

- 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
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- 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.
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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: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

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.

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 45CSR41. 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: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions"
 Type of Rule: X 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	\$ 7450	\$ 7450
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: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions"

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, the personal costs decrease due to reduced agency responsibility 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.

[Empty box for memorandum content]

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 41

CONTROL OF ANNUAL SULFUR DIOXIDE EMISSIONS TO MITIGATE INTERSTATE
 TRANSPORT OF FINE PARTICULATE MATTER AND SULFUR DIOXIDE

§45-41-1. General.

1.1. Scope. -- 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). 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 CAIR SO₂ Trading Program by carrying out the functions set forth for the Administrator in this rule and 40 CFR Part 51.

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 AAA through III, resulting in several minor areas of nonconformity with 153CSR6.

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

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

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

1.7. Former Rules. -- This legislative rule amends 45CSR41 "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide" which was filed April 28, 2006, and

which became effective May 1, 2006.

§45-41-2. Definitions.

2.1. "Account number" means the identification number given by the Administrator to each CAIR SO₂ 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 SO₂ allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity and, with regard to CAIR SO₂ allowances issued under provisions of a state implementation plan that are approved under 40 CFR §§51.124(o)(1) or (2) or (r) or section 88, the determination by the Secretary of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity.

2.6. "Allowance transfer deadline" means, for a control period, midnight of March 1, (if it is a business day), or, if March 1 is not a business day,

midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR SO₂ source's compliance account in order to be used to meet the source's CAIR SO₂ emissions limitation for such control period in accordance with section 54.

2.7. "Alternate CAIR designated representative" means, for a CAIR SO₂ source and each CAIR SO₂ 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 SO₂ Trading Program. If the CAIR SO₂ 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 SO₂ source is also a CAIR NO_x Ozone Season source under 45CSR40, then this natural person will be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ 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 SO₂ 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 SO₂ 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 SO₂ source and each CAIR SO₂ 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 SO₂ Trading Program. If the CAIR SO₂ 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 SO₂ source is also a CAIR NO_x Ozone Season source under 45CSR40, then this natural person will be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ 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 SO₂ 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.

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 opt-in unit under sections 80 through 88 of 45CSR39 Reserved.

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

2.17. "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.

2.18. "~~CAIR NO_x Ozone Season unit~~" means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under 45CSR§40-4 or and a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88 of 45CSR40 Reserved.

2.19. "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 SO₂ Trading Program requirements applicable to a CAIR SO₂ source, to each CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

2.20. "CAIR SO₂ allowance" means a limited authorization issued by the Administrator under the Acid Rain Program, or by the Secretary under ~~section 88~~ provisions of a state implementation plan that are approved under 40 CFR §§51.124(o)(1) or (2) or (r) or 97.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO₂ Trading Program as follows:

2.20.a. For one CAIR SO₂ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in section subsection 54.2;

2.20.b. For one CAIR SO₂ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in section subsection 54.2; and

2.20.c. For one CAIR SO₂ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in section subsection 54.2; and

2.20.d. An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, ~~or under the~~ provisions of a state implementation plan that ~~is~~ are approved under 40 CFR §§51.124(o)(1) or (2) or (r) or 97.288 will not be a CAIR SO₂ allowance.

2.21. "CAIR SO₂ allowance deduction" or "deduct CAIR SO₂ allowances" means the permanent withdrawal of CAIR SO₂ allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO₂ units at a CAIR SO₂ source for a control period, determined in accordance with sections 70 through ~~76~~ 75, or to account for

excess emissions.

2.22. "CAIR SO₂ Allowance Tracking System" means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program. This is the same system as the Allowance Tracking System under 40 CFR §72.2 by which the Administrator records allocations, deduction, and transfers of Acid Rain SO₂ allowances under the Acid Rain Program.

2.23. "CAIR SO₂ Allowance Tracking System account" means an account in the CAIR SO₂ Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

2.24. "CAIR SO₂ allowances held" or "hold CAIR SO₂ allowances" means the CAIR SO₂ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with sections 51 through 57, sections 60 through 62, and section 80 through 88 or 40 CFR Part 73, in a CAIR SO₂ Allowance Tracking System account.

2.25. "CAIR SO₂ emissions limitation" means, for a CAIR SO₂ source, the tonnage equivalent, in SO₂ emissions in a control period, of the CAIR SO₂ allowances available for deduction for the source under sections subsections 54.1 and 54.2 for a the control period.

2.26. "CAIR SO₂ source" means a source that includes one or more CAIR SO₂ units.

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 III 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 section 4 or and, except for purposes of section 5, a CAIR SO₂ opt-in unit under sections 80 through 88.

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

2.30. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous or lignite.

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

2.32. "Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel.

2.33. "Cogeneration unit" means a stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine:

2.33.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

2.33.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:

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

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

2.33.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

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

2.34. "Combustion turbine" means:

2.34.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

2.34.b. If the enclosed device under subdivision 2.34.a is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

2.35. "Commence commercial operation" means, with regard to a unit serving a generator:

2.35.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.

2.35.a.1. For a unit that is a CAIR SO₂ unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.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.

2.35.a.2. For a unit that is a CAIR SO₂ unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.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 2.35.a; or 2.35.b, or 2.35.c as appropriate.

2.35.b. Notwithstanding subdivision 2.35.a and except as provided in section 5, for a unit that is not a CAIR SO₂ unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.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 SO₂ unit under section 4.

2.35.b.1. For a unit with a date for commencement of commercial operation as defined in subdivision 2.35.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.

2.35.b.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.35.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 2.35.a; or 2.35.b, or 2.35.c as appropriate.

~~2.35.c. Notwithstanding subdivision 2.35.a and except as provided in subsection 84.8 or subdivisions 87.2.d and 87.2.e, for a CAIR SO₂ 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 SO₂ emission rate (in lb/mmBtu) and the heat input of the unit (in mmBtu) under subdivision 84.2.a.~~

~~2.35.c.1. For a unit with a date for commencement of commercial operation as defined in subdivision 2.35.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.~~

~~2.35.c.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.35.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 2.35.a, 2.35.b, or 2.35.c as appropriate.~~

~~2.35.d. Notwithstanding subdivisions 2.35.a through 2.35.c, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation will also be the unit's date of commencement of commercial operation.~~

2.36. "Commence operation" means:

2.36.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.

2.36.a.1. 2.36.b. For a unit that is a CAIR SO₂ unit under section 4 on the date the unit commences 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) after the date the unit commences operation as defined in subdivision 2.36.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.

