must reduce ozone season NO_x emissions by an amount equal to or greater than the applicable ozone season NO_x reduction listed below. The applicable ozone season NO_x reduction is binding on the listed owners or operators, their successors and assigns:

Company	Ozone Season NO _x Reduction
Dominion	668 tons
Columbia Gas Transmission	235 tons
Total	903 tons

90.4. Compliance plan. -- Effective May 1, 2009, an owner or operator of a large stationary internal combustion engine under subsection 90.2 must not operate such engine in the period May 1 through September 30 of 2009 and any subsequent year unless the owner or operator demonstrates the applicable ozone season NO_x reduction under subsection 90.3 through the requirements of an approved compliance plan. The compliance plan must meet the following provisions:

90.4.a. Reserved;

90.4.b. Reserved;

90.4.c. The compliance plan must demonstrate quantifiable and enforceable NO_x emission reductions equal to or greater than the applicable ozone season NO_x reduction set forth in subsection 90.3, taking into account any creditable reduction in NO_x emissions under subdivisions 90.4.e, 90.4.f, 90.4.g, 90.4.h or 90.4.i;

90.4.d. The compliance plan may include and affect some or all stationary internal combustion engines or other significant NO_x emitting equipment at an individual facility, at several facilities, or at all facilities in West Virginia that are controlled by the same owner or operator;

90.4.e. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on large stationary internal combustion engines under subsection 90.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

90.4.f. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x control equipment on uncontrolled stationary internal combustion engines not under subsection 90.2. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from the installation and operation of such NO_x control equipment. Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call engine inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between uncontrolled and controlled NO_x emission rates, and ozone season operating hours;

90.4.g. The compliance plan may include

credit for reductions in NO_x emissions due to replacement of any stationary internal combustion engines or other significant NO_x-emitting equipment. The owner or operator will demonstrate to the satisfaction of the Secretary that the historic ozone season load capacity of any stationary internal combustion engine or other significant NO_x-emitting equipment no longer in operation has been or would be replaced by one or more new stationary internal combustion engines, electric motors or turbines during each ozone season. The credit for reductions in NO_x emissions must be quantified based on the replaced engine's or other significant NO_x-emitting equipment's ozone season NO_x emission rate and ozone season operating hours, and the projected emission rate and ozone season operating hours of any new replacement stationary internal combustion engines, electric motors or turbines;

90.4.h. The compliance plan may include credit for reductions in NO_x emissions due to reductions from shifting historic load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The owner or operator will demonstrate to the satisfaction of the Secretary that a quantifiable net reduction in NO_x emissions has occurred or will occur due to a direct shift of ozone season load capacity from an uncontrolled engine to a controlled engine, electric motor or turbine. The credit for reductions in NO_x emissions must be quantified based on the uncontrolled engine's historic ozone season load capacity, NO_x emission rate (in g/bhp-hr), ozone season operating hours (in hr/ozone season), and the shifted ozone season load capacity, NO_x emission rate (in g/bhp-hr) and ozone season operating hours (in hr/ozone season) of the controlled stationary internal combustion engine, electric motor or turbine;

90.4.i. The compliance plan may include credit for reductions in NO_x emissions due to the installation and operation of NO_x controls on significant NO_x emitting equipment other than stationary internal combustion engines. The owner or operator will demonstrate to the satisfaction of the Secretary any creditable reductions in NO_x emissions from such NO_x emitting equipment.

Creditable reductions must be limited to reductions achieved after 1995 and from controls that were not part of the NO_x SIP Call inventory. The credit for reductions in NO_x emissions must be quantified based on the difference between NO_x emission rates prior to installation of controls and controlled NO_x emission rates, and ozone season operating hours;

90.4.j. The compliance plan must include the following:

90.4.j.1. A list of affected engines or affected NO_x emitting equipment subject to the plan, including the manufacturer, model number, facility location and facility identification number;

90.4.j.2. The projected ozone season hours of operation for each affected engine or affected NO_x emitting equipment and supporting documentation;

90.4.j.3. A description of the NO_x emission controls installed, or to be installed, on each affected engine or affected NO_x emitting equipment, date or proposed date of installation, and documentation to support the controlled NO_x emission rates;

90.4.j.4. The uncontrolled and controlled NO_x emission rates in lb/hr and tons per ozone season for each affected engine or affected NO_x emitting equipment, as applicable;

90.4.j.5. A numerical demonstration that the sum of creditable NO_x emission reductions (in tons) obtained from all affected engines or affected NO_x emitting equipment included under a compliance plan will be equivalent to or greater than the owner or operator's applicable ozone season NO_x reduction under subsection 90.3, taking into account any creditable reductions in NO_x emissions under subdivisions 90.4.e, 90.4.f, 90.4.g, 90.4.h or 90.4.i; and

90.4.j.6. Performance test protocol and provisions for periodic monitoring, reporting and recordkeeping for each affected engine or affected NO_x emitting equipment.

90.4.k. Any creditable reductions in NO_x emissions under subdivisions 90.4.e, 90.4.f, 90.4.g, 90.4.h or 90.4.i must be quantifiable and enforceable through limitations included in a federally enforceable permit or compliance order; and

90.4.l. Any owner or operator with an approved compliance plan under subsection 90.4 may amend the plan with the written approval of the Secretary. Any NO_x emission rate or limitation included in such an amendment must be reflected in a federally enforceable permit or compliance order. The Secretary will either approve by order or disapprove by certified mail the amended compliance plan within 90 days of submission, and notify the Administrator of the compliance plan amendment approval upon issuance of order.

90.5. Monitoring requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 90.4 must comply with the following monitoring requirements for each affected engine or affected NO_x emitting equipment:

90.5.a. The owner or operator must complete an initial performance test consistent with the requirements of 40 CFR Part 60, Appendix A, following installation of NO_x emission controls required to achieve the NO_x emission rate limit specified in subdivision 90.4.k; and

90.5.b. For the ozone season beginning in 2009, and each ozone season thereafter, the owner or operator will perform periodic monitoring sufficient to yield reliable data which demonstrate compliance with the limitations specified in subdivision 90.4.k. Such periodic monitoring must include:

90.5.b.1. A continuous emission monitoring system that complies with 40 CFR Part 75 or 40 CFR Part 60 and the quality assurance procedures specified in 40 CFR Part 60, Appendix F; or

90.5.b.2. Performance tests consistent with the requirements of 40 CFR Part 60, Appendix A, or portable monitors using ASTM D6522-00; and

90.5.b.2.A. A parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine or affected NO_x emitting equipment's emissions are consistent with the requirements of a compliance plan under subsection 90.4. Any such parametric monitoring program must be approved by the Secretary; or

90.5.b.2.B. A predictive emissions measurement system that relies on automated data collection from instruments. Any such predictive emissions measurement system must be approved by the Secretary.

90.6. Recordkeeping requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 90.4 must comply with the following recordkeeping requirements:

90.6.a. Maintain all records necessary to demonstrate compliance with the requirements of the compliance plan and subsection 90.6 for a period of five calendar years at the facility where an affected engine or affected NO_x emitting equipment is located. Such records will be made available to the Secretary or Administrator upon request; and

90.6.b. For each affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 90.4, the owner or operator will maintain records of:

90.6.b.1. Identification and location of each affected engine or affected NO_x emitting equipment;

90.6.b.2. Calendar date of record;

90.6.b.3. The number of hours the affected engine or affected NO_x emitting

equipment is operated during each ozone season compared to projected operating hours;

90.6.b.4. Type and quantity of fuel combusted; and

90.6.b.5. The results of all compliance tests.

90.7. Reporting requirements. -- Any owner or operator of an affected engine or affected NO_x emitting equipment subject to a compliance plan under subsection 90.4 must:

90.7.a. Notify the Secretary of any performance test under paragraph 90.5.b.2 at least 15 days in advance of such test;

90.7.b. Submit results of all performance tests to the Secretary within 30 days of completion of such tests; and

90.7.c. Submit a report which documents the total ozone season NO_x emissions and certifies compliance with the compliance plan for each affected engine or affected NO_x emitting equipment to the Secretary by October 31 of each year, beginning in 2009. The report must demonstrate and certify compliance with the applicable ozone season NO_x reduction set forth in subsection 90.3.

§45-40-100. Ozone Season NO_x Reduction Requirements for Emissions of NO_x from Cement Manufacturing Kilns.

100.1. Any cement manufacturing kiln (kiln) subject to this section will not be eligible for allowances from the CAIR NO_x Ozone Season trading budget under subsection 40.1 or subject to the CAIR NO_x Ozone Season Trading Program requirements under sections 4 through 88.

100.2. Applicability. -- Effective May 1, 2009, any owner or operator of the following kilns with process rates of at least the following must comply with the applicable requirements of this section:

100.2.a. Long dry kilns \geq 12 TPH;

100.2.b. Long wet kilns \geq 10 TPH;

100.2.c. Preheater kilns \geq 16 TPH; and

100.2.d. Precalciner and preheater/precalciner kilns \geq 22 TPH.

100.3. Standard requirements. -- Effective May 1, 2009, an owner or operator of any Portland cement kiln subject to this section must not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with low-NO_x burners, mid-kiln firing or alternative control techniques, subject to approval by the Administrator, that achieve at least the same emissions decreases as low-NO_x burners or mid-kiln firing.

100.4. NO_x compliance plan. -- Any owner or operator of a source subject to the standard requirements of subsection 100.3 may elect to use NO_x reductions from any non-affected kiln at a source with a Portland cement kiln under subsection 100.2. If the owner or operator so elects, he or she must submit for approval to the Administrator by May 1, 2009 a NO_x compliance plan which demonstrates the method(s) by which the operator will achieve NO_x reductions from non-affected kilns which achieve at least the same emissions decreases set forth in the standard requirements of subsection 100.3.

100.5. Reporting requirements. -- Any owner or operator subject to the standard requirements of subsection 100.3 must comply with the following reporting requirements:

100.5.a. By May 1, 2009, submit to the Secretary and Administrator the identification number and type of each kiln subject to this section, the name and address of the plant where the kiln is located and the name and telephone number of the person responsible for demonstrating compliance with this section; and

100.5.b. Submit a report documenting for that kiln the total NO_x emissions from May 1 through September 30 of each year to the Secretary and Administrator by October 31 of

each year, beginning in 2009.

100.6. Monitoring requirements.

100.6.a. Any owner or operator of a kiln subject to this section must complete an initial performance test and subsequent annual testing consistent with the requirements of 40 CFR Part 60, Appendix A, Method 7, 7A, 7C, 7D or 7E; and

100.6.b. The operator may use the results of continuous emission monitoring system (CEMS) to replace the annual testing requirements set forth in subdivision 100.6.a. Such equipment must be installed and operated consistent with ~~sections 70 through 76~~ and 40 CFR Part 75.

