

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

Form #1

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection, Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: W.V. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 41

TITLE OF RULE BEING PROPOSED: Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate
Transport of Fine Particulate Matter and Sulfur Dioxide

DATE OF PUBLIC HEARING: July 18, 2005 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection
Cooper's Rock Conference Room
601 57th Street, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

John A. Benedict, Director
WV Department of Environmental Protection
Division of Air Quality

601 57th Street, S.E.
Charleston, WV 25304

Stephanie R. Timmermeyer
Authorized Signature
Stephanie R. Timmermeyer, Director

\$12.80

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

BRIEFING DOCUMENT

Rule Title: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"

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:

In the final CAIR rule, U.S. EPA finds that 28 States and the District of Columbia contribute significantly to nonattainment of the NAAQS for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind States. U.S. EPA is requiring these upwind states to revise their SIPs to include control measures to reduce annual emissions of SO₂. Consequently, the 28 states, including West Virginia, are required to submit SIP revisions implementing CAIR by September 11, 2006.

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 June 8, 2005 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 - June 8, 2005
601 57th Street, SE, Charleston, WV
Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:

Larry Harris
Jackie Hallinan
Rick Roberts
Lisa Dooley
Bill Raney
Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary
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
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Brett Loflin, WV Oil and Gas Conservation Commission
Dave Bassage- WVDEP
Greg Adolpson – WVDEP
Jim Mason – WVDEP
Fred Durham – WVDEP
Jim Mason – WVDEP
Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle
Don Garvin – WVEC
Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 “Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors”**

This rule partially fulfills the State’s obligations in response to U.S. EPA’s final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

Comments:

How will this relate to the new rule 40?

Rule 40 will repeal Rule 1 in 2009.

Are these kinds of trading effective in lowering NO_x emission?

Yes, West Virginia has dropped from one of the highest to one of the lowest states.

If one is testing, how do you see which sources account for improvement?

Have CEMS on stacks so we can analyze data.

- **45CSR15 – “Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61”**

This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and 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 to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – “Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60”**

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 (USEPA) 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 incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. 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 July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines; Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – “To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities.”**

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 (USEPA) 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 the Code of Federal Regulations 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 Program, 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 Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

Comments:

What does the term “constituents” mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

Look at the definition of “hazardous waste” and prevention language is meant to set forth overall purpose of the rule.

Does the agency consult with DHHR or other public health officials?

No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.

- **45CSR33 – “Acid Rain Provisions and Permits”**

This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the United States Environmental Protection Agency (USEPA) under title IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions. Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or

cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – “Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

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. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. 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 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial,

Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – “Mercury Budget Trading Program to Reduce Mercury Emissions”**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%

2018 – 69%

WV:

2010 – 43%

2018 – 77%

- **45CSR39 – “Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides”**

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.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – "Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides"**

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

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

based “cap and trade” provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

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

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW 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.

No Comments.

- **33CSR41 – “Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide”**

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 generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – “Solid Waste Management Rule”**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq.

The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – “Hazardous Waste Management”**

The purpose of this rule is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – “Coalbed Methane Wells Rule”**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – “Rules of the Commission”**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 “Environmental Excellence Program Rule”**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the \$1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from \$250 to \$400; the permit fees for deep wells from \$250 to \$650; and the reclamation fees for all well activity from \$100 to \$150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from \$250 to \$650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately \$350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. HB 2723. Environmental Rules Bundle.

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. HB 3236. Thin Seam Coal Tax Applicability.

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. HB 2333. Environmental Good Samaritan Act.

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. HB 3033. Continuation of Special Reclamation Tax.

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. SB 154. Beneficial Reuse of Water Treatment Plant Sludge.

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. SB 287. Transfer of Rulemaking Authority for Water Quality Standards.

This legislation transfers the authority to promulgate water quality standards and the authority to grant reming variances from the Environmental Quality Board to the department.

11. SB 748. Credit for Mitigation.

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned meeting.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"

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 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	2006 Increase/Decrease (use "-")	2007 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	\$ 625	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR41 - "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"

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 2006 are approximately 16.7% of 1 FTE plus benefits, office and equipment costs. In fiscal years 2007 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.

Date: June 15, 2004

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

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

**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. --

1.5. Effective Date. --

§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 and, with regard to CAIR SO₂ allowances issued under section 88, the determination by the Secretary of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit.

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 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.