2.36.a.2. 2.36.c. For a unit that is a CAIR SO₂ unit under section 4 on the date the unit commences operation as defined in subdivision 2.36.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 2.36.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 2.36.a, 2.36.b, or 2.36.c as appropriate, except as provided in subsection 84.8.

~~2.36.b. Notwithstanding subdivision 2.36.a and except as provided in section 5, for a unit that is not a CAIR SO₂ unit under section 4 on the date the unit commences operation as defined in subdivision 2.36.a and is not a unit under subdivision 2.36.c, the unit's date for commencement of operation will be the date on which the unit becomes a CAIR SO₂ unit under section 4.~~

~~2.36.b.1. For a unit with a date for commencement of 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 operation.~~

~~2.36.b.2. For a unit with a date for commencement of operation as defined in subdivision 2.36.b 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 operation as defined in subdivisions 2.36.a, 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 SO₂ 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 SO₂ emission rate (in lb/mmBtu) and the heat input of the unit (in mmBtu) under subdivision 84.2.a.~~

~~2.36.c.1. For a unit with a date for commencement of 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 operation.~~

~~2.36.c.2. For a unit with a date for commencement of 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 operation as defined in subdivisions 2.36.a, 2.36.b, or 2.36.c as appropriate.~~

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

2.38. "Compliance account" means a CAIR SO₂ Allowance Tracking System account, established by the Administrator for a CAIR SO₂ source subject to an Acid Rain emissions limitations under 40 CFR §73.31(a) or (b) or for any other CAIR SO₂ source under sections 51 through 57 or sections 80 through 88, in which any CAIR SO₂ allowance allocations for the CAIR SO₂ units at the source are initially recorded and in which are held any CAIR SO₂ allowances available for use for a control period in order to meet the source's CAIR SO₂ emissions limitation in accordance with section 54.

2.39. "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 sulfur dioxide 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:

2.39.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

2.39.b. A sulfur dioxide monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO₂ emissions, in parts per million (ppm); and

2.39.c. 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

2.39.d. 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~~

2.39.e. 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.

2.40. "Control period" means the period beginning January 1 of a calendar year, except as provided in subdivision 6.3.b, and ending on December 31 of the same year, inclusive.

2.41. "Emissions" or "emission" 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, or portion of a ton, of sulfur dioxide emitted by the CAIR SO₂ units at a CAIR SO₂ source during a

control period that exceeds the CAIR SO₂ emission limitation for the source, provided that any portion of a ton of excess emissions will be treated as one ton of excess emissions.

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 regard to a unit, combusting any amount of fossil fuel in any calendar year.

2.45. "General account" means a CAIR SO₂ 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. "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.

2.49. "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.

2.50. "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, as a means of reducing national Hg emissions.

~~2.50:~~ 2.51. "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:

~~2.50.a:~~ 2.51.a. For the life of the unit;

~~2.50.b:~~ 2.51.b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

~~2.50.c:~~ 2.51.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.

~~2.51:~~ 2.52. "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.~~

~~2.52:~~ 2.53. "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.

~~2.53:~~ 2.54. "Most stringent state or federal SO₂ emission limitation" means, with regard to a unit, the lowest SO₂ emission 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.

~~2.54.~~ 2.55. "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.

~~2.55.~~ 2.56. "Operator" means any person who operates, controls, or supervises a CAIR SO₂ unit or a CAIR SO₂ source and will include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

~~2.56.~~ 2.57. "Owner" means any of the following persons:

~~2.56.a.~~ 2.57.a. With regard to a CAIR SO₂ source or a CAIR SO₂ unit at a source, respectively:

~~2.56.a.1.~~ 2.57.a.1. Any holder of any portion of the legal or equitable title in a CAIR SO₂ unit at the source or the CAIR SO₂ unit;

~~2.56.a.2.~~ 2.57.a.2. Any holder of a leasehold interest in a CAIR SO₂ unit at the source or the CAIR SO₂ unit; or

~~2.56.a.3.~~ 2.57.a.3. Any purchaser of power from a CAIR SO₂ unit at the source or the CAIR SO₂ 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 SO₂ unit; or

~~2.56.b.~~ 2.57.b. With regard to any general account, any person who has an ownership interest with respect to the CAIR SO₂ 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 SO₂ allowances.

~~2.57.~~ 2.58. "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.

~~2.58.~~ 2.59. "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.

~~2.59.~~ 2.60. "Recordation", "record", or "recorded" means, with regard to CAIR SO₂ allowances, the movement of CAIR SO₂ allowances by the Administrator into or between CAIR SO₂ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

~~2.60.~~ 2.61. "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR §75.22.

2.62. "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).

~~2.61.~~ 2.63. "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:

~~2.61.a.~~ 2.63.a. Atmospheric or pressurized fluidized bed combustion;

~~2.61.b.~~ 2.63.b. Integrated gasification combined cycle;

~~2.61.c.~~ 2.63.c. Magnetohydrodynamics;

~~2.61.d.~~ 2.63.d. Direct and indirect coal-fired turbines;

~~2.61.e.~~ 2.63.e. Integrated gasification fuel cells; or

~~2.61.f.~~ 2.63.f. As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions ~~2.61.a~~ 2.63.a through ~~2.61.e~~ 2.63.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.

~~2.62.~~ 2.64. "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.

~~2.63.~~ 2.65. "Serial number" means, for a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ allowance by the Administrator.

~~2.64.~~ 2.66. "Sequential use of energy" means:

~~2.64.a.~~ 2.66.a. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

~~2.64.b.~~ 2.66.b. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in

electricity production.

~~2.67.~~ 2.67. "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.

~~2.65.~~ 2.68. "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."

~~2.66.~~ 2.69. "State" means one of the states or the District of Columbia that adopts the CAIR SO₂ Trading Program pursuant to 40 CFR §§51.124(o)(1) or (2).

~~2.67.~~ 2.70. "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

~~2.67.a.~~ 2.70.a. In person;

~~2.67.b.~~ 2.70.b. By United States Postal Service; or

~~2.67.c.~~ 2.70.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.

~~2.68.~~ 2.71. "Title V operating permit" means a permit issued under 45CSR30.

~~2.69.~~ 2.72. "Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR SO₂ emission limitation, total tons of sulfur dioxide emissions for a control period 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.

~~2.70:~~ 2.73. “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.

~~2.71:~~ 2.74. “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.