100.7. Recordkeeping requirements. -- Any owner or operator of a kiln subject to this section must produce and maintain records which include, but are not limited to:

100.7.a. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln;

100.7.b. The type of control used for each affected Portland cement kiln;

100.7.c. The date, time and duration of any startup, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment;

100.7.d. The results of any performance testing;

100.7.e. Daily cement kiln production records; and

100.7.f. All records required to be produced or maintained will be retained on site for a minimum of 5 years and be made available to the Secretary or Administrator upon request.

100.8. Exemptions. -- The requirements of subsections 100.3, through 100.7 will not apply to the following periods of operation:

100.8.a. Start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; and

100.8.b. Regularly scheduled maintenance activities.

§45-40-110. Inconsistency Between Rules.

110.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, ~~such the~~ inconsistency will be resolved by the determination of the Secretary and ~~such the~~ determination will be based upon the application of the more stringent provision, term, condition, method or rule.

ORIGINAL

1

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of: PROPOSED REVISIONS TO 45CSR40 - CONTROL
OF OZONE SEASON NITROGEN OXIDE EMISSIONS
TO MITIGATE INTERSTATE TRANSPORT OF OZONE
NITROGEN OXIDES

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Jo Ann Wilson,
Court Reporter, at the West Virginia Department of
Environmental Protection, Division of Air Quality, Dolly
Sods Conference Room, 601 57th Street, S.E. Charleston,
West Virginia, commencing at 6:45 p.m., on the 10th day of
July 2006, pursuant to notice.

MISSY L. YOUNG, C.C.R.
ATTENDING REPORTER: JO ANN WILSON
POST OFFICE BOX 1322
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

1 Section 25162, on May the 12, 2005. The federal rule
2 requires that large emitters of Nitrogen Oxide reduce ozone
3 season emissions through the constraint of set budgets.

4 U.S. Environmental Protection is specifying
5 that ozone season Nitrogen Oxide emission reductions be
6 implemented in two phases. The first phase of ozone season
7 Nitrogen Oxide reductions starts in 2009; the second phase
8 starts in 2015, and continues thereafter. The Nitrogen
9 Oxide emission reduction requirements are based on controls
10 that are known to be highly cost effective for electric
11 generating units and large industrial boilers.

12 Flexibility is built in through market-
13 based "cap and trade" provisions, which allow sources to
14 buy, or sell, Nitrogen Oxide emission allowances from, or
15 to, other program participants. Reducing upwind ozone
16 season Nitrogen Oxide emissions will assist downwind eight
17 hour ozone non-attainment areas in achieving the National
18 Ambient Air Quality Standards.

19 Because the Clean Air Interstate Rule
20 subsumes the ozone season Nitrogen Oxide State
21 Implementation Plan Call trading program, existing Nitrogen
22 Oxide State Implementation Call rules 45CSR1, and 45CSR26,
23 and their ozone season Nitrogen Oxide reduction emissions

1 must be "sunsetting" by January 1st, 2009. Therefore,
2 45CSR40 contains a repeal clause, which effectively
3 "sunsets" these rules, meeting the approvability
4 requirement for implementing the Clean Air Interstate Rule.

5 45CSR40 applies to large fossil fuel-fired
6 electric generating units that have greater than 25
7 megawatts general capacity, and large fossil fuel-fired
8 industrial boilers with a heat input greater than 250
9 million BTUs per hour. This rule, also, applies to
10 affected cement kilns and internal combustion engines, by
11 retaining the Nitrogen Oxide State Implementation Plan Call
12 ozone season Nitrogen Oxide emission reduction requirements
13 for these sources from 45CSR1.

14 These existing requirements do not provide
15 for inclusion in any "cap and trade" program for cement
16 kilns and internal combustion engines. The Clean Air
17 Interstate Rule Nitrogen Oxide Annual Trading Program
18 requirements are set forth in 45CSR39.

19 Upon authorization and promulgation of
20 revisions to 45CSR40, the Division of Air Quality will
21 submit the final rules to the U.S. Environmental Protection
22 Agency as revisions to the State Implementation Plan,
23 pursuant to the Federal Clean Air Act.

1 The floor is now open for comments. Please
2 state your name and any affiliation.

3 MR. TWEDDLE: I'm here, primarily,
4 representing the West Virginia Council, but I'm on several
5 other environment boards. I should, also, state I am on
6 the Public Energy Authority, at the pleasure of the
7 governor. So, I'm very involved in this arena.

8 I do have, as an engineer, over 40 years of
9 experience dealing with air quality issues in my native
10 Canada, in California, and then, here. I have experienced,
11 and see, distinctive rollback attempts at the federal level
12 by the EPA. It's very discouraging. So, I'm standing up
13 to every opportunity I can to say there's no reason why
14 West Virginia should roll back any air quality rule, at
15 all. I've never seen economic justification for doing so.
16 There's no need to do it. The statutes, clearly, say that
17 the state of West Virginia can be more stringent than the
18 feds - - Federal EPA.

19 So, there is no - - It's not a cast-in-
20 stone requirement that DEP roll back, always adjust and
21 change, to what the feds say, unless it's administrative,
22 or legal, or language, or things like that. In terms of
23 air quality standards, my posture is that I do not want to

1 see us roll back any rule in terms of emissions, or air
2 quality.

3 MR. KOTCON: My name is James Kotcon. I am
4 speaking on behalf of the West Virginia chapter of the
5 Sierra Club. This rule, along with Regulation 39, should
6 be strengthened significantly, in particular with regard to
7 the section related to banking of allowances.

8 Specifically, some years ago, I served on a
9 committee that negotiated the first emissions trading and
10 banking rule for West Virginia. In that rule, the DEP
11 established the precedent of retiring for public benefit,
12 10 percent of any emissions, allowances, or credits that
13 were banked by any entity emissions unit. In addition, the
14 rule specified that credits, or allowances, that were
15 banked would expire, again, for the public benefit, after a
16 period of 10 years.

17 I would urge that those two provisions be
18 added to this rule, and to regulation 39, as well as to the
19 upcoming regulation - - I believe it's 40 - - dealing with
20 the sulfur dioxide emissions allowances.

21 Thank you.

22 MS. CHANDLER: Thank you, Mr. Kotcon.

23 MR. TWEDDLE: My name is Allan Tweddle. I'd

1 like to make some comments about the trans-border issue of
2 pollutants. The Province of Ontario, through their embassy
3 in Washington D.C., has made a very strong submission
4 objecting to some of these rules on trans-border migration
5 of pollutants. The Province of Ontario has analyzed, in
6 great detail, where all the pollution is coming from in the
7 Province of Ontario.

8 I'm sorry I don't have the report, the full
9 report, with me. If you will allow me, I will get a copy
10 of it and attach it to this rule. But, I do have one map
11 here, which illustrates what the Province of Ontario has
12 discovered, including citing the state of West Virginia as
13 a source of pollution in the Province of Ontario.

14 I bring this to your attention, and ask it
15 to go in the record, because there is, also, an item known
16 as Chapter 11 in NAFTA, in which Canada would have the
17 legal right to sue - - demand compensation - - for
18 pollution that's coming from West Virginia. There is no
19 court. This would go to a tribunal. The tribunal's track
20 record, to date, has been that anyone who goes and requests
21 those funds, collects them. I don't think the state of
22 West Virginia should put itself at risk for that kind of a
23 collection.

1 So, I am suggesting that this whole subject
2 of trans-border pollution, and the emissions that are going
3 out of West Virginia to other jurisdictions, need to have a
4 very, very careful review to be sure that the state is
5 doing absolutely everything it can, technically, to be sure
6 that we are reducing emissions. We must be able to show
7 good faith effort in this regard, because if not, in a
8 tribunal, or if it got in the courts, we would have to show
9 that good faith.

10 The Canadian government has objected to the
11 lack of good faith by the Bush administration in this
12 arena. Not the Canadian government, excuse me, the
13 Province of Ontario government - - that's a different
14 jurisdiction - - has objected very strenuously.

15 So, I think it behooves us to take a very
16 careful look to be sure that we are, in fact, going the
17 extra mile in terms of curbing these trans-border
18 pollutants. Not just embracing the federal standard, but
19 being more stringent than where it is permitted I'd like
20 to submit this map. It's from the Province of Ontario
21 report. If you'll allow me, I will get you, and submit it
22 in a day or so, a full copy of this report that was
23 submitted in Washington.

1 MS. CHANDLER: We can do that. Thank you,
2 Mr. Tweddle.

3 We're taking comments, right now, on
4 45CSR40.

5 MS. KENNEDY-SIMS: My name is Vikki Jo
6 Kennedy-Sims. I hail from Kodiak Island, Alaska, but I'm
7 currently making my home, for the last three years and nine
8 months, in the state of West, by God, Virginia.

9 I just came from the other hearing. What I
10 see going on with the DEP in this state is an outrage.
11 It's not the Department of Environmental Protection. It's
12 the Department of Industrial Protection. I think it's an
13 outrage. I'm just appalled. I cannot believe it. At a
14 time when tourism is starting to just boom in this state,
15 now we're starting to lower all the standards.

16 I'm not sure who this gentleman is, and I'm
17 lucky I came in on a few of his comments, but we are,
18 indeed, a huge part of all the water, the air pollution
19 that's going on in this great land of ours. Here, in West
20 Virginia, I know when I travel, and I come back to West
21 Virginia, as long as I stay in the mountains, I'm okay.
22 But, I start getting over here, anywhere from Wood County,
23 down along the Ohio River, down to Charleston into the

1 chemical valley, I swear to God, I swear - - I hold my hand
2 up, I swear - - my eyes water, my chest becomes congested.

3 We can't lower any standards for air. It's
4 absolutely unacceptable. It's bad. When you're not born
5 and raised here, you do not know how bad it can be on
6 someone who comes to visit. I hear the tourists telling me
7 the same things. I stay in a lot of your state parks. I
8 love West Virginia. I love having somebody tell me, you
9 know, I went through Charleston; my eyes burned. Or, I
10 went through Nitro, or the chemical valley. Or, I went up
11 to Wood County, where the Polymer Alliance - - then, they
12 put that sign on the highway: Polymer Alliance Zone. What,
13 are we supposed to hold our breath from Ritchie County all
14 the way through Wood County?

