

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

**SERIES 39**  
**CONTROL OF ANNUAL NITROGEN OXIDES EMISSIONS**

**§45-39-1. General.**

1.1. Scope. -- This rule establishes general provisions and the designated representative, permitting, allowance and monitoring provisions for the state CAIR NO<sub>x</sub> 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 HH, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO<sub>x</sub>). 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 NO<sub>x</sub> Annual Trading Program by carrying out the functions set forth for the Administrator in this rule and 40 CFR Part 51. The CAIR NO<sub>x</sub> Ozone Season Trading Program requirements are set forth in 45CSR40.

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 AA through HH, resulting in several minor areas of nonconformity with 153CSR6.

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

1.4. Filing Date. -- April 14, 2008.

1.5. Effective Date. -- May 1, 2008.

1.6. Former Rules. -- This legislative rule amends 45CSR39 "Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport

of Fine Particulate Matter and Nitrogen Oxides" which was filed April 28, 2006, and which became effective May 1, 2006.

**§45-39-2. Definitions.**

2.1. "Account number" means the identification number given by the Administrator to each CAIR NO<sub>x</sub> Annual Allowance Tracking System account.

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

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

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

2.5. "Allocate" or "allocation" means, with regard to CAIR NO<sub>x</sub> Annual allowances, the determination by the Secretary, a permitting authority or the Administrator of the amount of such CAIR NO<sub>x</sub> Annual allowances to be initially credited to a CAIR NO<sub>x</sub> Annual unit, a new unit set-aside, or other entity.

2.6. "Allowance transfer deadline" means, for a control period, midnight of March 1, (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR NO<sub>x</sub> Annual

allowance transfer must be submitted for recordation in a CAIR NO<sub>x</sub> Annual source's compliance account in order to be used to meet the source's CAIR NO<sub>x</sub> Annual emissions limitation for such control period in accordance with section 54.

2.7. "Alternate CAIR designated representative" means, for a CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual 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 15, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO<sub>x</sub> Annual Trading Program. If the CAIR NO<sub>x</sub> Annual source is also a CAIR SO<sub>2</sub> source under 45CSR41, then this natural person will be the same person as the alternate CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the CAIR NO<sub>x</sub> Annual source is also a CAIR NO<sub>x</sub> Ozone Season source under 45CSR40, then this natural person will be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the CAIR NO<sub>x</sub> Annual source is also subject to the Acid Rain Program, then this natural person will be the same person as the alternate designated representative under the Acid Rain Program under 45CSR33. If the CAIR NO<sub>x</sub> Annual source is also subject to the Hg Budget Trading Program, then this natural person will be the same person as the alternate Hg designated representative under the Hg Budget Trading Program under 45CSR37.

2.8. "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under sections 70 through 75, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by sections 70 through 75.

2.9. "Boiler" means an enclosed fossil or other

fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

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

2.11. "CAIR authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with sections 10 through 15, sections 51 through 57, to transfer and otherwise dispose of CAIR NO<sub>x</sub> Annual allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

2.12. "CAIR designated representative" means, for a CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual 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 15, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO<sub>x</sub> Annual Trading Program. If the CAIR NO<sub>x</sub> Annual source is also a CAIR SO<sub>2</sub> source under 45CSR41, then this natural person will be the same person as the CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the CAIR NO<sub>x</sub> Annual source is also a CAIR NO<sub>x</sub> Ozone Season source under 45CSR40, then this natural person will be the same person as the CAIR designated representative under the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the CAIR NO<sub>x</sub> Annual source is also subject to the Acid Rain Program, then this natural person will be the same person as the designated representative under the Acid Rain Program under 45CSR33. If the CAIR NO<sub>x</sub> Annual source is also subject to the Hg Budget Trading Program, then this natural person will be the same person as the Hg designated representative under the Hg Budget Trading Program under 45CSR37.

2.13. “CAIR NO<sub>x</sub> Annual allowance” means a limited authorization issued by the Secretary, a permitting authority or the Administrator under provisions of a state implementation plan that are approved under 40 CFR §§51.123(o)(1) or (2) or (p), or under 40 CFR Part 97, Subpart EE or 40 CFR §97.188 to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO<sub>x</sub> Annual Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation plan that are approved under 40 CFR §§51.123(o)(1) or (2) or (p), or 40 CFR Part 97, Subpart EE or 40 CFR §97.188 will not be a CAIR NO<sub>x</sub> Annual allowance.