~~2.72:~~ 2.75. “Total energy output” means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

~~2.73:~~ 2.76. “Unit” means a stationary, fossil fuel-fired boiler or combustion turbine or other stationary, fossil fuel-fired combustion device.

~~2.74:~~ 2.77. “Unit operating day” means a calendar day in which a unit combusts any fuel.

~~2.75:~~ 2.78. “Unit operating hour” or “hour of unit operation” means an hour in which a unit combusts any fuel.

~~2.76:~~ 2.79. “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).

~~2.77:~~ 2.80. “Useful thermal energy” means, with regard to a cogeneration unit, thermal energy that is:

~~2.77.a:~~ 2.80.a. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

~~2.77.b:~~ 2.80.b. Used in a heating

application (e.g., space heating or domestic hot water heating); or

~~2.77.c:~~ 2.80.c. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

~~2.78:~~ 2.81. “Utility power distribution system” means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

~~2.79:~~ 2.82. 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.

§45-41-3. 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.

§45-41-4. Applicability. -- ~~The~~ Except as provided in subsection 4.2, the following units in West Virginia will shall be CAIR SO₂ units, and any source that includes one or more such units ~~will shall~~ be a CAIR SO₂ source, subject to the requirements of sections ~~5 1~~ through ~~76 75~~:

4.1. Electric generating units. -- ~~Except as provided in subsection 4.2, 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; ~~and,~~

4.2. ~~Cogeneration Exempt~~ units. -- Except as provided in subsection 4.3, any unit in West Virginia that is a CAIR SO₂ unit under subsection 4.1 or subdivision 4.3.a and meets any of the following requirements shall not be a CAIR SO₂ unit:

4.2.a. For a Any unit that qualifies qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues continuing to qualify as a cogeneration unit, 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_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:

4.2.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

4.2.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).

4.3. Loss of exemption. -- Any unit in West Virginia that is not a CAIR SO₂ unit under subsection 4.1, or which qualified for an exemption under subsection 4.2, but subsequently meets any of the following provisions, shall lose its exemption and become a CAIR SO₂ unit under subsection 4.1:

4.3.a. If a stationary boiler or stationary combustion turbine that, under subsection 4.1, is not a CAIR SO₂ unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MW_e producing electricity for sale, the unit shall become a CAIR SO₂ unit as provided in subsection 4.1 on the first date on which it both combusts fossil fuel and serves such generator:

4.3.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 4.2.a for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ 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 4.2.a; and

4.3.c. If a unit qualifies as a solid waste incineration unit and meets the requirements of

subdivisions 4.2.b or 4.2.c for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ 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.

§45-41-5. Retired Unit Exemption.

5.1. General exemption provisions.

5.1.a. Any CAIR SO₂ unit that is permanently retired and is not a CAIR SO₂ opt-in unit under sections 80 through 88 will be exempt from the CAIR SO₂ 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 51 through 62.~~

5.1.b. The exemption under subdivision 5.1.a will become effective the day on which the CAIR SO₂ 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 sulfur dioxide, starting on the date that the exemption takes effect.

5.2.b. 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.c. 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 SO₂ 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.d. 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, 2010 or the date on which the unit resumes operation.

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

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

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

5.2.e.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.f. 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.

§45-41-6. Standard Requirements.

6.1. Permit requirements.

6.1.a. The CAIR designated representative of each CAIR SO₂ source required to have a Title V operating permit and each CAIR SO₂ 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 SO₂ source required to have a Title V operating permit and each CAIR SO₂ 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 SO₂ source that is not otherwise required to have a Title V operating permit and each CAIR SO₂ 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 SO₂ source and such CAIR SO₂ unit.

6.2. ~~Monitoring, reporting, and recordkeeping~~ requirements.

6.2.a. The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ 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 SO₂ source with the CAIR SO₂ emission limitation under subsection 6.3.

6.3. Sulfur dioxide emission requirements.

6.3.a. As of the allowance transfer deadline for the 2010 control period and each control period thereafter, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source must hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period, as determined in accordance with subsections 54.1 and 54.2 in an amount not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with sections 70 through ~~76~~ 75.

6.3.b. A CAIR SO₂ unit will be subject to the requirements under subdivision 6.3.a for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under ~~subdivision~~ subdivisions 70.2.a, ~~subsection~~ 70.2.b, or ~~subsection~~ 70.2.e and for each control period thereafter.

6.3.c. A CAIR SO₂ allowance will not be deducted, for compliance with the requirements under subdivision 6.3.a, for a control period in a calendar year before the year for which the CAIR SO₂ allowance was allocated.

6.3.d. CAIR SO₂ allowances will be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with sections 51 through 62 and 80 through 88.

6.3.e. A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ 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 SO₂ allowance does not constitute a property right.

6.3.g. Upon recordation by the Administrator under sections 51 through 57, sections 60 through 62, or sections 80 through 88, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ unit's source's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO₂ unit.

6.4. Excess emissions requirements. --

~~6.4.a.~~ If a CAIR SO₂ source emits sulfur dioxide during any control period in excess of the CAIR SO₂ emission limitation, then:

~~6.4.a.1.~~ 6.4.a. The owners and operators of the source and each CAIR SO₂ unit at the source will surrender the CAIR SO₂ 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 control period 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 SO₂ source and each CAIR SO₂ 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 SO₂ 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 SO₂ 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 SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.

6.5.b. The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source will submit the reports required under the CAIR SO₂ Trading Program, including those under sections 70 through ~~76~~ 75.

6.6. Liability.

6.6.a. Each CAIR SO₂ source and each CAIR SO₂ unit must meet the requirements of the CAIR SO₂ Trading Program.

6.6.b. Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a

CAIR SO₂ source will also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.

6.6.c. Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit will also apply to the owners and operators of such unit.

6.7. Effect on other authorities. -- No provision of the CAIR SO₂ 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 SO₂ source or CAIR SO₂ unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, order, or the CAA.

§45-41-7. Computation of Time.

7.1. Unless otherwise stated, any time period scheduled, under the CAIR SO₂ 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 SO₂ 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 SO₂ Trading Program, falls on a weekend or a state or federal holiday, the time period will be extended to the next business day.

§45-41-8. Appeal Procedures.

8.1. The appeal procedures for decisions of the Administrator under the CAIR SO₂ Trading Program are set forth in 40 CFR Part 78.

§45-41-10. Authorization and Responsibilities of the CAIR Designated Representative.