15 I mean, this just cannot be done. I know
16 the pressure's coming from the federal level. I know this.
17 The word is, "No", N-o. It's real easy to tell them no.
18 We cannot lower the standards for air quality in this state
19 of West Virginia. It has a domino effect on everything.
20 Please, just think twice about lowering any air standards.
21 It's bad enough now.

22 I thank you for this time.

23 MS. CHANDLER: You're welcome.

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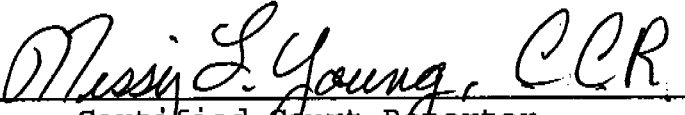
There being nothing further, this public hearing for the proposed revisions to 45CSR40 is concluded.

(WHEREUPON, the hearing was concluded at 6:58 p.m.)

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing, reported by Jo Ann Wilson, as directed by me, to the best of her skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 20th day of July 2006.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.



American Electric Power
1 Riverside Plaza
Columbus, OH 43215
AEP.com

July 10, 2006

Mr. John A. Benedict, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

RE: AEP Comments on Proposed Division of Air Quality Rules

Dear Director Benedict:

Appalachian Power Company and Ohio Power Company, dba American Electric Power (AEP), are pleased to offer comments on the following rules proposed by the Division of Air Quality (DAQ):

- 45 C.S.R. 39 – Control of Annual Nitrogen Oxides Emissions
- 45 C.S.R. 40 – Control of Ozone Season Nitrogen Oxides Emissions
- 45 C.S.R. 41 – Control of Annual Sulfur Dioxide Emissions

AEP has supported DAQ's decision to adopt the CAIR rules (45 CSR 39, 45 CSR 40, and 45 CSR 41) consistent with the federal model rule as finalized by USEPA and commends the DAQ on the timely development of these revisions. We appreciate the efforts of the DAQ to keep these rules updated and consistent with federal rulemaking developments.

If you have any questions on these comments, please contact G. J. Wooten of my staff at 614-716-1262.

Sincerely,

A handwritten signature in black ink, appearing to read "P. A. Dal Porto".

P. A. Dal Porto
Manager – Air Quality Services

cc: T. P. Mallan - Charleston
G. J. Wooten - AQS

Pamela F. Faggert
Vice President and Chief Environmental Officer
5000 Dominion Boulevard, Falls Allen, VA 22060
Phone: 804-275-3417



July 10, 2006

Mr. John A. Benedict
Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, West Virginia 25304-2943

Re: WV DEP Division of Air Quality Proposed Legislative Rules

Dear Mr. Benedict:

Dominion is submitting this letter in response to the Division of Air Quality's (DAQ) Notice of Public Hearing and Public Comment Period regarding the following air quality rule proposals under Title 45 that have been approved by the West Virginia Legislature:

- ◆ Series 39 – Control of Annual Nitrogen Oxides Emissions
- ◆ Series 40 – Control of Ozone Season Nitrogen Oxides Emissions
- ◆ Series 41 – Control of Annual Sulfur Dioxide Emissions.

These regulatory proposals essentially adopt all of the elements of the federal "model rule" established under 40 CFR Part 96 to implement the requirements of the Clean Air Interstate Rule (CAIR). Dominion generally supports DAQ's approach toward consistency with the federal program and commends the Agency on its timely development of these proposed revisions to the West Virginia State Implementation Plan to address the federal CAIR. However, we offer the following comments on two specific elements of the NO_x rules (Series 39 and Series 40).

Early Reduction Credits and the Compliance Supplement Pool (§45-39-43)

Dominion generally supports the early reduction credit provisions DEP has established in the annual NO_x CAIR proposal (§45-39-43). These early reduction incentives not only provide companies added compliance flexibility that ease the burden once the requirements take effect, but benefit the environment as well by providing real emission reductions sooner – a "win-win" situation. However, we suggest the DEP consider the following modification to the provisions as currently proposed:

Under the proposal, allowances from the compliance supplement pool (CSP) would be awarded to sources that generate early NO_x reductions during the 2007 and 2008 control periods as well as to sources that demonstrate a need based on an inability to meet the NO_x reduction requirements by 2009. The CSP distribution methodology would pro-rate all such requests providing "equal weight" to requests generated from actual early emission reductions and requests based on a "demonstrated need". While we do not take issue with provisions that would award CSP allowances to those that demonstrate a need, we believe that DEP should allocate allowances from the CSP first to units that have earned credits through early reductions and therefore incurred operational costs, and then, to the extent there are residual allowances, to units that demonstrate need.

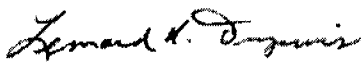
Distribution of Allowances from the New Source Set Aside (§45-39-42.3 and §45-40-42.3)

The methodology DEP proposes for sources requesting allowances from the new source set aside (NSSA) under both the annual (§45-39-42.3) and the ozone season (§45-40-42.3) NOx programs could result in some sources not having the ability to receive such allowances for emissions generated during their initial year or control period of operation. As proposed, a new source commencing operation in any given year can request to be allocated allowances "starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NOx (annual or ozone season) unit commences commercial operation". Thus, a source commencing operation in January 2010, for example, would not be eligible for allowances from the NSSA for any emissions it generates during the 2010 annual NOx control period. Likewise, a unit that commences operation in May 2010 would be ineligible for NSSA allowances for both the 2010 annual and ozone season control periods. Under the new unit set aside provisions of the West Virginia NOx SIP Call rule (§45-26-42.4), sources were able to apply in advance for allowances from the NSSA, which were then distributed on a pro-rata basis with unused allowances returned to the NSSA pool. We urge DEP to consider using a similar approach in the CAIR program that would allow new sources access to the NSSA allowances during their initial year of commercial operation.

An additional concern with the proposed NSSA allocation methodology is the limitation imposed on the number of allowances a new source can request. As proposed, a new source can request for an amount of allowances "not exceeding the CAIR (annual or ozone season) unit's total tons of NOx emissions during the control period immediately before such control period." This restriction could particularly disadvantage certain units in their initial years of commercial operation as they "ramp up" operations, as well as units that come on line late in a control period and would then be limited in their request for allowances to cover emissions for the following year (or control period). Since the methodology as proposed will pro-rate the distribution of allowances from the NSSA anyway, the limitations placed on the amount of allowances a unit can request should be eliminated.

Thank you for this opportunity to comment. If you have any questions, please call Lenny Dupuis at (804) 273-3022.

Sincerely,


for

Pamela F. Faggert

cc: Jim Mason (WV DEP)
L. Dupuis (Dominion)



PPG Industries

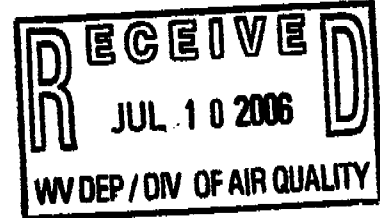
PPG Industries, Inc.
Post Office Box 181
New Martinsville, WV 26155 USA
Telephone (304) 455-2200
jthoran@ppg.com

J. Thomas Horan
Manager, Environmental Control
Natrium Plant
Chlor-Alkali

July 7, 2006

Certified Mail Return Receipt Requested

John A. Benedict, Director
WV Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304



Re: Comments for 45 CSR 40; Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides

Dear Mr. Benedict:

PPG Industries, Inc., operates the Natrium Plant at New Martinsville, West Virginia, in Marshall County, for the production of Chlor-alkali and derivatives. There are boilers at this plant which are subject to the NOx SIP Call rules (45 CSR 1), one of which is a NOx opt-in unit in the state. As such, we are submitting these comments on Rule 40 as they directly affect this opt-in unit when the new CAIR rules supercede 45 CSR 1. Specifically, we request that provisions be included in Rule 40 to provide fair treatment and transition for this unit which is already an opt-in, in addition to those included based on EPA model rules for future, new opt-ins.

We believe that this can be readily accomplished by adding some subsections which carry over the effective provisions of 45 CSR 1 for this unit only. For other opt-ins which may sign up for the very first time under Rule 40, provisions can apply as currently drafted.

Our review of the final CAIR rules, the clarifying technical amendments, and other EPA references cause us to conclude that EPA clearly favors the inclusion of opt-ins in the state CAIR

programs and did not mean to disadvantage any existing NOx opt-in unit as compared to other existing non-EGU's under Rule 1 or Rule 40. Yet, the model CAIR rules for opt-ins are written with the assumption that all are newly "opting in." This fails to provide a fair transition for a unit, such as ours, which became an opt-in unit under Rule 1, is still so today, and will remain so up until the new provisions of Rule 40 supercede Rule 1. Therefore, we believe that some additional subsections are needed to provide for the transition into Rule 40 of "existing" opt-in units such as ours, to provide parity with other existing non-EGU's under the rule.

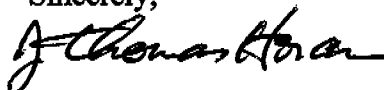
Attachment A lists the subsections, along with suggested text, which need amendments to assure a fair transition. Attachment B contains excerpts from EPA references which we believe support the inclusion of these additional subsections for "existing" opt-in units.

Because PPG elected to opt-in a boiler for NOx reductions under Rule 1 in 2003, significant NOx reductions have been achieved from this unit. This has assisted in improving regional air quality for both ozone and particulate matter. This was accomplished through the investment of approximately \$750,000 by PPG to install low-NOx burners and continuous emission monitoring on this opt-in boiler, plus the continuous cost of operation and maintenance. It would be most unfair to now, in fact, penalize PPG for having made that investment and achieved those earlier reductions by setting its baseline for the newer CAIR rules after those significant reductions. This has the effect of "bait and switch" for such units which voluntarily entered the current NOx reduction program under 45 CSR 1. This is a result which we do not believe EPA intended, as evidenced by the excerpts in Attachment B.

PPG, therefore, urges the DAQ to add to proposed Rule 40 the text reflected in Attachment A. PPG's boiler is the only unit in the state that would be affected by these changes. The CAIR model rules for "new" opt-ins would not change.

We appreciate your consideration of these comments and requests, and urge the adoption of the suggested text.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thomas Horan". The signature is written in a cursive style with a large initial "J" and "H".

J. Thomas Horan
Manager, Environmental Control

Attachments:

cc: Jim Mason
WV Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Attachment A

Revise subsection 84.2.c to insert the following text at the end of the subsection:

84.2.c. "...under subsection 84.7, except as authorized in subsection 84.3.c. and 84.4.d, such information..."