2.14. “CAIR NO<sub>x</sub> Annual allowance deduction” or “deduct CAIR NO<sub>x</sub> Annual allowances” means the permanent withdrawal of CAIR NO<sub>x</sub> Annual allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO<sub>x</sub> Annual units at a CAIR NO<sub>x</sub> Annual source for a control period, determined in accordance with sections 70 through 75, or to account for excess emissions.

2.15. “CAIR NO<sub>x</sub> Annual allowances held” or “hold CAIR NO<sub>x</sub> Annual allowances” means the CAIR NO<sub>x</sub> Annual allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with sections 51 through 57 and sections 60 through 62, in a CAIR NO<sub>x</sub> Annual Allowance Tracking System account.

2.16. “CAIR NO<sub>x</sub> Annual Allowance Tracking System” means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO<sub>x</sub> Annual allowances under the CAIR NO<sub>x</sub> Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

2.17. “CAIR NO<sub>x</sub> Annual Allowance Tracking System account” means an account in the CAIR NO<sub>x</sub> Annual Allowance Tracking System established by the Administrator for

purposes of recording the allocation, holding, transferring, or deducting of CAIR NO<sub>x</sub> Annual allowances.

2.18. “CAIR NO<sub>x</sub> Annual emissions limitation” means, for a CAIR NO<sub>x</sub> Annual source, the tonnage equivalent, in NO<sub>x</sub> emissions in a control period, of the CAIR NO<sub>x</sub> Annual allowances available for deduction for the source under subsections 54.1 and 54.2 for the control period.

2.19. “CAIR NO<sub>x</sub> Annual source” means a source that includes one or more CAIR NO<sub>x</sub> Annual units.

2.20. “CAIR NO<sub>x</sub> Annual Trading Program” means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AA through II and 40 CFR §51.123(o)(1) or (2) or established by the Administrator in accordance with Subparts AA through II of 40 CFR Part 97, and 40 CFR §§51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

2.21. “CAIR NO<sub>x</sub> Annual unit” means a unit that is subject to the CAIR NO<sub>x</sub> Annual Trading Program under section 4.

2.22. “CAIR NO<sub>x</sub> Ozone Season source” means a source that is subject to the CAIR NO<sub>x</sub> Ozone Season Trading Program.

2.23. “CAIR NO<sub>x</sub> Ozone Season Trading Program” means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAAA through IIII and 40 CFR §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) or established by the Administrator in accordance with 40 CFR Part 97, Subparts AAAA through IIII, and 40 CFR §§51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

2.24. Reserved.

2.25. “CAIR permit” means the legally binding and federally enforceable written document, or portion of such document, issued by the Secretary under sections 20 through 24, including any permit revisions, specifying the CAIR NO<sub>x</sub> Annual Trading Program requirements applicable to a CAIR NO<sub>x</sub> Annual source, to each CAIR NO<sub>x</sub> Annual unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

2.26. “CAIR SO<sub>2</sub> source” means a source that is subject to the CAIR SO<sub>2</sub> Trading Program.

2.27. “CAIR SO<sub>2</sub> Trading Program” means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAA through III and 40 CFR §51.124(o)(1) or (2) or established by the Administrator in accordance with Subparts AAA through III of 40 CFR Part 97, and 40 CFR §§51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

2.28. Reserved.

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:

2.32.a. Except for purposes of sections 40 through 43, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

2.32.b. For purposes of sections 40 through 43, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified

year.

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

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

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

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

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

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

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

2.34. “Combustion turbine” means:

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

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

2.35. “Commence commercial operation”

means, with regard to a unit:

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 NO<sub>x</sub> Annual unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.a and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date will remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

2.35.a.2. For a unit that is a CAIR NO<sub>x</sub> Annual unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.a and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivisions 2.35.a or 2.35.b, 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 NO<sub>x</sub> Annual unit under section 4 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subdivision 2.35.a, the unit's date for commencement of commercial operation will be the date on which the unit becomes a CAIR NO<sub>x</sub> Annual 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 date of commencement of commercial operation of the

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

2.35.b.2. For a unit with a date for commencement of commercial operation as defined in subdivision 2.35.b and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivisions 2.35.a or 2.35.b, as appropriate.

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.

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

2.36.c. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 2.36.a, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit will be treated as a separate unit with a separate date for commencement of operation as defined in subdivisions 2.36.a, 2.36.b, or 2.36.c as appropriate.

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 NO<sub>x</sub> Annual Allowance Tracking System account, established by the Administrator for a CAIR NO<sub>x</sub> Annual source under sections 51 through 57, in which any CAIR NO<sub>x</sub> Annual allowance

allocations for the CAIR NO<sub>x</sub> Annual units at the source are initially recorded and in which are held any CAIR NO<sub>x</sub> Annual allowances available for use for a control period in order to meet the source's CAIR NO<sub>x</sub> Annual emissions limitation in accordance with section 54.