10.1. Except as provided under section 11,

each CAIR SO₂ source, including all CAIR SO₂ units at the source, will have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.

10.2. The CAIR designated representative of the CAIR SO₂ source will be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ 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 SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ 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 SO₂ Allowance Tracking System account will be established for a CAIR SO₂ 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 SO₂ units at the source.

10.5. Each submission under the CAIR SO₂ Trading Program will be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ 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 SO₂ source or a CAIR SO₂ unit only if the submission has been made, signed, and certified in accordance with subsection 10.5.

§45-41-11. 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.

§45-41-12. 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 SO₂ source and the CAIR SO₂ 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 SO₂ source and the CAIR SO₂ 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 SO₂ source or a CAIR SO₂ 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 SO₂ source or a CAIR SO₂ 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.

§45-41-13. 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 SO₂ source, and each CAIR SO₂ 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 SO₂ source and of each CAIR SO₂ 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 SO₂ 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 SO₂ Trading Program on behalf of the owners and operators of

the source and of each CAIR SO₂ 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 SO₂ 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 SO₂ unit, or where a utility or industrial customer purchases power from a CAIR SO₂ 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 SO₂ unit at the source; and CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ 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 SO₂ allowances by contract, CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in accordance with the contract.";

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.

§45-41-14. 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 SO₂ 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 SO₂ allowance transfers.

§45-41-15. 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.

§45-41-20. General CAIR SO₂ Trading Program Permit Requirements.

20.1. For each CAIR SO₂ 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 SO₂ source and the CAIR SO₂ units at the source covered by the CAIR permit, all applicable CAIR SO₂ Trading Program requirements, CAIR NO_x Annual Trading Program requirements, and CAIR NO_x Ozone Season 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.

§45-41-21. Submission of CAIR Permit Applications.

21.1. Duty to apply. -- The CAIR designated

representative of any CAIR SO₂ 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 SO₂ unit at the source at least 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2010 or the date on which the CAIR SO₂ unit commences commercial operation, except as provided in subsection 83.1.

21.2. Duty to reapply. -- For a CAIR SO₂ 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 SO₂ unit at the source to renew the CAIR permit in accordance with 45CSR30, except as provided in subsection 83.2.

§45-41-22. Information Requirements for CAIR Permit Applications.

22.1. A complete CAIR permit application will include the following elements concerning the CAIR SO₂ source for which the application is submitted, in a format prescribed by the Secretary:

22.1.a. Identification of the CAIR SO₂ source;

22.1.b. Identification of each CAIR SO₂ unit at the CAIR SO₂ source;

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

22.1.d. A copy of the complete certificate of representation under section 13.

§45-41-23. 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 sections 51 through 57,

sections 60 through 62, or sections 80 through 88, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from the compliance account of the CAIR SO₂ 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 SO₂ source's Title V operating permit or other federally enforceable permit as applicable.

§45-41-24. 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.

§45-41-30. Reserved.

§45-41-40. Reserved.

§45-41-50. Reserved.

§45-41-51. 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ allowances in the general account.

51.6.c. In the event a new person having an ownership interest with respect to CAIR SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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§41-51.8.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§41-51.8.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§41-51.8 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.

§45-41-52. Responsibilities of CAIR Authorized Account Representative.

52.1. Following the establishment of a CAIR SO₂ 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 SO₂ allowances in the account, will be made only by the CAIR authorized account representative for the account.

§45-41-53. Recordation of CAIR SO₂ allowances.

53.1. After a compliance account is established under subsection 51.1 or 40 CFR §73.31(a) or (b), the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with sections 60 through 62

or Subpart D of 40 CFR Part 73.

53.2. In 2011 and each year thereafter, after Administrator has completed all deductions under ~~section subsection~~ 54.2, the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO₂ allowance allocated for the new 30th year and transferred to the source in accordance with sections 60 through 62 or Subpart D of 40 CFR Part 73.

53.3. After a general account is established under ~~section subsection~~ 51.2 or 40 CFR §73.31(c), the Administrator will record in the general account any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with sections 60 through 62 or Subpart D of 40 CFR Part 73.

53.4. In 2011 and each year thereafter, after the Administrator has completed all deductions under ~~section subsection~~ 54.2, the Administrator will record in the general account any CAIR SO₂ allowance allocated for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with sections 60 through 62 or Subpart D of 40 CFR Part 73.

53.5. Serial numbers for allocated CAIR SO₂ allowances. -- When recording the allocation of CAIR SO₂ allowances issued by the Secretary under section 88, the Administrator will assign each such CAIR SO₂ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

§45-41-54. Compliance with CAIR SO₂ emission limitation.

54.1. Allowance transfer deadline. -- The CAIR SO₂ allowances are available to be

deducted for compliance with a source's CAIR SO₂ emission limitation for a control period in a given calendar year only if the CAIR SO₂ allowances:

54.1.a. Were allocated for the control period 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 control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under ~~section sections~~ 60 and 61 by the allowance transfer deadline for the control period; and

~~54.1.c. Are not necessary for deduction deductions for excess emissions for a prior control period under subsection 54.4 or for deduction under 40 CFR Part 77.~~

54.2. Deductions for compliance. -- Following the recordation, in accordance with section 61, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO₂ allowances available under subsection 54.1 in order to determine whether the source meets the CAIR SO₂ emission limitation for the control period as follows:

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

54.2.a.1. Deduct the amount of CAIR SO₂ allowances, available under subsection 54.1 and not issued by the Secretary under section 88, that is required under 40 CFR §§73.35(b) and (c). If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of 40 CFR §§73.35(b) and (c).

54.2.a.2. Deduct the amount of CAIR SO₂ allowances, ~~available under subsection 54.1~~ and not issued by the Secretary under section 88, that is required under 40 CFR §§73.35(d) and

77.5. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of 40 CFR §§73.35(d) and 77.5.

54.2.a.3. Treating the CAIR SO₂ allowances deducted under paragraph 54.2.a.1 as also being deducted under this paragraph, deduct CAIR SO₂ allowances available under subsection 54.1 (including any issued by the Secretary under section 88) in order to determine whether the source meets the CAIR SO₂ emission limitation for the control period, as follows:

54.2.a.3.A. Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with subdivisions 54.3.a and 54.3.b, the number of tons of total sulfur dioxide emissions, determined in accordance with sections 70 through 76 75, from all CAIR SO₂ units at the source for the control period; or

54.2.a.3.B. If there are insufficient CAIR SO₂ allowances to complete the deductions in subparagraph 54.2.a.3.A, until no more CAIR SO₂ allowances available under subsection 54.1 (including any issued by the Secretary under section 88) remain in the compliance account.