Revise subsection 84.3. for the calculation of baseline heat input to add subsection 84.3.c as follows:

84.3.c. If the unit qualified as an opt-in unit under 45 CSR1 and maintained an opt-in permit for such unit up until application for an opt-in permit under 45 CSR 40, the unit's heat input as determined in accordance with 45 CSR 1-84.3 and -88.2.a for the ozone season prior to the addition of add-on NOx emission controls pursuant to 45 CSR 1 and used by the Secretary to calculate allocations under 45 CSR 1- 88.2

Revise subsection 84.4 for the calculation of baseline NOx emission rate to add subsection 84.4.d. as follows:

84.4.d. If the unit qualified as an opt-in unit under 40 CSR 1 and maintained an opt-in permit for such unit up until application for an opt-in permit under 45 CSR 40, the unit's total NOx mass emissions as calculated and reported under 45 CSR 1 – 84.3 and – 88.2.b. for the ozone season prior to the addition of add-on NOx emission controls pursuant to 45 CSR1 and used by the Secretary to calculate allocations under 45 CSR 1 – 88.2.

Attachment B

1. May 12, 2005 Federal Register excerpts, CAIR Final Rules
2. April 28, 2006 Federal Register excerpts, CAIR Final Rules updates
3. EPA Clean Air Markets “CAIR Questions and Answers – Model Rules”

NO_x emission reductions does not begin until 2007 because this is the first year after the State SIP submittal deadlines. The CAIR CSP will provide a total of 200,000¹³⁶ CAIR annual NO_x allowances of vintage 2009 in addition to the annual CAIR NO_x budgets.

The CAIR's CSP is patterned after the NO_x SIP Call's CSP, which is part of an established and extensively litigated rulemaking. Similarities include: Limiting the total number of allowances that can be distributed; limiting the years in which CSP allowances can be earned; populating the CSP with allowances vintaged the first compliance year; and using distribution criteria of early reductions and need.

The EPA will apportion the CSP to the States based upon their share of the final, regionwide NO_x CAIR reductions. Similar to the NO_x SIP Call, States may distribute these CAIR NO_x allowances to sources based upon either: (1) A demonstration by the source to the State of NO_x emissions reductions in surplus of any existing NO_x emission control requirements; or (2) a demonstration to the State that the facility has a "need" that would affect electricity grid reliability. Sources that wish to receive CAIR CSP allowances based upon a demonstration of surplus emissions reductions will be awarded one CAIR annual NO_x allowance for every ton of NO_x emissions reductions. (Should a State receive more requests for allowances than their share of the CAIR CSP, the State would pro-rate the allowance distribution.) Determination of surplus emissions must use emissions data measured using part 75 monitoring.

The EPA elected to include the CSP in response to several comments noting the benefit of early NO_x reductions and some commenters concerns in complying with the stringent Phase I CAIR NO_x cap. While EPA analysis has shown that sources had sufficient time to install NO_x emission controls, the EPA does believe that it would be appropriate to provide some mechanism to alleviate the concerns of some sources which may have unique issues with complying with the 2009 implementation deadline. In addition to mitigating some of the uncertainty regarding the EPA projections of resources to comply with CAIR, the CAIR CSP also effectively provides incentives for early, surplus NO_x reductions.

The EPA agrees with the comments that advocate allowing sources to earn

¹³⁶ The 200,000 ton pool includes the 1,503 tons that would be DE and NJ's share. Section V of today's action describes in detail the State-by-State apportionment of the total CSP.

CAIR annual NO_x allowances only for those reductions that are in surplus of the sources' existing NO_x reduction requirements. By allowing sources in NO_x SIP Call and non-NO_x SIP Call States to demonstrate that their year-round early reductions are truly "surplus" and, therefore, deserving of CSP allowances, the EPA is responding to comments that the EPA should allow sources in non-NO_x SIP Call States to receive credit for early reductions. Some commenters advocated crediting sources in the ozone-season NO_x cap-and-trade program that emitted below the emission rate used to determine the ozone-season budget. The EPA did not accept this recommendation because a source that is allowed to bank NO_x SIP Call allowances into the CAIR ozone-season NO_x program and receive early reduction credit from CAIR's CSP would be essentially "double-counting" that emission reduction.

The EPA did not restrict the use of the NO_x allowances awarded from the CSP because several aspects of the CSP already address concerns that too many total credits would be distributed and that they would flood the markets. First, the CSP is a finite pool of NO_x allowances. Second, by requiring sources to reduce one ton of NO_x emissions for every NO_x allowance awarded from the CSP ensures that significant reductions are made prior to the CAIR implementation date.

G. Are There Individual Unit "Opt-In" Provisions?

In the SNPR, EPA described a potential approach for allowing certain units to voluntarily participate in, or "opt-in," to the CAIR. Originally, EPA proposed to have no opt-in provision but included language in the SNPR on what a potential opt-in provision may look like. This "potential" opt-in provision would have allowed non-EGU boilers and turbines that exhaust to a stack or duct and monitor and report in accordance with part 75 to opt into the CAIR. The opt-in unit would have been required to opt-in for both SO₂ and NO_x. The allocation method for opt-ins assumed a percentage SO₂ reduction from a baseline and for NO_x, allocations were equal to a baseline heat input multiplied by a specified NO_x emissions rate, the same NO_x emissions rate EGUs were subject to in the assumed EGU budgets. Allocations were updated annually and after opting in units would have had to stay in the CAIR for a minimum of 5 years. The EPA received many comments in favor of and very few comments against including an opt-in provision in the final rule. As a result, EPA is including

an opt-in provision in this final rule that is based on the approach described in the SNPR but includes several modifications and additions in response to comments as described below. In general, EPA believes there is value to including an opt-in provision but believes that sources that opt-in should be responsible for a certain level of reduction below its baseline because of the additional flexibility provided to that source by opting into a regional trading program and because of the possibility that participation in the CAIR may reduce or eliminate future potential required reductions. Therefore, the following opt-in approach has as its goals to provide more flexibility to the units opting in as well as to potentially provide more cost-effective reductions for the affected EGUs but also to ensure a certain level of reduction from the units opting into the program.

1. Applicability

Some commenters suggested that the opt-in provision not be limited to boilers and turbines but should be open to any unit. The EPA strongly believes that any unit participating in an emissions trading program be subject to accurate and reliable monitoring and reporting requirements. This is the purpose of part 75. The EPA has developed criteria for boilers and turbines to satisfy the requirements of part 75 but has not developed criteria for all non-boilers and turbines and, therefore, cannot be confident their emissions can be monitored with the high degree of accuracy and reliability required by a cap-and-trade program. Continuous Emissions Monitoring Systems or "CEMS" are typically what is required by EPA to participate in a cap-and-trade program.

In response to comments received suggesting that non-boilers and turbines be allowed to opt-in, EPA is expanding applicability of the opt-in provision to include, in addition to boilers and turbines, other fossil fuel-fired combustion devices that vent all emissions through a stack and meet monitoring, recordkeeping, and recording requirements of part 75.

2. Allowing Single Pollutant

Some commenters suggested that sources should be allowed to opt-in for only one pollutant instead of requiring the source to opt-in for both SO₂ and NO_x as EPA proposed. These commenters argued that some sources may only emit significant amounts of one of the two regulated pollutants and that it would not make sense to require reductions in both pollutants from such

source. The EPA agrees with this comment and will allow units to opt-in for one pollutant, i.e., NO_x, SO₂, or both. Another commenter suggested that EPA allow non-EGUs subject to the NO_x SIP Call to opt into the CAIR for NO_x only without requiring any reductions in SO₂. This commenter argued that these non-EGUs could simply turn on their SCR's during the non-ozone season and easily achieve significant NO_x reductions. The EPA agrees that the relatively small number of non-EGUs subject to the NO_x SIP Call that have SCR's could achieve significant NO_x reductions by operating their SCR's during the non-ozone season. As stated above, EPA is allowing sources to opt-in for one pollutant and thus non-EGUs subject to the NO_x SIP call may opt-in for NO_x only.

3. Allocation Method for Opt-Ins

In the SNPR, EPA proposed allocating allowances to opt-in units on a yearly basis. The amount of allowances allocated would be calculated by multiplying an emission rate by the lesser of a baseline heat input or the actual heat input monitored at the unit in the prior year.

The baseline heat input would be calculated by using the most recent 3 years of quality-assured part 75 monitoring data. When less than 3 years of quality-assured part 75 monitoring data is available, the heat input would be based on quality-assured part 75 monitoring data from the year before the unit opted in.

For SO₂, EPA proposed that the emission rate used to calculate allocations would be the lesser of, the most stringent State or Federal SO₂ emission rate that applied in the preceding year or the emission rate representing 50 percent of the unit's baseline SO₂ emission rate (in lbs/mmBtu) for the years 2010 through 2014 and 35 percent of the unit's baseline SO₂ emission rate (in lbs/mmBtu) for 2015 and beyond. For NO_x, EPA proposed that the emission rate would be the lower of the unit's baseline emission rate, the most stringent State or Federal NO_x emission limitation that applies to the opt-in unit at any time during the calendar year prior to opting into the CAIR Program, or 0.15 lb/mmBtu for the years 2010 through 2014 and 0.11 lbs/mmBtu for the years 2015 and beyond.

In today's final rule, EPA is making a number of changes to its proposed methodology for calculating allocations for opt-in units.

With regards to baseline heat input, EPA is requiring that sources may only use part 75 monitored data for years in

which they have maintained at least a 90 percent monitor availability. The EPA is making this change because part 75 contains missing data provisions that require substitution of data when monitors are unavailable. When units have low monitor availability, units are required to report more conservative (e.g., higher) heat input values. This is to provide an incentive to maintain high monitor availability (since under a cap and trade program sources would be required to turn in more allowances if they reported higher emissions). When setting baselines, sources have the opposite incentive, reporting a higher heat input would result in a higher baseline and thus a greater allocation.