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

2.39.a. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

2.39.b. A nitrogen oxides concentration monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> emissions, in parts per million (ppm);

2.39.c. A nitrogen oxides emission rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub>; and NO<sub>x</sub> emission rate, in pounds per million British thermal units (lb/mmBtu);

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

moisture content, in percent H<sub>2</sub>O;

2.39.e. A carbon dioxide monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and

2.39.f. An oxygen monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.

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" 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 75.

2.42. "Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO<sub>x</sub> Annual units at a CAIR NO<sub>x</sub> Annual source during a control period that exceeds the CAIR NO<sub>x</sub> Annual emissions limitation for the source.

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

2.44. "Fossil fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

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

2.46. “General account” means a CAIR NO<sub>x</sub> Annual Allowance Tracking System account, established under sections 51 through 57, that is not a compliance account.

2.47. “Generator” means a device that produces electricity.

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

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

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

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

2.52. “Life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a

specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit’s total costs, pursuant to a contract:

2.52.a. For the life of the unit;

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

2.52.c. For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

2.53. “Maximum design heat input” means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

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

2.55. “Most stringent state or federal NO<sub>x</sub> emissions limitation” means, with regard to a unit, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

2.56. “Nameplate capacity” means, starting from the initial installation of a generator, the maximum electrical generating output (in MW<sub>e</sub>) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MW<sub>e</sub>)

that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

2.57. “Oil-fired” means, for purposes of sections 40 through 43, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

2.58. “Operator” means any person who operates, controls, or supervises a CAIR NO<sub>x</sub> Annual unit or a CAIR NO<sub>x</sub> Annual source and will include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

2.59. “Owner” means any of the following persons:

2.59.a. With regard to a CAIR NO<sub>x</sub> Annual source or a CAIR NO<sub>x</sub> Annual unit at a source, respectively:

2.59.a.1. Any holder of any portion of the legal or equitable title in a CAIR NO<sub>x</sub> Annual unit at the source or the CAIR NO<sub>x</sub> Annual unit;

2.59.a.2. Any holder of a leasehold interest in a CAIR NO<sub>x</sub> Annual unit at the source or the CAIR NO<sub>x</sub> Annual unit; or

2.59.a.3. Any purchaser of power from a CAIR NO<sub>x</sub> Annual unit at the source or the CAIR NO<sub>x</sub> Annual unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner will not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO<sub>x</sub> Annual unit; or

2.59.b. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO<sub>x</sub> Annual allowances held in the general account and who is subject to the binding agreement for the CAIR authorized

account representative to represent the person’s ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances.

2.60. “Permitting authority” means the state air pollution control agency, local agency, other state agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO<sub>x</sub> Annual Trading Program in accordance with 40 CFR Part 96, Subpart CC or, if no such agency has been so authorized, the Administrator.

2.61. “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.

2.62. “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 log, or by a notation made on the document, information, or correspondence, by the Secretary or the Administrator in the regular course of business.

2.63. “Recordation”, “record”, or “recorded” means, with regard to CAIR NO<sub>x</sub> Annual allowances, the movement of CAIR NO<sub>x</sub> Annual allowances by the Administrator into or between CAIR NO<sub>x</sub> Annual Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

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

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

2.66. “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:

2.66.a. Atmospheric or pressurized fluidized bed combustion;

2.66.b. Integrated gasification combined cycle;

2.66.c. Magnetohydrodynamics;

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

2.66.e. Integrated gasification fuel cells;  
or

2.66.f. As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 2.66.a through 2.66.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.

2.67. “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.

2.68. “Serial number” means, for a CAIR NO<sub>x</sub> Annual allowance, the unique identification number assigned to each CAIR NO<sub>x</sub> Annual allowance by the Administrator.

2.69. “Sequential use of energy” means:

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

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

electricity production.

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

2.71. “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.”

2.72. “State” means one of the states or the District of Columbia that adopts the CAIR NO<sub>x</sub> Annual Trading Program pursuant to 40 CFR §§51.123(o)(1) or (2).

2.73. “Submit” or “serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

2.73.a. In person;

2.73.b. By United States Postal Service;  
or

2.73.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.

2.74. “Title V operating permit” means a permit issued under 45CSR30.

2.75. “Ton” means 2,000 pounds. For the purpose of determining compliance with the CAIR NO<sub>x</sub> Annual emissions limitation, total tons of nitrogen oxides 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 75, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton

less than 0.50 tons deemed to equal zero tons.