54.2.b. For a CAIR SO₂ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances available under subsection 54.1 (including any issued by the Secretary under section 88) in order to determine whether the source meets the CAIR SO₂ emission limitation for the control period, as follows:

54.2.b.1. Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with subdivisions 54.3.a and 54.3.b, the number of tons of total sulfur dioxide emissions, determined in accordance with sections 70 through 76 75, from all CAIR SO₂ units at the source for the control period; or

54.2.b.2. If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph 54.2.b.1, until no more CAIR SO₂

allowances available under subsection 54.1 (including any issued by the Secretary under section 88) remain in the compliance account.

54.3. Identification of CAIR SO₂ allowances by serial number.

54.3.a. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsections 54.2 or 54.4. Such request must be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO₂ source and the appropriate serial numbers.

54.3.b. First-in, first-out. -- The Administrator will deduct CAIR SO₂ 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 SO₂ 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 SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

54.3.b.2. Any CAIR SO₂ allowances that were allocated to any unit entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to sections 60 through 62 or Subpart D of 40 CFR Part 73, in the order of recordation;

54.3.b.3. Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

54.3.b.4. Any CAIR SO₂ allowances that were allocated to any unit entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant

to sections 60 through 62 or Subpart D of 40 CFR Part 73, in the order of recordation;

54.3.b.5. Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

54.3.b.6. Any CAIR SO₂ allowances that were allocated to any unit entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to sections 60 through 62 or Subpart D of 40 CFR Part 73, 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 a control period in a calendar year in which the CAIR SO₂ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by the Secretary under section 88), equal to, or exceeding in accordance with subdivisions 54.3.a and 54.3.b, three times the number of tons of the source's excess emissions the sum of the following amount: three times the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO₂ allowances required to be deducted under paragraph 54.2.a.2.

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 SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the 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 SO₂ Trading Program and make appropriate adjustments of the information in the submissions.

54.6.b. The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 54.6.a, and record such deductions and transfers.

§45-41-55. Banking.

55.1. CAIR SO₂ 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 SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under sections 54, 56, or sections 60 through 62 or sections 80 through 88.

§45-41-56. 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 SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§45-41-57. 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 SO₂ allowances in the account to one or more other CAIR SO₂ 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 SO₂ allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO₂ allowances into the account under section 60 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.

§45-41-60. Submission of CAIR SO₂ Allowance Transfers.

60.1. A CAIR authorized account representative seeking recordation of a CAIR SO₂ allowance transfer will submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ 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 SO₂ 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.

60.2. The CAIR authorized account representative for the transferee account can meet the requirements in subdivision 60.1.c by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization will be binding

on any CAIR authorized account representative for such account and will apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

60.3. The statement under subsection 60.2 will include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under state or federal law to obtain correction of any erroneous transfers into such accounts. This authorization will be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator."

§45-41-61. U.S. EPA Recordation.

61.1. Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO₂ allowances allocated to a CAIR SO₂ unit or as provided in subsection 61.2) of receiving a CAIR SO₂ allowance transfer, the Administrator will record a CAIR SO₂ allowance transfer by moving each CAIR SO₂ 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 SO₂ allowance identified by serial number in the transfer; and

61.1.c. The transfer is in accordance with the limitation on transfer under 40 CFR §§74.42 and 74.47(c), as applicable.

61.2. CAIR SO₂ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO₂ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the

Administrator completes the deductions under section 54 for the control period immediately before such allowance transfer deadline.

61.3. Where a CAIR SO₂ allowance transfer submitted for recordation fails to meet the requirements of subsection 61.1, the Administrator will not record such transfer.

§45-41-62. Notification.

62.1. Notification of recordation. -- Within 5 business days of recordation of a CAIR SO₂ 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 SO₂ 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 SO₂ allowance transfer for recordation following notification of non-recordation.

§45-41-70. General Monitoring and Reporting Requirements. -- The owners and operators, and to the extent applicable, the CAIR designated representative of a CAIR SO₂ unit, must comply with the monitoring, recordkeeping and reporting requirements as provided in sections 70 through 76 75 and Subparts F and G 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 SO₂ 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 SO₂ unit but that is monitored under 40 CFR §75.16(b)(2) must comply with the same monitoring, recordkeeping and reporting requirements as a CAIR SO₂ unit.

70.1. Requirements for installation, certification and data accounting. -- The owner or operator of each CAIR SO₂ unit will:

70.1.a. Install all monitoring systems required under sections 70 through 76 75 for monitoring SO₂ mass emissions and individual unit heat input (including all systems required to monitor SO₂ concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with 40 CFR §§75.11 and 75.16);

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 SO₂ unit that commences commercial operation before July 1, 2008, by January 1, 2009;

70.2.b. For the owner or operator of a CAIR SO₂ unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

70.2.b.1. January 1, 2009; or

70.2.b.2. 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation;

70.2.c. For the owner or operator of a CAIR SO₂ unit for which construction of a new stack or flue or installation of add-on SO₂ emission controls is completed after the applicable deadline under subdivisions 70.2.a, 70.2.b, 70.2.d or 70.2.e, 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 SO₂ emissions controls;

70.2.d. Notwithstanding the dates in subdivisions 70.2.a and 70.2.b, 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.e. Notwithstanding the dates in subdivisions 70.2.a and 70.2.b, ~~and solely for purposes of subdivision 6.3.b,~~ for the owner or operator of a CAIR SO₂ opt-in unit under sections 80 through 88, by the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ 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 SO₂ 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 SO₂ concentration, ~~SO₂ emission rate (in lb/mmBtu),~~ stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO₂ 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, as

applicable.

~~70.3.b. The owner or operator of a CAIR SO₂ unit that does not meet the applicable compliance date set forth in subdivision 70.2.c 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 Subpart D of, or Appendix D 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.c.~~

70.4. Prohibitions.

70.4.a. No owner or operator of a CAIR SO₂ 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 SO₂ unit will operate the unit so as to discharge, or allow to be discharged, SO₂ 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 SO₂ unit will disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO₂ 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 SO₂ 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 SO₂ unit is subject to the applicable provisions of 40 CFR Part 75 concerning units in long-term cold storage.

§45-41-71. Initial Certification and Recertification Procedures.