With regards to the SO₂ emission rate used to calculate allocations, EPA is requiring that the emission rate used to calculate allocations would be the lesser of, the most stringent State or Federal SO₂ emission rate that applies to the unit in the year that the unit is being allocated for, or the emission rate representing 70 percent of the unit's baseline SO₂ emission rate (in lbs/mmBtu). The EPA is changing the percentage emission reduction upon which allocations are based because some commenters suggested that instead of using percentage emission reduction requirements that are the same as the requirements for EGUs as a basis for allocating to opt-ins, EPA should require emissions reductions based on similar marginal cost of control. The EPA agrees with the basic concept that emissions reductions for opt-ins should be based on similar marginal costs. One commenter submitted results from a study of industrial boiler NO_x and SO₂ control costs that indicated the use of similar marginal cost of control would result in approximately a 30 percent reduction in NO_x and SO₂ by 2010. While the commenter provided limited data to allow EPA to evaluate the commenter's estimates, EPA is using this percentage reduction requirement for the opt-in provision. The same commenter stated that it may be possible to achieve more than a 30 percent reduction in SO₂ and NO_x by 2015 by employing future unspecified technology advances. Because these future technology advances are not specified nor demonstrated, EPA is not requiring more than a 30 percent reduction in SO₂ and NO_x in 2015 and beyond for opt-ins. The EPA is changing the requirement to use the lowest required emission rate for the year preceding the year in which allowances are being allocated to the lowest emission rate for the year in which allowances are being allocated. The EPA

is making this change because EPA believes that such data should be available and that this more accurately reflects the intent of the rule to ensure that the source is not being allocated a greater number of allowances than the emissions a source would be allowed to emit under the regulations it is subject to in the year the allocations are being made. The EPA is finalizing parallel provisions with respect to NO_x.

4. Alternative Opt-in Approach

Some commenters suggested that EPA include an alternative approach to opting into the CAIR. This alternative would allow units to opt-in as early as 2009 for NO_x and 2010 for SO₂ and receive allocations at their current emission levels in return for a commitment to make deeper reductions by 2015 than would be required under the general opt-in provision described above. Therefore, for the years 2010 through 2014, the unit would be allocated allowances based on the same heat input used under the general opt-in provision (e.g., the lesser of the baseline heat input or the heat input for the year preceding the year in which allocations are being made) multiplied by an emission rate. This emission rate would be the lower of the emission rate for the year or years before the unit opted in or the most stringent State or Federal emission rate required in the year that the unit opts in. For SO₂ for the years 2015 and beyond, the unit would be allocated allowances based on the same heat input multiplied by an emission rate. This emission rate would be the lower of a 90 percent reduction from the baseline emission rate or the most stringent State or Federal emission rate required in the baseline year. For NO_x, the same methodology would be used, except that the emission rate used for the years 2015 and beyond would be the lower of 0.15 lbs/mmBtu or the most stringent State or Federal emission rate required in the baseline year. The EPA believes the environmental benefit of achieving deeper emissions reductions in the future (2015) from sources that may otherwise not make such deep emissions reductions is worth including in this final rule.

5. Opting Out

In the SNPR, EPA proposed that opt-in units be required to remain in the program a minimum of 5 years after which time they could voluntarily withdraw from the CAIR. Some commenters expressed concern over this proposed approach, arguing that because EGUs affected by the CAIR are not allowed to voluntarily withdraw from the CAIR that opt-in sources should not be allowed to voluntarily

withdraw either. The EPA recognizes that opt-in sources such as industrial boilers and turbines tend to be more sensitive to changing market forces than EGUs. As a result, EPA believes it is appropriate to allow opt-in sources who voluntarily participate in an emissions reductions program to be able to end their participation or ("opt-out") after a specified period of time. As proposed, EPA believes a period of 5 years is appropriate and is finalizing a rule to allow opt-in sources to opt-out after participating in the CAIR for 5 years. This option to opt-out after 5 years does not apply to sources that opt-in under the alternative approach. Sources that opt-in under the alternative approach may not opt-out at any time.

6. Regulatory Relief for Opt-In Units

The CAIR does not offer relief from other regulatory requirements, existing or future, for units that opt-in to the CAIR cap and trade program. Any revision of requirements for other, non-CAIR programs would be done under rulemakings specific to those programs. As discussed above, EPA is including two different approaches for opt-in units to follow, a general and an alternative approach. The EPA is including both approaches in this final rule in response to comments supportive of including an alternative means and to provide greater flexibility for sources to participate in the CAIR trading program. Opt-in sources may select which approach is more appropriate for their particular situation. An opt-in source may not switch from one approach to the other once in the program. States have the flexibility to choose to include both of these approaches, one of these approaches, or none of them in their SIPs. EPA is not requiring States to include an individual unit opt-in provision because the participation of individual opt-in units is not required to meet the goals of the CAIR. However, States cannot choose to have an individual unit opt-in approach different than what EPA has finalized in this rule and still participate in the inter-State trading program administered by EPA.

H. What Are the Source-Level Emissions Monitoring and Reporting Requirements?

In the NPR, the EPA proposed that sources subject to the CAIR monitor and report NO_x and SO₂ mass emissions in accordance with 40 CFR part 75.

The model trading rules incorporate part 75 monitoring and are being finalized as proposed. The majority of CAIR sources are measuring and reporting SO₂ mass emissions year

round under the Acid Rain Program, which requires part 75 monitoring. Most CAIR sources are also reporting NO_x mass emissions year round under the NO_x SIP Call. The CAIR-affected Acid Rain sources that are located in States that are not affected by the NO_x SIP Call currently measure and report NO_x emission rates year round, but do not currently report NO_x mass emissions. These sources will need to modify only their reporting practices in order to comply with the proposed CAIR monitoring and reporting requirements.

Because so many sources are already using part 75 monitoring, there were very few comments on the source-level monitoring requirements in this rulemaking. The comments the EPA received related to sources not currently monitoring under part 75. Commenters suggested that alternative forms of monitoring (e.g., part 60 monitoring) would be appropriate for these sources. The EPA disagrees. Consistent, complete and accurate measurement of emissions ensures that each allowance actually represents one ton of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions from another source. Similarly, such measurement of emissions ensures that each single allowance (or group of SO₂ allowances, depending upon the SO₂ allowance vintage) represents one ton of emissions, regardless of the source for which it is measured and reported. This establishes the integrity of each allowance, which instills confidence in the underlying market mechanisms that are central to providing sources with flexibility in achieving compliance. Part 75 has flexibility relating to the type of fuel and emission levels as well as procedures for petitioning for alternatives. The EPA believes this provides the requested flexibility.

Should a State(s) elect to use the example allocation approach, the EPA would modify the part 75 monitoring and reporting requirements to collect information used in determining the allowance allocations for Combined Heat and Power (CHP) units. More specifically, provisions for the monitoring and reporting of the BTU content of the steam output would be added to the existing requirements. The information on electricity output currently reported under part 75 would not need to be revised to allow States to implement the example allowance allocation approach.

In the SNPR, the EPA proposed continuous measurement of SO₂ and NO_x emissions by all existing affected sources by January 1, 2008 using part 75 certified monitoring methodologies.

New sources have separate deadlines based upon the date of commencement of operation, consistent with the Acid Rain Program. These deadlines are finalized as proposed.

I. What Is Different Between CAIR's Annual and Seasonal NO_x Model Cap and Trade Rules?

Today's action finalizes not only the proposed CAIR annual NO_x program and annual SO₂ program, but also a CAIR ozone-season NO_x program. Because the CAIR ozone-season NO_x program is the only ozone-season NO_x cap and trade program that the EPA will administer, NO_x SIP Call States wishing to meet their NO_x SIP Call obligations through an EPA-administered regional NO_x program will also use the CAIR ozone-season rule. The EPA believes that States and affected sources will benefit from having a single, consistent regional NO_x cap and trade program. This section of today's action highlights any key differences between the CAIR ozone-season NO_x model rule and the NO_x SIP Call model rule, as well as the CAIR annual and ozone-season NO_x model rules.

Differences Between the CAIR Ozone-Season NO_x Model Rule and the NO_x SIP Call Model Rule

While the CAIR ozone-season NO_x model rule closely mirrors the NO_x SIP Call rule (as does the other CAIR rules), the EPA has incorporated into the CAIR model rules its experience with implementing trading programs (including seasonal NO_x programs). These modifications include the following.

A. Unrestricted banking: The CAIR ozone-season NO_x model rule will not include any restrictions on the banking of NO_x SIP Call allowances (vintages 2008 and earlier) or CAIR ozone-season NO_x allowances. The NO_x SIP Call rules include "progressive flow control" provisions that reduce the value of banked allowances in years where the bank is above a certain percentage of the cap. (See section VIII.E.1 of today's rule for a detailed discussion).

B. Facility level compliance: The CAIR ozone-season NO_x model rule will allow sources to comply with the allowance holding requirements at the facility level. The NO_x SIP Call rules required unit-by-unit level compliance with certain types of allowance accounts providing some flexibility for sources with multiple affected units. (See the June 2004 SNPR, section IV for a detailed discussion).

The EPA believes that these changes improve the programs and that both CAIR and NO_x SIP Call affected sources



Federal Register

Friday,
April 28, 2006

Part IV

Environmental Protection Agency

40 CFR Parts 51, 52 et al.
Air Pollution Control—Transport of
Emissions of Nitrogen Oxides (NO_x) and
Sulfur Dioxide (SO₂); Final Rule

E. Sources Subject to the CAIR FIP Cap-and-Trade Programs

Under the proposed CAIR FIP cap-and-trade programs, only EGUs were subject to the proposed rules. The proposed applicability provisions are, by design, identical to the provisions for applicability the CAIR SIP model trading programs and incorporated the FIP NPR revisions to the applicability provisions of the final CAIR SIP model trading rules. The revisions to CAIR SIP model rule applicability include exemptions for (1) municipal solid waste incinerators and (2) existing units that have not served a generator since before November 15, 1990.

Incorporating these exemptions into the applicability provisions in both the CAIR SIP and CAIR FIP trading programs provides clarity and aligns the provisions more closely with the provisions in the title IV Acid Rain Program. A detailed discussion of the rationales for including these exemptions may be found in section VII of the CAIR FIP NPR. (See section VIII.C. in the CAIR NFR preamble for applicability discussion at 70 FR 25276-25278 and section VII in today's preamble for additional discussion of changes to the CAIR EGU definition).

Public comment on the proposed applicability provisions of the CAIR FIP trading programs primarily expressed interest in additional exemptions for waste coal-fired units, biomass-fired units, and low emissions units. These are discussed in detail below.

Applicability in the Final CAIR FIP. Today's action finalizes that, in any jurisdiction for which a final CAIR FIP is promulgated, units will be subject to the CAIR FIP trading programs (*i.e.*, to the CAIR FIP SO₂, NO_x annual, or NO_x ozone season programs, as appropriate) if they are stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Certain cogeneration units or solid waste incinerators are exempt from the CAIR FIP and are described below.

Cogeneration Unit Exemption. As in the CAIR NFR, certain cogeneration units are exempt from the CAIR FIP trading programs. Cogeneration units include units having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy and meeting certain operating and efficiency standards. The program has different

applicability provisions for non-cogeneration units and cogeneration units. Any cogeneration unit, serving (since the later of November 15, 1990 or the start-up of the unit), a generator with a nameplate capacity of greater than 25 MW and supplying more than 1/2 potential electric output capacity and more than 219,000 MW-hrs annually to any utility power distribution system for sale, will be subject to the requirements of the CAIR FIP trading rules.