2.76. “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.

2.77. “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.

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

2.79. “Unit” means a stationary, fossil fuel-fired boiler or combustion turbine.

2.80. “Unit operating day” means a calendar day in which a unit combusts any fuel.

2.81. “Unit operating hour” or “hour of unit operation” means an hour in which a unit combusts any fuel.

2.82. “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).

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

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

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

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

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

2.85. 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.

**§45-39-3. Measurements, Abbreviations and Acronyms.** -- Measurements, abbreviations and acronyms used in this rule are defined as follows:

Btu -- British thermal unit.

CO<sub>2</sub> -- carbon dioxide.

NO<sub>x</sub> -- nitrogen oxides.

Hg -- mercury.

hr -- hour.

kW-- kilowatt electrical.

kWh -- kilowatt hour.

mmBtu -- million Btu.

MW<sub>e</sub> -- megawatt electrical.

MWh -- megawatt hour.

O<sub>2</sub> -- oxygen.

ppm -- parts per million.

lb -- pound.

scfh -- standard cubic feet per hour.

SO<sub>2</sub> -- sulfur dioxide.

H<sub>2</sub>O -- water.

yr -- year.

#### **§45-39-4. Applicability.**

4.1. Except as provided in subsection 4.2, the following units in West Virginia shall be CAIR NO<sub>x</sub> Annual units, and any source that includes one or more such units shall be a CAIR NO<sub>x</sub> Annual source, subject to the requirements of sections 1 through 75: any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW<sub>e</sub> producing electricity for sale. If a stationary boiler or stationary combustion turbine that is not a CAIR NO<sub>x</sub> Annual unit under this subsection begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MW<sub>e</sub> producing electricity for sale, the unit shall become a CAIR NO<sub>x</sub> Annual unit as provided in this subsection on the first date on which it both combusts fossil fuel and serves such generator.

4.2. With limited exception, the following units in West Virginia shall not be CAIR NO<sub>x</sub> Annual units:

4.2.a. Any unit that is a CAIR NO<sub>x</sub> Annual unit under subsection 4.1 qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit, and, not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MW<sub>e</sub> 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 qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of this subdivision for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Annual unit starting on the earlier of January 1 after the first calendar year during which the unit

first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets all of the requirements of this subdivision.

4.2.b. Any unit that is a CAIR NO<sub>x</sub> Annual unit under subsection 4.1 commencing operation before January 1, 1985 and qualifying as a solid waste incineration unit with an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis), or any unit that is a CAIR NO<sub>x</sub> Annual unit under subsection 4.1 commencing operation on or after January 1, 1985 and qualifying as a solid waste incineration unit with an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis). If a unit qualifies as a solid waste incineration unit and meets the requirements of this subdivision for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Annual unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

#### **§45-39-5. Retired Unit Exemption.**

5.1. General exemption provisions.

5.1.a. Any CAIR NO<sub>x</sub> Annual unit that is permanently retired will be exempt from the CAIR NO<sub>x</sub> Annual Trading Program, except for the provisions of this section, sections 2 through 4, subdivisions 6.3.d through 6.3.g, sections 7 through 15, and sections 40 through 62.

5.1.b. The exemption under subdivision 5.1.a will become effective the day on which the CAIR NO<sub>x</sub> Annual unit is permanently retired.

Within 30 days of the unit's permanent retirement, the CAIR designated representative will submit a statement to the Secretary and submit a copy of the statement to the Administrator. The statement must state, in a format prescribed by the Secretary, that the unit was permanently retired on a specific date and will comply with the requirements of subsection 5.2.

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

## 5.2. Special provisions.

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

5.2.b. The Secretary will allocate CAIR NO<sub>x</sub> Annual allowances under sections 40 through 43 to a unit exempt under subsection 5.1.

5.2.c. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subsection 5.1 must retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Secretary or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

5.2.d. The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under subsection 5.1 must comply with the requirements of the CAIR NO<sub>x</sub> Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

5.2.e. A unit exempt under subsection 5.1 and located at a source that is required, or but for this exemption would be required, to have a Title

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

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

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

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

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

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

## §45-39-6. Standard Requirements.

### 6.1. Permit requirements.

6.1.a. The CAIR designated representative of each CAIR NO<sub>x</sub> Annual source required to have a Title V operating permit and each CAIR NO<sub>x</sub> Annual 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 section 21; and

6.1.a.2. Submit in a timely manner any

supplemental information that the Secretary determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

6.1.b. The owners and operators of each CAIR NO<sub>x</sub> Annual source required to have a Title V operating permit and each CAIR NO<sub>x</sub> Annual 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. The owners and operators of a CAIR NO<sub>x</sub> Annual source that is not otherwise required to have a Title V operating permit and each CAIR NO<sub>x</sub> Annual unit that is not otherwise required to have a Title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under sections 20 through 24 for such CAIR NO<sub>x</sub> Annual source and such CAIR NO<sub>x</sub> Annual unit.