71.1. The owner or operator of a CAIR SO₂ 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 Appendices B and D 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 §75.16(b)(2)(ii) for apportioning the SO₂ mass emissions measured in a common stack or a petition under 40 CFR §75.66 for an alternative to a requirement in 40 CFR §§75.11 or 75.16 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 SO₂ Trading Program Reserved.~~

71.4. Except as provided in subsection 71.1, the owner or operator of a CAIR SO₂ 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 Appendix D 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 SO₂ 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 system under subdivision 70.1.a is 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 SO₂ 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 SO₂ 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 SO_2 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 SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of Appendix A to 40 CFR Part 75;

71.4.c.5.A.2. For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of Appendix A to 40 CFR Part 75; and

71.4.c.5.A.3. For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of Appendix D to 40 CFR Part 75.

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 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).

§45-41-72. 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 of, or Appendix D 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 SO_2 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.

§45-41-73. Notifications.

73.1. The CAIR designated representative for a CAIR SO_2 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.~~

§45-41-74. 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 in Subparts F and G of 40 CFR Part 75, and the requirements of subsection 10.5.

74.2. Monitoring plans. -- The owner or operator of a CAIR SO_2 unit must comply with the requirements of 40 CFR §75.62 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. The CAIR designated representative will report the SO_2 mass emissions

data and heat input data for the CAIR SO₂ 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, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

74.4.a.2. For a unit that commences commercial operation on or after July 1, 2008, 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 2008, in which case reporting will commence in the quarter covering January 1, 2009 through March 31, 2009;

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 SO₂ opt-in unit under sections 80 through 88, the calendar quarter corresponding to the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in subsection 84.7.

74.4.b. 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 §75.64; and

74.4.c. For CAIR SO₂ units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Ozone Season Trading Program, or CAIR NO_x Annual 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 SO₂ 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; and

74.5.b. For a unit with add-on SO₂ emission controls and for all hours where SO₂ 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 SO₂ emissions.

§45-41-75. Petitions.

75.1. The CAIR designated representative of a CAIR SO₂ 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 SO₂ 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.

~~§45-41-76. Additional Requirements to Provide Heat Input Data.~~

~~76.1. The owner or operator of a CAIR SO₂ unit that monitors and reports SO₂ mass emissions using a SO₂ 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.

§45-41-80. CAIR SO₂ Opt-In Unit Applicability. -- A CAIR SO₂ opt-in unit must be a unit that:

- 80.1. Is located in West Virginia;
- 80.2. Is not a CAIR SO₂ unit under section 4 and is not covered by a retired unit exemption under section 5 that is in effect;
- 80.3. Is not covered by a retired unit exemption under 40 CFR §72.8 that is in effect and is not an opt-in source under 40 CFR Part 74;
- 80.4. Has or is required or qualified to have a Title V operating permit or other federally enforceable permit; and
- 80.5. Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of sections 70 through ~~76~~ 75.

§45-41-81. 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 50 through ~~76~~ 75, a CAIR SO₂ opt-in unit will be treated as a CAIR SO₂ 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 SO₂ unit before issuance of a CAIR opt-in permit for such unit.

§45-41-82. CAIR Designated Representative.

82.1. Any CAIR SO₂ 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 SO₂ units will have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO₂ units.

§45-41-83. 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 SO₂ 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 SO₂ 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. Is not and, so long as the unit is a CAIR SO₂ opt-in unit, will not become, an opt-in source under 40 CFR Part 74;

83.1.b.4. Vents all of its emissions to a stack; and

83.1.b.5. 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 SO₂ 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 SO₂ 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 SO₂ opt-in unit from the CAIR SO₂ Trading Program in accordance with section 86 or the unit becomes a CAIR SO₂ unit under section 4, the CAIR SO₂ opt-in unit will remain subject to the requirements for a CAIR SO₂ opt-in unit, even if the CAIR designated representative for the CAIR SO₂ 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.

§45-41-84. 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 SO₂ 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 SO₂ 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 SO₂ Trading Program in accordance with section 86.

84.2.b. The monitoring and reporting under subdivision 84.2.a must include the entire control period immediately before the date on which the unit enters the CAIR SO₂ 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 SO₂ 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 control periods, in addition to the control period under subdivision

84.2.b, during which control periods 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 control periods begin not more than 3 years before the unit enters the CAIR SO₂ 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 SO₂ emission rate and heat input are monitored and reported for only one control period, in accordance with subdivisions 84.2.a and 84.2.b, the unit's total heat input (in mmBtu) for the control period; or

84.3.b. If the unit's SO₂ emission rate and heat input are monitored and reported for more than one control period, 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 control ~~period under subdivision 84.2.b and for the control periods under subdivision~~ subdivisions 84.2.b and 84.2.c.

84.4. Baseline SO₂ emission rate. -- The unit's baseline SO₂ emission rate will equal:

84.4.a. If the unit's SO₂ emission rate and heat input are monitored and reported for only one control period, in accordance with subdivisions 84.2.a and 84.2.b, the unit's SO₂ emission rate (in lb/mmBtu) for the control period;

84.4.b. If the unit's SO₂ emission rate and heat input are monitored and reported for more than one control period, in accordance with subdivisions 84.2.a, 84.2.b and 84.2.c, and the unit does not have add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emission rate (in lb/mmBtu) for the control ~~period under subdivision 84.2.b and the control periods under subdivision~~ subdivisions 84.2.b and 84.2.c; or

84.4.c. If the unit's SO₂ emission rate and

heat input are monitored and reported for more than one control period, in accordance with subdivisions 84.2.a, 84.2.b and 84.2.c, and the unit has add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emission rate (in lb/mmBtu) for such control ~~period~~ periods during which the unit has add-on SO₂ emission controls.

84.5. Issuance of CAIR opt-in permit. -- After calculating the baseline heat input and the baseline SO₂ 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 SO₂ 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 SO₂ 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 SO₂ 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 SO₂ opt-in permit for the unit.

84.7. Date of entry into CAIR SO₂ Trading Program. -- A unit for which an initial CAIR opt-in permit is issued by the Secretary will become a CAIR SO₂ opt-in unit, and a CAIR SO₂ unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.

84.8. Repowered CAIR SO₂ 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 SO₂ opt-in unit of CAIR SO₂ allowances

under subsection 88.3 and such unit is repowered after its date of entry into the CAIR SO₂ Trading Program under subsection 84.7, the repowered unit will be treated as a CAIR SO₂ opt-in unit replacing the original CAIR SO₂ 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 SO₂ emission rate as the original CAIR SO₂ opt-in unit, and the original CAIR SO₂ opt-in unit will no longer be treated as a CAIR SO₂ opt-in unit or a CAIR SO₂ unit.