Otherwise, the unit will qualify for an exemption under the FIP rules. This cogeneration unit exemption is identical to the exemption in the CAIR NFR, as revised by today's action. Section VIII.C.3. of the CAIR NFR preamble describes the cogeneration unit exemption and discusses the specific elements of how units would qualify and remain qualified for the exemption (70 FR 25276-25278).

Solid Waste Incinerator Exemption. Today's action includes an exemption for certain solid waste incinerators in both the CAIR and CAIR FIP cap-and-trade programs. Specifically, a solid waste incineration unit commencing operation before January 1, 1985; for which the average annual fuel consumption of non-fossil fuels during 1985-1987 exceeded 80 percent and during any 3 consecutive calendar years after 1990 the average annual fuel consumption of non-fossil fuels exceeds 80 percent, is not subject to either the CAIR or CAIR FIP cap-and-trade programs. (Section VII of the preamble for today's rule provides additional discussion.)

Individual Unit Opt-ins. Today's action includes provisions for individual units to opt-in to the CAIR FIP trading programs. These units, when they opt-in, become "affected" by the CAIR FIP trading program and, as a result, must comply with allowance holding requirements, monitor and report emissions, and receive CAIR allowances.

The opt-in provisions of the CAIR FIP trading programs would become applicable to sources in a given State only if the State chooses to submit an abbreviated SIP revision that would provide for the inclusion of opt-ins in the CAIR FIP trading programs. The EPA considered requiring all States to have opt-in provisions in the proposed CAIR FIP trading programs. By not requiring opt-in provisions in all States covered by the proposed FIP trading programs, the Agency seeks to preserve the States' flexibility to decide whether to allow opt-in units. In addition, the EPA believes that including opt-in provisions only in States that have elected to include them in an

abbreviated SIP revision avoids the possibility of "stranding" some opt-in units. More specifically, this requirement avoids a situation where a unit might make investments based upon assumption that it will opt-in to a CAIR FIP trading program only to be stranded if the CAIR FIP program was later supplanted by EPA approving a CAIR SIP submitted by the State that did not include opt-in provisions.

If States choose to submit abbreviated SIP revisions to provide for the inclusion of opt-ins in the CAIR FIP trading programs, the SIP revisions must include the opt-in provisions that are provided in the CAIR final rule. See section VIII.G. of the CAIR NFR preamble for discussion of opt-in provisions (70 FR 25286-25288).

Waste Coal-Fired Units Under CAIR FIP. The EPA received comments requesting an exemption for waste coal-fired units from both the CAIR and CAIR FIP SO₂ annual programs. Some commenters claimed that their costs to comply with the programs are excessively high. The economics of a waste coal-fired unit are different depending upon whether the unit has a fixed price power purchase agreement in place or whether it is selling electricity on the wholesale market.

Units that had power purchase agreements with fixed prices in place on November 15, 1990, are exempt from title IV and do not receive title IV allowances. The commenters state that, while their agreements are in effect, these units are not able to pass through cost increases, such as the cost of compliance with CAIR, except where specific escalations are provided (*e.g.*, compensation for increases in fuel costs or inflation).

While under the agreements and exempt from title IV, the units can opt into the title IV program and receive allowances as opt-in units. Commenters claim that the title IV opt-in provisions could allocate allowances to them at levels below their projected emissions because the years on which title IV bases the allocations are early in the units operation and might under-represent the unit's typical heat input. The commenters add that it is not cost effective for the units to reduce SO₂ emissions by installing advanced emission controls because the units already achieve significant reductions and have fixed price contracts that do not allow them to pass through control costs.

The second scenario is the period beginning when the units' power purchase agreements expire and the units lose their title IV exemption. As title IV affected units, they lose their



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CAIR Questions and Answers - Model Rules

Q: Are there specific requirements for the CAIR and CAMR permit applications? For example, our State currently has a generic permit application that involves check boxes for the type of permit the facility is requesting. Would it be sufficient to include a CAIR/CAMR check box or do we need a separate application process?

A: Yes, each of the model trading rules addresses permit applications. In part 96, subpart CC §§ 96.120-124 addresses the CAIR annual NO_x trading program permit requirements; subpart CCC §§ 96.220-224 addresses the CAIR SO₂ trading program permit requirements; subpart CCCC §§ 96.320-324 addresses the CAIR NO_x ozone season trading program permit requirements. For CAMR, permit requirements are in Part 60, §§ 60.4120 - 4124. For the initial CAIR and CAMR permits, a separate application process will be required. However, permit renewal should be integrated into the State's existing permit renewal process. EPA will work with individual States to determine how to integrate the CAIR and CAMR permit renewal process with the Title V permit renewal process.

Q: How do the Annual NO_x and the Ozone Season NO_x programs interact? And will EPA administer both?

A: EPA would administer both programs. Upon operation of the CAIR ozone-season NO_x program, EPA would stop administering the Nox SIP Call trading program. The CAIR annual and ozone-season NO_x programs would be completely separate – using separate allowances and conducting separate compliance. Note that the NO_x SIP Call allowances may be used for compliance in the CAIR ozone-season NO_x program and not in the annual program. Also the CAIR CSP is comprised of CAIR annual NO_x allowances. Because some States are not affected for both, those States may participate in either the annual or ozone-season NO_x programs as appropriate.

✓ **Q: There is a voluntary opt-in provision in the model program. Could a state require a class of sources to opt in as long as there emissions were well monitored?**

A: States may allow sources to voluntarily opt-in to the regional trading programs using the provisions in the model trading rules. However, a State may not require a source or class of sources to opt-in.

Q: Why was the definition of "unit" changed from the NO_x SIP Call definition? EPA added to the unit definition: " other stationary, fossil fuel-fired combustion device." How does this affect, for example, large furnaces (not boilers) at Weirton Steel?

A: Only fossil-fuel fired boilers and turbines are required to be covered by the CAIR trading programs. Fossil-fuel fired combustion devices (including, but not limited to,

boilers and turbines) may opt-in if the State adopts the opt-in provisions in the model trading rules. The term "combustion device" was added to the definition of "unit" to reflect the broader range of types of sources that may become opt-in units. Units that are not boilers or turbines are not subject to the trading programs unless they opt-in voluntarily.

Q: Can non-EGUs participate in the annual CAIR trading program? If so, how?

A: Non-EGUs may participate in the annual CAIR trading program through the opt-in provisions in §§ 96.180-96.188 and §§ 96.280-96.288, provided their State chooses to allow sources to opt-in. If a State chooses to allow opt-ins, the model rule opt-in provisions must be used.

Q: Does EPA have any available errata on the final CAIR rules? Are there any necessary tweaks/corrections/additions/omissions for the final CAIR language?

A: The final CAIR preamble and regulatory language are published in the May 12, 2005, Federal Register and are available on the CAIR website (www.epa.gov/cair). States can obtain a working copy of the CAIR model trading rules from their EPA Regional CAIR contacts. The working files contain some additional technical corrections. Further, EPA has proposed revisions to the CAIR model trading rule language to clarify the rules and facilitate their interaction with the CAIR FIP trading rules. The proposed language is also on the CAIR web site in the rulemaking package that includes the proposed CAIR FIP.

Q: Can EPA explain how the application process for new unit set-aside allowances works and will some owner/operators have to purchase allowances for first year operation?

A: If a State adopts the model rule new unit allocation provisions (for the NOx ozone season or annual programs), then the owners/operators will have to obtain allowances for the first year of operation. After the year in which the unit starts up, the unit may apply for allowances from the new unit reserve, requesting an amount equal to its tons of emissions in the previous year. If the State's reserve is not oversubscribed, the unit will receive its requested allocation. If the reserve is oversubscribed, the State will need to prorate all of the allocation requests. See §§96.142(c) and 96.342(c). After the unit accumulates 5 years of quality assured data, the unit will receive an allocation based on its baseline heat input. See §§96.142(a) and (b) and §96.342(a) and (b). It should be noted that States can design a different allocation methodology; the one described here is the sample methodology in the CAIR model trading rules.

Q: The mercury model rule uses a conversion factor equal to 3413 Btu/kWh. The CAIR model rule uses a conversion factor equal to 3414 Btu/kWh to convert electrical energy output to heat input. What is the correct conversion factor?

A: The correct value is 3,413 Btu/kWh. This is consistent with the value used in the Acid Rain Program. The CAIR model rules have a typographical error in §§96.142 and 96.342, but have the correct value in the definition of "potential electrical output capacity" in §§ 96.102, 96.202, and 96.302. The rulemaking package that includes the proposed CAIR FIP proposes to correct the error.

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Q: EPA allows flexibility in regards to allowance allocation methodology. Does this flexibility apply to how states calculate baseline heat inputs? For example, for existing units (commencing operation before January 1, 2001) the model rule uses a factor equal to 7900 Btu/kWh to convert gross electrical output to heat input. Also, for co-generation units which are boilers, the model rule divides the total heat energy in the steam by 0.8. Can states use different conversion factors?

A: States may develop any approach to allocating the CAIR NOx annual or ozone season allowances so long as it meets the basic requirements in §51.123(o)(2) and (aa)(2). For example, a State may develop a different methodology for calculating baseline heat input. It should be noted that the example approach referred to in the question is the "modified output" approach which in the model rule was designed for new rather than existing units.

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Q: Is there a two-year life span for the Compliance Supplement Pool allowances in CAIR as there was in the NOx SIP Call? If not, why not?

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A: There are no restrictions on the use of the CAIR annual NOx allowances issued under the compliance supplement pool. See 70 FR 25285-6 for a discussion of the CSP, its distribution, and the reasons for not restricting the use of CSP allowances.

Q: Why was flow control eliminated from the final CAIR? It was used in the NOx SIP Call and did not seem overly burdensome.

A: See 70 FR 25282-3 for a discussion of progressive flow control with regard to CAIR.

Q: Will EPA administer a state's trading program if it includes opt-in sources, such as municipal waste combustors (MWCs) pursuant to the opt-in approach finalized in CAIR?

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A: If States choose to they may allow sources to opt in to the CAIR trading programs in accordance with the CAIR model rule language for opt-ins. (See discussion beginning on 70 FR 25286 and 51.123(o)(2)(i), 51.123(aa)(2)(ii) and 51.124(o)(2).)

Q: Could a state or group of states require flow control, and if so, would EPA administer the program or would the states have to administer it?