6.2. Monitoring, reporting, and recordkeeping requirements.

6.2.a. The owners and operators, and the CAIR designated representative, of each CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual unit at the source will comply with the monitoring, reporting, and recordkeeping requirements of sections 70 through 75.

6.2.b. The emission measurements recorded and reported in accordance with sections 70 through 75 will be used to determine compliance by each CAIR NO<sub>x</sub> Annual source with the CAIR NO<sub>x</sub> Annual emissions limitation under subsection 6.3.

6.3. Nitrogen oxides emission requirements.

6.3.a. As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual unit at the source must hold, in the source's compliance account, CAIR NO<sub>x</sub> Annual allowances available for compliance deductions for the control period under subsection 54.1 in an

amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO<sub>x</sub> Annual units at the source, as determined in accordance with sections 70 through 75.

6.3.b. A CAIR NO<sub>x</sub> Annual unit will be subject to the requirements under subdivision 6.3.a for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under subdivisions 70.2.a, 70.2.b, or 70.2.e and for each control period thereafter.

6.3.c. A CAIR NO<sub>x</sub> Annual allowance will not be deducted, for compliance with the requirements under subdivision 6.3.a, for the control period in a calendar year before the year for which the CAIR NO<sub>x</sub> Annual allowance was allocated.

6.3.d. CAIR NO<sub>x</sub> Annual allowances will be held in, deducted from, or transferred into or among CAIR NO<sub>x</sub> Annual Allowance Tracking System accounts in accordance with sections 51 through 62.

6.3.e. A CAIR NO<sub>x</sub> Annual allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO<sub>x</sub> Annual Trading Program. No provision of the CAIR NO<sub>x</sub> Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under section 5 and no provision of law will be construed to limit the authority of the state or the United States to terminate or limit such authorization.

6.3.f. A CAIR NO<sub>x</sub> Annual allowance does not constitute a property right.

6.3.g. Upon recordation by the Administrator under sections 40 through 62, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> Annual allowance to or from a CAIR NO<sub>x</sub> Annual source's compliance account is incorporated automatically in any CAIR permit of the source.

6.4. Excess emissions requirements. -- If a CAIR NO<sub>x</sub> Annual source emits nitrogen oxides

during any control period in excess of the CAIR NO<sub>x</sub> Annual emissions limitation, then:

6.4.a. The owners and operators of the source and each CAIR NO<sub>x</sub> Annual unit at the source will surrender the CAIR NO<sub>x</sub> Annual 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.b. Each ton of such excess emissions and each day of such control period will constitute a separate violation of this rule, the CAA, and W.Va. Code §22-5-1 et seq.

6.5. Recordkeeping and reporting requirements.

6.5.a. Unless otherwise provided, the owners and operators of the CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Secretary or the Administrator.

6.5.a.1. The certificate of representation under section 13 for the CAIR designated representative for the source and each CAIR NO<sub>x</sub> Annual 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 75, provided that to the extent that sections 70 through 75 provides for a 3-year period for recordkeeping, the 3-year period will apply;

6.5.a.3. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO<sub>x</sub> Annual Trading Program; and

6.5.a.4. Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO<sub>x</sub> Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO<sub>x</sub> Annual Trading Program.

6.5.b. The CAIR designated representative of a CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual unit at the source will submit the reports required under the CAIR NO<sub>x</sub> Annual Trading Program, including those under sections 70 through 75.

6.6. Liability.

6.6.a. Each CAIR NO<sub>x</sub> Annual source and each CAIR NO<sub>x</sub> Annual unit must meet the requirements of the CAIR NO<sub>x</sub> Annual Trading Program.

6.6.b. Any provision of the CAIR NO<sub>x</sub> Annual Trading Program that applies to a CAIR NO<sub>x</sub> Annual source or the CAIR designated representative of a CAIR NO<sub>x</sub> Annual source will also apply to the owners and operators of such source and of the CAIR NO<sub>x</sub> Annual units at the source.

6.6.c. Any provision of the CAIR NO<sub>x</sub> Annual Trading Program that applies to a CAIR NO<sub>x</sub> Annual unit or the CAIR designated representative of a CAIR NO<sub>x</sub> Annual unit will also apply to the owners and operators of such unit.