§45-41-85. 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 SO₂ emission rate under subsection 84.4;

85.1.e. A statement whether the unit is to be allocated CAIR SO₂ 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 SO₂ 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 SO₂ allowances to or from the compliance account of the source that includes a CAIR SO₂ 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 SO₂ opt-in unit is located and in a Title V operating permit or other federally enforceable permit for the source.

§45-41-86. Withdrawal from CAIR SO₂ Trading Program. -- Except as provided under subsection 86.7, a CAIR SO₂ opt-in unit may withdraw from the CAIR SO₂ Trading Program, but only if the Secretary issues a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit in accordance with subsection 86.4.

86.1. Requesting withdrawal. -- In order to withdraw a CAIR SO₂ opt-in unit from the CAIR SO₂ Trading Program, the CAIR designated representative of the CAIR SO₂ opt-in unit must submit to the Secretary a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO₂ 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 SO₂ opt-in unit covered by a request under subsection 86.1 may withdraw from the CAIR SO₂ 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 control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO₂

opt-in unit must meet the requirement to hold CAIR SO₂ 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 SO₂ opt-in unit CAIR SO₂ allowances equal in number amount to and allocated for the same or a prior control period as any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under section 88 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO₂ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO₂ opt-in unit may submit a CAIR SO₂ allowance transfer for any remaining CAIR SO₂ allowances to another CAIR SO₂ 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 SO₂ allowances required), the Secretary will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit as of midnight on December 31 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 SO₂ opt-in unit that the CAIR SO₂ opt-in unit's request to withdraw is denied. Such CAIR SO₂ opt-in unit will continue to be a CAIR SO₂ 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 SO₂ 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 SO₂ opt-in unit until the effective date of the termination and will comply with all requirements under the CAIR SO₂ Trading Program concerning any control periods for which the unit is a CAIR SO₂ 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 SO₂ 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 SO₂ Trading Program. -- Once a CAIR SO₂ opt-in unit withdraws from the CAIR SO₂ 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 SO₂ 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 SO₂ opt-in unit will not be eligible to withdraw from the CAIR SO₂ Trading Program if the CAIR designated representative of the CAIR SO₂ opt-in unit requests, and the Secretary issues a CAIR SO₂ opt-in permit providing for, allocation to the CAIR SO₂ opt-in unit of CAIR SO₂ allowances under subsection 88.3.

§45-41-87. Change in Regulatory Status.

87.1. Notification. -- If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ 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 SO₂ 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 SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4, the Secretary will revise the CAIR SO₂ 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 SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4.

87.2.b. The Administrator will deduct from the compliance account of the source that includes a the CAIR SO₂ opt-in unit that becomes a CAIR SO₂ unit under section 4, CAIR SO₂ allowances equal in number amount to and allocated for the same or a prior control period as:

87.2.b.1. Any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under section 88 for any control period after the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4; and

87.2.b.2. If the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4 is not December 31, the CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under section 88 for the control period that includes the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4 divided by the total number of days in the control period 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 SO₂ opt-in unit that becomes a CAIR SO₂ unit under section 4 contains the CAIR SO₂ allowances necessary for completion of the deduction under subdivision 87.2.b.

~~87.2.d. For every control period after the date on which a CAIR SO₂ opt-in unit becomes a~~

~~CAIR SO₂ unit under section 4, the CAIR SO₂ opt-in unit will be treated, solely for purposes of CAIR SO₂ allowance allocations under section 42, as a unit that commences operation on the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4 and will be allocated CAIR SO₂ allowances under section 42.~~

~~87.2.c. Notwithstanding subdivision 87.2.d, if the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4 is not January 1, the following number of CAIR SO₂ allowances will be allocated to the CAIR SO₂ opt-in unit (as a CAIR SO₂ unit) under section 42 for the control period that includes the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4:~~

~~87.2.c.1. The number of CAIR SO₂ allowances otherwise allocated to the CAIR SO₂ opt-in unit (as a CAIR SO₂ unit) under section 42 for the control period multiplied by;~~

~~87.2.c.2. The ratio of the number of days, in the control period, starting with the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under section 4, divided by the total number of days in the control period; and~~

~~87.2.c.3. Rounded to the nearest whole allowance as appropriate.~~

§45-41-88. CAIR SO₂ Allowance Allocations to CAIR SO₂ 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 SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under subsection 84.7, in accordance with subsections 88.2 or 88.3.

88.1.b. By no later than October 31 of the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under subsection 84.7; and October 31 of each year

thereafter, the Secretary will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO₂ opt-in unit, in accordance with ~~subsections~~ subsection 88.2 or 88.3.

88.2. Calculation of allocation. -- For each control period for which a CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the Secretary will allocate in accordance with the following procedures:

88.2.a. The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:

88.2.a.1. The CAIR SO₂ opt-in unit's baseline heat input determined under subsection 84.3; or

88.2.a.2. The CAIR SO₂ opt-in unit's heat input, as determined in accordance with sections 70 through ~~76~~ 75, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under subsection 84.7;

88.2.b. The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:

88.2.b.1. The CAIR SO₂ opt-in unit's baseline SO₂ emission rate determined under subsection 84.4 and multiplied by ~~70 percent~~ 0.70 (70 percent); or

88.2.b.2. The most stringent state or federal SO₂ emission limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated; and

88.2.c. The Secretary will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under subdivision 88.2.a, multiplied by the SO₂ emission

rate under subdivision 88.2.b, divided by 2,000 lb/ton.

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 SO₂ opt-in unit of CAIR SO₂ allowances under this subsection (subject to the conditions in subsections 84.8 and 86.7), the Secretary will allocate to the CAIR SO₂ opt-in unit as follows:

88.3.a. For each control period in 2010 through 2014 for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the heat input (in mmBtu) used for calculating CAIR SO₂ allowance allocations will be determined as described in subdivision 88.2.a. The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:

88.3.a.1. The CAIR SO₂ opt-in unit's baseline SO₂ emission rate determined under subsection 84.4; or

88.3.a.2. The most stringent state or federal SO₂ emission limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under subsection 84.7;

88.3.b. The Secretary will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under subdivision 88.3.a, multiplied by the SO₂ emission rate under subdivision 88.3.a, divided by 2,000 lb/ton;

88.3.c. For each control period in 2015 and thereafter for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocations will be determined as described in subdivision 88.2.a. The SO₂ emission rate (in lb/mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:

88.3.c.1. The CAIR SO₂ opt-in unit's baseline SO₂ emission rate determined under subsection 84.4 multiplied by 0.10 (10 percent); or

88.3.c.2. The most stringent state or federal SO₂ emission limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated; and

88.3.d. The Secretary will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under subdivision 88.3.c, multiplied by the SO₂ emission rate under subdivision 88.3.c, divided by 2,000 lb/ton.