A: If a state or group of states require flow control, then the trading program would not be administered by EPA. (This would be an emissions trading program that "differs substantively" from the model rule. See 51.123 paragraphs (o)(4) and (aa)(4) and 51.124(o)(4).)



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Last updated on Thursday, March 2nd, 2006
URL: <http://www.epa.gov/airmarkets/cair/modelrules.html>



WEST VIRGINIA CHAMBER OF COMMERCE
The Voice of Business in West Virginia

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments to the June 9, 2006 Revisions to Existing Legislative Rules: 8, 16, 18, 25, 34, 39, 40 and 41.

Dear Mr. Benedict:

These comments are filed on behalf of the West Virginia Chamber of Commerce ("the Chamber"). The Chamber is the largest, most influential general business organization, representing all business sectors in every region of the state. Members range from small business enterprises to mid-size manufacturers to tourism destinations to energy companies to Fortune 500 corporations. However, small businesses are the core of our membership -- making up 95 percent of the West Virginia Chamber's companies and firms.

The proposed regulatory amendments to Rules 8, 8, 16, 18, 25, 34, 39, 40 and 41 are of interest to our membership and we offer the following comments:

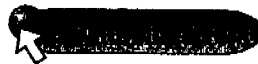
Rule 6 - Control of Air Pollution from Combustion of Refuse The Chamber supports both the general cleanup of the language of this rule and the substantive changes that concern temporary air quality generators and emergencies and natural disasters.

Rule 8 - Ambient Air Quality Standards The Chamber applauds the decision to place all ambient air quality standards within one rule. There appears to be a minor error concerning the carbon monoxide standards in that the reference should be to milligrams rather than micrograms, which should be corrected in the final rule.

Rule 16 - Standards of Performance for New Stationary Sources The Chamber supports the modification of this rule to appropriately reflect the federal program.

Rule 18 - Control Air Pollution from Combustion of Solid Waste As stated previously, the Chamber supports the consolidation of Rule 24 and Rule 18.

Rule 25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal The Chamber supports the modification of this rule to appropriately reflect the federal program.



T. Boggs to J. Benedict
July 10, 2006
Page 2 of 2

Rule 34 – Emission Standards for Hazardous Air Pollutants The Chamber supports the consolidation of Rule 15 with Rule 34 and the modification of this rule to appropriately reflect the federal program.

Rules 39, 40 and 41 – Interstate Transport Rules The Chamber supports the modification of this rule to appropriately reflect the federal program. As noted in comments filed to this rule package by others, the Chamber agrees that it would be appropriate for the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the opportunity to provide these comments and the efforts of the agency to maintain an up-to-date regulatory program.

Sincerely



Thomas M. Boggs
Vice President
West Virginia Chamber of Commerce

cc: Stephen G. Roberts, President
Larry Emerson, Chair, Environmental Committee

July 10, 2006

John A. Benedict, Director
Division of Air Quality
Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Re: Comments on Proposed Amendments to Rules 6,
8, 16, 18, 25, 34, 39, 40 and 41

Dear Director Benedict:

These comments are submitted by the West Virginia Manufacturers Association (WVMA) on behalf of its members. The WVMA represents the core of the manufacturing sources and their associates in this state, virtually all of whom are affected by the DAQ's air quality control rules. We appreciate the opportunity to present the following comments on the pending rule changes:

Rule 6

The WVMA endorses the exemption from permitting for temporary air curtain incinerators. These units are highly efficient, clean-burning and mobile. They provide an important tool for small, transient disposal operations, including the possibility of using them to address emergency needs such as flood debris destruction. We also endorse the proposed provisions for the burning of poultry and other animal wastes in the case of an emergency such as for bird flu or other pathogenic animal disease as we recognize that burning or incineration is a very effective means of destroying pathogens. We also agree that it makes sense to move the requirements for other air curtain incinerators to Rule 18 along with other standards for solid waste combustion units.

However, as to section 4.2, we believe that it is not appropriate to take away the exemption on hours of operation for industrial incinerators. These units and flares are operating in almost all cases as air pollution control devices, not as commercial units. As such they are also almost always required by permit to be operated at all times the associated process is in operation for air quality control. We do not believe that the DAQ intends for such sources to shut down their processes as a result of this proposed rule change. Therefore, we request that the exemption for industrial incinerators be maintained. On a related note, we also believe that it is not necessary to require the posting of operating instructions at the location of industrial incinerators under subsection 4.9 as these units are subject to operating standards that are contained in the rules DAQ is adopting by reference and to detailed permit conditions. Such a requirement does not exist for other types of industrial processes and controls.

Rule 8

The WMVA endorses the consolidation of ambient air quality standards into Rule 8. Putting them all in one, easily-identified rule is most helpful to the regulated community and the public.

However, we believe that the introductory text to each standard is misstated. Ambient standards are not emissions limits. They are free-standing air quality levels that must be achieved and maintained. Therefore, in sections 4.1, 4.2, 4.3, 4.4, 4.7, and 4.8,

the phrase: "No person shall allow emissions of..." must be deleted. Sources are obligated not to cause or contribute to a violation of an ambient standard. That does not equate the standard to an emission limit, nor have the standards ever been so applied. The introductory text in each of those subsections should simply say that the following ambient standards are established for the listed pollutants. No reference to emissions should be included. The text should be conformed to that of 40 CFR Part 50.

Also, there are errors in subsections 4.3.a. and 4.3.b. for carbon monoxide standards. They should both be stated in milligrams not micrograms. See 40 CFR §50.8.

Rule 16

The WVMA supports the annual update of these standards for new sources; however, we continue to believe the State rules should be keyed to the federal rules as of July 1 each year in order to synchronize them with the annual republication of the Code of Federal Regulations Title 40.

Rule 18

The WVMA endorses the consolidation of Rule 24 within this Rule and the addition of the provisions for non-temporary air curtain incinerators. We suggest that the wording in section 10 on permits for units as described in subsection 10.1 and 10.3 is awkward at best. These subsections should be amended to clarify their intent since they now refer to past dates in the present tense. The same problem exists in section 12 on compliance dates which are being newly added to the rule but which are already long

past. Also, for all of the subsections in section 1.1, we suggest that the text be modified to add the words “subject to standards” before the words “promulgated by” for clarity.

Rule 25

The WVMA endorses the updating of the standards, but we believe the incorporation by reference date should be July 1, 2006, consistent with Title 40 CFR republication cycle.

Rule 34

The WVMA endorses the consolidation of Rule 15 with Rule 34. We believe that the updated incorporation by reference should be as of July 1, 2006 to correspond to the Title 40 CFR republication date for the ease of reference by regulated sources and the public.

Rules 39, 40 and 41

The WVMA endorses the updating of the CAIR – related series of rules to conform to EPA counterpart rules. As to Rule 40, we urge the DAQ to add text as necessary to allow any existing NO_x ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NO_x opt-in units in equity with other existing non-EGU NO_x sources.

We appreciate the efforts of the DAQ to keep all of these rules updated and the move to consolidate clearly-related rules as appropriate. This benefits both the regulated

sources and other users of these rules. Thank you for your consideration of these comments.

Sincerely,

John K. Pitner
WVMA Air Team Leader
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25304
(304) 342-2123

Cc: Karen S. Price, President, WVMA
WVMA Air Team

45CSR40

CONTROL OF OZONE SEASON NITROGEN OXIDE EMISSIONS

RESPONSE TO COMMENTS

On June 9, 2006, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 10, 2006 to accept oral comments on proposed revisions to legislative rule 45CSR40. Written comments were also accepted through 6:00 PM on Monday, July 10, 2006. Five commenters submitted written comments regarding proposed revisions to rule 45CSR40, and three commenters provided verbal comments. DAQ addresses the written comments below. The verbal comments received did not specifically address any revision in the proposed rule.

I. COMMENTER: American Electric Power

COMMENT A. The commenter states, *"AEP has supported DAQ's decision to adopt the CAIR rules (45 CSR 39, 45 CSR 40, and 45 CSR 41) consistent with the federal model rule as finalized by USEPA and commends the DAQ on the timely development of these revisions. We appreciate the efforts of the DAQ to keep these rules updated and consistent with federal rulemaking developments."*

RESPONSE A. No response required.

II. COMMENTER: Dominion

COMMENT A. The commenter states, *"Dominion generally supports DAQ's approach toward consistency with the federal program and commends the Agency on its timely development of these proposed revisions to the West Virginia State Implementation Plan to address the federal CAIR."*

RESPONSE A. No response required.

COMMENT B. The commenter states, *"The methodology DEP proposes for sources requesting allowances from the new source set aside (NSSA) under both the annual (§45-39-42.3) and the ozone season (§45-40-42.3) NOx programs could result in some sources not having the ability to receive such allowances for emissions generated during their initial year or control period of operation. As proposed, a new source commencing operation in any given year can request to be allocated allowances "starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NOx (annual or ozone season) unit commences*

commercial operation". Thus, a source commencing operation in January 2010, for example, would not be eligible for allowances from the NSSA for any emissions it generates during the 2010 annual NOx control period. Likewise, a unit that commences operation in May 2010 would be ineligible for NSSA allowances for both the 2010 annual and ozone season control periods. Under the new unit set aside provisions of the West Virginia NOx SIP Call rule (§45-26-42.4), sources were able to apply in advance for allowances from the NSSA, which were then distributed on a pro-rata basis with unused allowances returned to the NSSA pool. We urge DEP to consider using a similar approach in the CAIR program that would allow new sources access to the NSSA allowances during their initial year of commercial operation."

RESPONSE B. DAQ has reviewed the comment and determined through discussion with U.S. EPA that certain elements of a first year set-aside allocation would result in CAIR SIP approvability issues. Therefore, DAQ will follow the CAIR model rule, which does not provide for allocations in the first year of operation.

COMMENT C. The commenter states, *"An additional concern with the proposed NSSA allocation methodology is the limitation imposed on the number of allowances a new source can request. As proposed, a new source can request for an amount of allowances "not exceeding the CAIR (annual or ozone season) unit's total tons of NOx emissions during the control period immediately before such control period." This restriction could particularly disadvantage certain units in their initial years of commercial operation as they "ramp up" operations, as well as units that come on line late in a control period and would then be limited in their request for allowances to cover emissions for the following year (or control period). Since the methodology as proposed will pro-rate the distribution of allowances from the NSSA anyway, the limitations placed on the amount of allowances a unit can request should be eliminated."*

RESPONSE C. DAQ notes that the new source set-aside methodology in the proposed rule requires a prorate only when requested allowances exceed those available in the set-aside. Additionally, a simple prorate does not necessarily provide a mechanism to keep such requests equitable and fair. The commenter does not provide a method by which new sources will be accountable for return of excess allowances allocated in an unlimited request scenario. The federal administrative protocols are designed for a specific allocation of set-aside allowances using a "look back" mechanism. Thus, the allocations that a source receives under a set-aside are based on past actual emissions rather than speculative potential emissions. The CAIR methodology uses the tons of emissions from the previous control period to determine permissible requests from the set-aside. This ensures that no excess allowances are awarded to sources. As a new source ramps up their operation, so does the ability to request additional allowances, albeit on a one-year delay. DAQ will not revise the rule as requested by the commenter.