6.7. Effect on other authorities. -- No provision of the CAIR NO<sub>x</sub> Annual 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, and the CAIR designated representative of a CAIR NO<sub>x</sub> Annual source or CAIR NO<sub>x</sub> Annual unit from compliance with any other provision of the applicable, approved state

implementation plan, a federally enforceable permit, order, or the CAA.

**§45-39-7. Computation of Time.**

7.1. Unless otherwise stated, any time period scheduled, under the CAIR NO<sub>x</sub> Annual Trading Program, to begin on the occurrence of an act or event will begin on the day the act or event occurs.

7.2. Unless otherwise stated, any time period scheduled, under the CAIR NO<sub>x</sub> Annual Trading Program, to begin before the occurrence of an act or event will be computed so that the period ends the day before the act or event occurs.

7.3. Unless otherwise stated, if the final day of any time period, under the CAIR NO<sub>x</sub> Annual Trading Program, falls on a weekend or a state or federal holiday, the time period will be extended to the next business day.

**§45-39-8. Appeal Procedures.**

8.1. The appeal procedures for decisions of the Administrator under the CAIR NO<sub>x</sub> Annual Trading Program are set forth in 40 CFR Part 78.

**§45-39-10. Authorization and Responsibilities of the CAIR Designated Representative.**

10.1. Except as provided under section 11, each CAIR NO<sub>x</sub> Annual source, including all CAIR NO<sub>x</sub> Annual units at the source, will have one and only one CAIR designated representative, with regard to all matters under the CAIR NO<sub>x</sub> Annual Trading Program concerning the source or any CAIR NO<sub>x</sub> Annual unit at the source.

10.2. The CAIR designated representative of the CAIR NO<sub>x</sub> Annual source will be selected by an agreement binding on the owners and operators of the source and all CAIR NO<sub>x</sub> Annual units at the source and will act in accordance with the certification statement in paragraph 13.1.d.4.

10.3. Upon receipt by the Administrator of a complete certificate of representation under section 13, the CAIR designated representative of the source will represent and, by his or her

representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO<sub>x</sub> Annual source represented and each CAIR NO<sub>x</sub> Annual unit at the source in all matters pertaining to the CAIR NO<sub>x</sub> Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators will be bound by any decision or order issued to the CAIR designated representative by the Secretary, the Administrator, or a court regarding the source or unit.

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

10.5. Each submission under the CAIR NO<sub>x</sub> Annual Trading Program will be submitted, signed, and certified by the CAIR designated representative for each CAIR NO<sub>x</sub> Annual source on behalf of which the submission is made. Each such submission must include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

10.6. The Secretary and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO<sub>x</sub> Annual source

or a CAIR NO<sub>x</sub> Annual unit only if the submission has been made, signed, and certified in accordance with subsection 10.5.

**§45-39-11. Alternate CAIR Designated Representative.**

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

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

11.3. Except in this section, section 2, subsections 10.1 and 10.4, sections 12, 13, 15 and 51, whenever the term “CAIR designated representative” is used in sections 1 through 75, the term will be construed to include the CAIR designated representative or any alternate CAIR designated representative.

**§45-39-12. Changing the CAIR Designated Representative and Alternate CAIR Designated Representative; Changes in Owners and Operators.**

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

operators of the CAIR NO<sub>x</sub> Annual source and the CAIR NO<sub>x</sub> Annual units at the source.

12.2. Changing alternate CAIR designated representative. -- The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under section 13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO<sub>x</sub> Annual source and the CAIR NO<sub>x</sub> Annual units at the source.

12.3. Changes in owners and operators.

12.3.a. In the event an owner or operator of a CAIR NO<sub>x</sub> Annual source or a CAIR NO<sub>x</sub> Annual unit is not included in the list of owners and operators in the certificate of representation under section 13, such 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 owner or operator were included in such list.

12.3.b. Within 30 days following any change in the owners and operators of a CAIR NO<sub>x</sub> Annual source or a CAIR NO<sub>x</sub> Annual 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.

**§45-39-13. Certificate of Representation.**

13.1. A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative will

include the following elements in a format prescribed by the Administrator:

13.1.a. Identification of the CAIR NO<sub>x</sub> Annual source, and each CAIR NO<sub>x</sub> Annual unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit;

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

13.1.c. A list of the owners and operators of the CAIR NO<sub>x</sub> Annual source and of each CAIR NO<sub>x</sub> Annual unit at the source;

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

13.1.d.1. "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO<sub>x</sub> Annual unit at the source."