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, 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.

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 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.

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, 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.

2.16. "CAIR NO_x Ozone Season source" means a source that includes one or more CAIR NO_x Ozone Season units.

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, 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 a CAIR NO_x Ozone Season opt-in unit under sections 80 through 88 of 45CSR40.

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, 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 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 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 54.2. 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 approved under 40 CFR §51.124(o)(1) or (2) 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 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, 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 of the CAIR SO₂ allowances available

for deduction for the source under sections 54.1 and 54.2 for a 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, 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, 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

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 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.

2.35.a.1. For a unit that is a CAIR SO₂ unit under section 4 on 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.

2.35.a.2. For a unit that is a CAIR SO₂ unit under section 4 on 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), 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.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 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.

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), 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.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.

2.36.a.1. 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), such date will remain the unit's date of commencement of operation.

2.36.a.2. 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), 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.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 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:

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

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.

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 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. "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. For the life of the unit;

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

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

2.53. "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. "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 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 specified by the person

conducting the physical change.

2.55. "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. "Owner" means any of the following persons:

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

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

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

2.61. "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. Atmospheric or pressurized fluidized bed combustion;

2.61.b. Integrated gasification combined cycle;

2.61.c. Magnetohydrodynamics;

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

2.61.e. Integrated gasification fuel cells;
or

2.61.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 through 2.61.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. "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. "Serial number" means, for a CAIR SO₂ allowance, the unique identification number assigned to each CAIR SO₂ allowance by the Administrator.

2.64. "Sequential use of energy" means:

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

2.65. "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. "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. "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. In person;

2.67.b. By United States Postal Service;
or

2.67.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. "Title V operating permit" means a permit issued under 45CSR30.

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

2.74. "Unit operating day" means a calendar day in which a unit combusts any fuel.

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

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

2.77.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. Used in a heating application (e.g., space heating or domestic hot water heating); or

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

2.78. "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. 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 oxide.

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 following units in West Virginia will be CAIR SO₂ units, and any source that includes one or more such units will be a CAIR SO₂ source, subject to the requirements of sections 5 through 76:

4.1. Electric generating units. -- Except as provided in subsection 4.2, a stationary fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MW_e producing electricity for sale; and

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

§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, subdivisions 6.3.d through 6.3.g, section 7, 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, 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; 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 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.

6.2.b. The emission measurements recorded and reported in accordance with sections 70 through 76 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.

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 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.

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 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. 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. 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, provided that to the extent that sections 70 through 76 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.

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 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, 51 and 82, whenever the term "CAIR designated representative" is used in sections 4 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;

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 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."; and

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

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

§45-41-14. 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.

§45-41-20. General CAIR 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 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, 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 operation.

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.

§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. -- 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 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. 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. 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, 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.

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 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 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 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 CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.

51.8. 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 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 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 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;

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 60 by the allowance transfer deadline for the control period; and

54.1.c. Are not necessary for deduction 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, 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, 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 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 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 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.

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 54.4.

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.

§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.

§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 60 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 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.

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 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 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 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 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 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 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 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, 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 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, 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 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.

§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.

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 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 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 SO₂ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO₂ 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 CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of Appendix A to 40 CFR Part 75; 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 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 SO₂ 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 SO₂ 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 SO₂ 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.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, quarterly reports will include the applicable data and information required by Subparts F through H 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.

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 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. Application of an alternative to any requirement of sections 70 through 76 is in accordance with sections 70 through 76 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. Application of an alternative to any requirement of sections 70 through 76 is in accordance with sections 70 through 76 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.

§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.

§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, 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 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 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;

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 88.3 (subject to the conditions in subsections 84.8 and 86.7).

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 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.

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 are monitored and reported in accordance with sections 70 through 76. 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, starting on the date of certification of the appropriate monitoring systems under sections 70 through 76 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 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 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 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 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 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 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 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 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, 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.

§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 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 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 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 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 CAIR SO₂ opt-in unit that becomes a CAIR SO₂ unit under section 4, CAIR SO₂ allowances equal in number 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 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.e. 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.e.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.e.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.e.3. Rounded to the nearest whole allowance as appropriate.

§45-41-88. CAIR SO₂ Allowance Allocations to 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 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 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, 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; 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 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. 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 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 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 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 inconsistency will be resolved by the determination of the Secretary and such determination will be based upon the application of the more stringent provision, term, condition, method or rule.