III. COMMENTER: PPG Industries

COMMENT A. The commenter states, *"PPG Industries, Inc., operates the Natrium Plant at New Martinsville, West Virginia, in Marshall County, for the production of Chlor-alkali and derivatives. There are boilers at this plant which are subject to the NOx SIP Call rules (45 CSR 1),*

one of which is a NOx opt-in unit in the state. As such, we are submitting these comments on Rule 40 as they directly affect this opt-in unit when the new CAIR rules supercede 45 CSR 1. Specifically, we request that provisions be included in Rule 40 to provide fair treatment and transition for this unit which is already an opt-in, in addition to those included based on EPA model rules for future, new opt-ins.

We believe that this can be readily accomplished by adding some subsections which carry over the effective provisions of 45 CSR 1 for this unit only. For other opt-ins which may sign up for the very first time under Rule 40, provisions can apply as currently drafted.

Our review of the final CAIR rules, the clarifying technical amendments, and other EPA references cause us to conclude that EPA clearly favors the inclusion of opt-ins in the state CAIR programs and did not mean to disadvantage any existing NOx opt-in unit as compared to other existing non-EGU's under Rule 1 or Rule 40. Yet, the model CAIR rules for opt-ins are written with the assumption that all are newly "opting in." This fails to provide a fair transition for a unit, such as ours, which became an opt-in unit under Rule 1, is still so today, and will remain so up until the new provisions of Rule 40 supercede Rule 1. Therefore, we believe that some additional subsections are needed to provide for the transition into Rule 40 of "existing" opt-in units such as ours, to provide parity with other existing non-EGU's under the rule.

Attachment A lists the subsections, along with suggested text, which need amendments to assure a fair transition. Attachment B contains excerpts from EPA references which we believe support the inclusion of these additional subsections for "existing" opt-in units.

Because PPG elected to opt-in a boiler for NOx reductions under Rule 1 in 2003, significant NOx reductions have been achieved from this unit. This has assisted in improving regional air quality for both ozone and particulate matter. This was accomplished through the investment of approximately \$750,000 by PPG to install low-NOx burners and continuous emission monitoring on this opt-in boiler, plus the continuous cost of operation and maintenance. It would be most unfair to now, in fact, penalize PPG for having made that investment and achieved those earlier reductions by setting its baseline for the newer CAIR rules after those significant reductions. This has the effect of "bait and switch" for such units which voluntarily entered the current NOx reduction program under 45 CSR 1. This is a result which we do not believe EPA intended, as evidenced by the excerpts in Attachment B.

PPG, therefore, urges the DAQ to add to proposed Rule 40 the text reflected in Attachment A. PPG's boiler is the only unit in the state that would be affected by these changes. The CAIR model rules for "new" opt-ins would not change.

Attachment A

Revise subsection 84.2.c to insert the following text at the end of the subsection:
84.2.c. "...under subsection 84.7, except as authorized in subsection 84.3.c. and 84.4.d, such information..."

Revise subsection 84.3. for the calculation of baseline heat input to add subsection 84.3.c

as follows:

84.3.c. If the unit qualified as an opt-in unit under 45 CSR1 and maintained an opt-in permit for such unit up until application for an opt-in permit under 45 CSR 40, the unit's heat input as determined in accordance with 45 CSR 1-84.3 and -88.2.a for the ozone season prior to the addition of add-on NOx emission controls pursuant to 45 CSR 1 and used by the Secretary to calculate allocations under 45 CSR 1- 88.2

Revise subsection 84.4 for the calculation of baseline NOx emission rate to add subsection 84.4.d. as follows:

84.4.d. If the unit qualified as an opt-in unit under 40 CSR 1 and maintained an opt-in permit for such unit up until application for an opt-in permit under 45 CSR 40, the unit's total NOx mass emissions as calculated and reported under 45 CSR 1 – 84.3 and – 88.2.b. for the ozone season prior to the addition of add-on NOx emission controls pursuant to 45 CSR1 and used by the Secretary to calculate allocations under 45 CSR 1 – 88.2.”

RESPONSE A. The DAQ generally agrees with PPG's rationale. After discussions with PPG and the Environmental Protection Agency, DAQ has revised the rule to include PPG's opt-in unit from the NOx SIP Call as an applicable unit in the CAIR program, and carry forth the unit's baseline heat input and baseline NOx emission rate from the NOx SIP Call and 45CSR1. The purpose of the revisions is to ensure that PPG's Unit 002 has the opportunity to continue participation in the ozone season NOx trading program under CAIR, as the NOx SIP Call program under 45CSR1 sunsets in 2009.

IV. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. The commenter states, "*The Chamber supports the modification of this rule to appropriately reflect the federal program.*"

RESPONSE A. DAQ has made slight modifications to several definitions and added regulatory citations as well as clarifications to the rule to ensure that it appropriately reflects the federal program.

COMMENT B. The commenter states, "*As noted in comments filed to this rule package by others, the Chamber agrees that it would be appropriate for the DAQ to add text as necessary to allow any existing NOx ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NOx opt-in units in equity with other existing non-EGU NOx sources.*"

RESPONSE B. The DAQ refers the commenter to Response IIIA.

V. COMMENTER: West Virginia Manufacturer's Association

COMMENT A. The commenter states, "*The WVMA endorses the updating of the CAIR – related series of rules to conform to EPA counterpart rules. As to Rule 40, we urge the DAQ to add text as necessary to allow any existing NOx ozone season opt-in unit to participate in Rule 40 without allocation penalty where such a unit is already a 45 CSR 1 opt-in unit and maintains that status up until a Rule 40 opt-in permit is issued. This will keep NOx opt-in units in equity with other existing non-EGU NOx sources.*"

RESPONSE A. DAQ refers the commenter to Response IIIA.

VI. COMMENTER: Allan Tweddle

COMMENT A. The commenter expressed his opinion that the agency should not "roll back any rule in terms of emissions, or air quality."

RESPONSE A. This rule implements part of the federal Clean Air Interstate Rule (CAIR). It maintains the ozone season limits established under its predecessor, the federal NOx SIP Call as implemented by the State under 45CSR1 and 45CSR26. Therefore, although programmatic differences may exist, DAQ does not view the rule as being less stringent than previous State requirements.

COMMENT B. Commenter alluded to a trans-border issue concerning the province of Ontario, Canada. He submitted a map which cited West Virginia as contributing to pollution in that province. He asserted that, "we must be able to show good faith effort in this regard..." or the State could suffer penalties.

RESPONSE B. Recognition that pollution does not respect jurisdictional boundaries lies at the heart of 45CSR40, as well as 45CSR37, 45CSR39 and 45CSR41. These rules collectively implement at the State level the federal Clean Air Interstate Rule (CAIR) and the federal Clean Air Mercury Rule (CAMR). All of these rules are designed as "cap and trade" programs in which the U.S. EPA has performed comprehensive analyses to ascertain, among many other things, the available control technologies, the installation and operating costs of controls, consequences to electric reliability and the potential air quality benefits of implementation. The CAIR-related rules are specifically designed to mitigate interstate transport of fine particulate matter and its precursors. The EPA has determined that CAIR will adequately address interstate transport of the regulated pollutants NOx and SO₂. It is beyond the intent and scope of the CAIR rules, and the parallel State rules, to regulate potential international transport of pollutants.

Notwithstanding this fact, it should be noted that the considerable NOx emission reductions achieved by the NOx SIP Call and continued under CAIR, as well as the SO₂ reductions required by CAIR, will have a beneficial effect on all downwind areas that may be significantly impacted by those pollutants. Therefore, if the Province of Ontario has indeed been significantly impacted from NOx and SO₂ emissions from the State of West Virginia, the emission reductions required under our

CAIR rules will substantially ameliorate the adverse impacts.

VII. COMMENTER: Jim Kotcon Seirra Club

COMMENT A. The commenter stated that 45CSR40 should be strengthened, and made observations about a previous banking and trading rule in West Virginia, and how in that rule ten percent of any banked emissions may be retired for benefit of the public. He also noted that in that rule and banked credits would expire after ten years. Mr. Kotcon also urged that DAQ add these provisions to 45CSR40.

RESPONSE A. The DAQ believes the commenter is referring to 45CSR28 - *Air Pollutant Emissions Banking and Trading*. The purpose of 45CSR28 is to establish a voluntary statewide air pollutant emissions trading program which provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air pollutant emissions and the protection of human health, welfare and the environment. Rule 45CSR28 has seen minimal interest or participation. Therefore, the effects of rule provisions that have not been exercised in a practical application are difficult to assess. Further, rule 45CSR28 may be characterized as an open market trading program whose purpose is to provide flexibility to industry while protecting environmental values through limited applicability of emission credit generation and usage, as well as the two stipulations that the commenter mentioned. There is no limit or cap on the total number of emission credits which may be generated or banked.

In contrast to 45CSR28, this rule 45CSR40 and the other CAIR rules may be characterized as regulatory cap and trading programs. EPA has established the individual and collective emission caps for multiple states under CAIR to achieve specific environmental goals. Moreover, EPA has determined that the potential effects of banking and trading do not significantly impact program effectiveness. Therefore, added CAIR emission banking restrictions on West Virginia sources would not necessarily benefit the environment but would definitely place our sources at a competitive disadvantage. The DAQ will retain the current requirements and language.

VIII. COMMENTER: Vickie Jo Kennedy Simms

COMMENT A. The commenter made several observations about various environmental problems in the state and said that she has suffered from watering eyes and chest congestion while traveling from Wood County into the Charleston chemical valley. She asserted that others had told her of similar experiences. She said, "We can't lower any standards for air." She expressed an opinion that the federal government was pressuring the state to relax regulations. Then, she repeated her request that the State not lower standards for air quality.

RESPONSE A. As noted above in Response VI. A., this rule implements part of the federal Clean Air Interstate Rule (CAIR). It maintains the ozone season limits established under its predecessor, the federal NOx SIP Call as implemented by the State under 45CSR1 and 45CSR26. Therefore, although programmatic differences may exist, DAQ does not view the rule as being less

stringent than previous State requirements.