13.1.d.2. "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO<sub>x</sub> Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO<sub>x</sub> Annual unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

13.1.d.3. "I certify that the owners and operators of the source and of each CAIR NO<sub>x</sub> Annual unit at the source shall be bound by any order issued to me by the Administrator, the Secretary, or a court regarding the source or unit."

13.1.d.4. "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO<sub>x</sub> Annual unit, or

where a utility or industrial customer purchases power from a CAIR NO<sub>x</sub> Annual unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO<sub>x</sub> Annual unit at the source; and CAIR NO<sub>x</sub> Annual allowances and proceeds of transactions involving CAIR NO<sub>x</sub> Annual allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO<sub>x</sub> Annual allowances by contract, CAIR NO<sub>x</sub> Annual allowances and proceeds of transactions involving CAIR NO<sub>x</sub> Annual allowances will be deemed to be held or distributed in accordance with the contract."

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

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

#### **§45-39-14. Objections Concerning the CAIR Designated Representative.**

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

14.2. Except as provided in subsections 12.1 or 12.2, no objection or other communication submitted to the Secretary or the Administrator concerning the authorization, or any

representation, action, inaction, or submission, of the CAIR designated representative will affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the Secretary or the Administrator under the CAIR NO<sub>x</sub> Annual Trading Program.

14.3. Neither the Secretary nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO<sub>x</sub> Annual allowance transfers.

**§45-39-15. Delegation by CAIR Designated Representative and Alternate CAIR Designated Representative.**

15.1. A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this rule.

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

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

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

15.3.b. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural

person (referred to as an “agent”);

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

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

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

15.3.d.2. “Until this notice of delegation is superseded by another notice of delegation under subsection 15.4, I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under section 15 is terminated.”

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

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

representative or alternate CAIR designated representative submitting such notice of delegation.

**§45-39-20. General CAIR NO<sub>x</sub> Annual Trading Program Permit Requirements.**

20.1. For each CAIR NO<sub>x</sub> Annual source required to have a Title V operating permit, such permit must include a CAIR permit administered by the Secretary for the Title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the Title V operating permit or other federally enforceable permit as applicable will be administered in accordance with 45CSR30 and any other applicable rule, except as provided otherwise by section 5 and sections 20 through 24.

20.2. Each CAIR permit will contain, with regard to the CAIR NO<sub>x</sub> Annual source and the CAIR NO<sub>x</sub> Annual units at the source covered by the CAIR permit, all applicable CAIR NO<sub>x</sub> Annual Trading Program requirements, CAIR NO<sub>x</sub> Ozone Season Trading Program requirements, and CAIR SO<sub>2</sub> 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.

**§45-39-21. Submission of CAIR Permit Applications.**

21.1. Duty to apply. -- The CAIR designated representative of any CAIR NO<sub>x</sub> Annual source required to have a Title V operating permit will submit to the Secretary a complete CAIR permit application under section 22 for the source covering each CAIR NO<sub>x</sub> Annual unit at the source at least 18 months (or such lesser time provided by the Secretary) before the later of January 1, 2009 or the date on which the CAIR NO<sub>x</sub> Annual unit commences commercial operation.

21.2. Duty to reapply. -- For a CAIR NO<sub>x</sub> Annual source required to have a Title V operating permit, the CAIR designated representative will submit a complete CAIR permit application under section 22 for the source covering each CAIR

NO<sub>x</sub> Annual unit at the source to renew the CAIR permit in accordance with 45CSR30.

**§45-39-22. Information Requirements for CAIR Permit Applications.**

22.1. A complete CAIR permit application will include the following elements concerning the CAIR NO<sub>x</sub> Annual source for which the application is submitted, in a format prescribed by the Secretary:

22.1.a. Identification of the CAIR NO<sub>x</sub> Annual source;

22.1.b. Identification of each CAIR NO<sub>x</sub> Annual unit at the CAIR NO<sub>x</sub> Annual source; and

22.1.c. The standard requirements under section 6.

**§45-39-23. 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 40 through 62, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> Annual allowance to or from the compliance account of the CAIR NO<sub>x</sub> Annual source covered by the permit.

23.3. The term of the CAIR permit will be set by the Secretary, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO<sub>x</sub> Annual source's Title V operating permit or other federally enforceable permit as applicable.