88.4. Recordation.

88.4.a. The Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the Secretary to the CAIR SO₂ opt-in unit under subdivision 88.1.a.

88.4.b. By December 1 of the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under subsection 84.7, and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the Secretary to the CAIR SO₂ opt-in unit under subdivision 88.1.b.

§45-41-90. Inconsistency Between Rules.

90.1. 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 45CSR41 - CONTROL
OF ANNUAL SULFUR DIOXIDE EMISSIONS TO
MITIGATE INTERSTATE TRANSPORT OF FINE
PARTICULATE MATTER AND SULFUR DIOXIDE

Transcript of proceedings had at a public
hearing in the above-styled matter taken by Jo Ann Wilson,
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 7:02 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 emitters of Sulfur Dioxide reduce annual emissions based
2 upon the implementation of retirement ratios for Sulfur
3 Dioxide allowances allocated under the Acid Rain Program.
4 The U.S. Environmental Protection Agency is specifying that
5 annual Sulfur Dioxide emission reductions be implemented in
6 two phases. The first phase of Sulfur Dioxide reductions
7 starts in 2010 and requires retiring Sulfur Dioxide
8 allowances at a 2:1 ratio; the second phase starts in 2015
9 and requires retiring Sulfur Dioxide allowances at a 2.86:1
10 ratio, and continues thereafter.

11 The Sulfur Dioxide emissions reductions
12 requirements are based on controls that are known to be
13 highly cost effective for electric generating units.
14 Flexibility is built in through market-based "cap and
15 trade" provisions, which allow sources to buy, or sell,
16 Sulfur Dioxide emission allowances from, or to, other
17 program participants. Reducing upwind Sulfur Dioxide
18 emissions will assist downwind Particulate Matter, in the
19 2.5 microns, and eight hour ozone non-attainment areas in
20 achieving the National Ambient Air Quality Standards.

21 45CSR41 applies to large fossil fuel-fired
22 electric generating units that have greater than 25
23 megawatts generating capacity.

1 Upon authorization and promulgation of
2 revisions to 45CSR41, the Division of Air Quality will
3 submit the final rules to the U.S. Environmental Protection
4 Agency as revisions to the State Implementation Plan,
5 pursuant to the Federal Clean Air Act.

6 The floor is now open for comments. Please
7 state your name and any affiliation.

8 MR. TWEDDLE: I'm here, primarily,
9 representing the West Virginia Council, but I'm on several
10 other environment boards. I should, also, state I am on
11 the Public Energy Authority, at the pleasure of the
12 Governor. So, I'm very involved in this arena.

13 I do have, as an engineer, over 40 years of
14 experience dealing with air quality issues in my native
15 Canada, in California, and then, here. I have experienced,
16 and see, distinctive rollback attempts at the federal level
17 by the EPA. It's very discouraging. So, I'm standing up
18 to every opportunity I can to say there's no reason why
19 West Virginia should roll back any air quality rule, at
20 all. I've never seen economic justification for doing so.
21 There's no need to do it. The statutes, clearly, say that
22 the state of West Virginia can be more stringent than the
23 feds - - Federal EPA.

1 So, there is no - - it's not a cast-in-
2 stone requirement that DEP roll back, always adjust and
3 change, to what the feds say, unless it's administrative,
4 or legal, or language, or things like that. In terms of
5 air quality standards, my posture is that I do not want to
6 see us roll back any rule in terms of emissions, or air
7 quality.


8 MS. CHANDLER: There being nothing further,
9 this public hearing for the proposed revisions to 45CSR41
10 is concluded. Thank you for coming.

11 (WHEREUPON, the hearing was
12 concluded at 7:06 p.m.)
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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.



west virginia department of environmental protection

NAME (Please Print)

ADDRESS

ORGANIZATION

PHONE/FAX

E-MAIL

COMMENT
YES/NO

NAME (Please Print)	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	COMMENT YES/NO
Gail Holley	PO Box 2613 Charleston WV 25329				NO
Jon Mason	WVDEP				
Alan Twardy	Self, WVEC				
Jim Kotcon	444 HARVEY AVE NW MORGANTOWN WV 26508	WV SIERRA CLUB	574-3722	JKOTCON@WVU.EDU	YES
Vicki Jo Sims	1507 DIXIE ST PO BOX 5153 CHS.	Concerned Mont/WV	444 3370		Yes

Sign-In

Proposed Revisions to DAQ Legislative Rules
DEP's Dolly Sods Conference Room
601 57th Street, SE, Charleston
July 10, 2006 6:00 p.m.



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 E. Faggert
Vice President and Chief Environmental Officer
8000 Dominion Boulevard, Eden Allen, VA 23060
Phone: 804-273-3407



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.

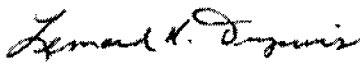
Distribution of Allowances from the New Source Set Aside (§45-39-42.3 and §45-40-42.3)

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)



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, 16, 18, 25, 34, 39, 40 and 41 are of interest to our membership and we would like to provide the following comments:

Rule 6 - Control of Air Pollution from Combustion of Refuse The Chamber supports both the general intent and the language of this rule and the substantive changes that concern controlling air quality during 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

45CSR41

CONTROL OF ANNUAL SULFUR DIOXIDE 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 45CSR41. Written comments were also accepted through 6:00 PM on Monday, July 10, 2006. Four commenters submitted written comments regarding proposed revisions to rule 45CSR41, and one commenter provided verbal comments. DAQ addresses the written comments below. The verbal comment 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.

III. 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 revised the rule to ensure that it appropriately reflects the federal

program.

IV. 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.*"

RESPONSE A. No response required.

V. 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) for reductions of emissions of sulfur oxides over and above those required by the existing Acid Rain Program. Therefore, DAQ views the rule as being more stringent than previous State requirements for emissions of sulfur oxides from electric generating units.