**§45-39-24. 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.

**§45-39-30. Reserved.**

**§45-39-40. CAIR NO<sub>x</sub> Annual Trading Budget.**

40.1. The West Virginia CAIR NO<sub>x</sub> annual trading budget for allocations of CAIR NO<sub>x</sub> Annual allowances for the control periods of 2009 through 2014 and 2015 and thereafter are respectively as follows:

CAIR NO <sub>x</sub> Annual Trading Budget	2009-2014	2015 and thereafter
	74,220 tons	61,850 tons

**§45-39-41. Timing Requirements for CAIR NO<sub>x</sub> Annual Allowance Allocations.**

41.1. By October 31, 2006, the Secretary will submit to the Administrator the CAIR NO<sub>x</sub> Annual allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1 and 42.2, for the control periods in 2009, 2010, 2011, 2012, 2013 and 2014.

41.2. By October 31, 2009 and October 31 of each year thereafter, the Secretary will submit to the Administrator the CAIR NO<sub>x</sub> Annual allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1 and 42.2, for the control period in the sixth year after the year of the applicable deadline for submission under this section.

41.3. By October 31, 2009 and October 31 of each year thereafter, the Secretary will submit to the Administrator the CAIR NO<sub>x</sub> Annual allowance allocations, in a format prescribed by the Administrator and in accordance with subsections 42.1, 42.3 and 42.4, for the control period in the year of the applicable deadline for submission under this section.

**§45-39-42. CAIR NO<sub>x</sub> Annual Allowance Allocations.**

42.1. Determination of baseline heat input. -- The baseline heat input (in mmBtu) used with

respect to CAIR NO<sub>x</sub> Annual allowance allocations under subsection 42.2 for each CAIR NO<sub>x</sub> Annual unit will be:

42.1.a. For units commencing operation before January 1, 2001, the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

42.1.a.1. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

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

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

42.1.b. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years;

42.1.c. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subdivision 42.1.a, and a unit's total tons of NO<sub>x</sub> emissions during a calendar year under subdivision 42.3.c, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Secretary for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year; and

42.1.d. A unit's converted control period heat input for a calendar year specified under subdivision 42.1.b equals:

42.1.d.1. Except as provided in

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

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

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

#### 42.2. CAIR NO<sub>x</sub> Annual allowance allocation.

42.2.a. CAIR NO<sub>x</sub> Annual allowances. -- For each control period in 2009 and thereafter, the Secretary will allocate to all CAIR NO<sub>x</sub> Annual units in the state that have a baseline heat input (as determined under subsection 42.1) a total amount of CAIR NO<sub>x</sub> Annual allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO<sub>x</sub> emissions in the state trading budget under section 40 (except as provided in subsection 42.4).

42.2.b. Calculation of CAIR NO<sub>x</sub> Annual allowance allocation. -- The Secretary will allocate

CAIR NO<sub>x</sub> Annual allowances to each CAIR NO<sub>x</sub> Annual unit under subdivision 42.2.a in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> Annual allowances allocated under subdivision 42.2.a by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> Annual unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> Annual units in West Virginia and rounding to the nearest whole allowance as appropriate.

42.3. New unit set-aside allocation. -- For each control period in 2009 and thereafter, the Secretary will allocate CAIR NO<sub>x</sub> Annual allowances to CAIR NO<sub>x</sub> Annual units in West Virginia that are not allocated CAIR NO<sub>x</sub> Annual allowances under subsection 42.2 because the units do not yet have a baseline heat input under subsection 42.1 or because the units have a baseline heat input but all CAIR NO<sub>x</sub> Annual allowances available under subsection 42.2 for the control period are already allocated, in accordance with the following procedures:

42.3.a. The Secretary will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO<sub>x</sub> Annual allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the CAIR NO<sub>x</sub> annual trading budget under section 40;

42.3.b. The CAIR designated representative of such a CAIR NO<sub>x</sub> Annual unit may submit to the Secretary a request, in a format specified by the Secretary, to be allocated CAIR NO<sub>x</sub> Annual allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> Annual unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> Annual allowances under subsection 42.2. A separate CAIR NO<sub>x</sub> Annual allowance allocation request for each control period for which CAIR NO<sub>x</sub> allowances are sought must be submitted on or before May 1 of such control period and after the date on which the CAIR NO<sub>x</sub> Annual unit commences commercial operation;

42.3.c. In a CAIR NO<sub>x</sub> Annual allowance allocation request under subdivision 42.3.b, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> Annual allowances in an amount not exceeding the CAIR NO<sub>x</sub> Annual unit's total tons of NO<sub>x</sub> emissions during the calendar year immediately before such control period; and

42.3.d. The Secretary will review each CAIR NO<sub>x</sub> Annual allowance allocation request under subdivision 42.3.b and will allocate CAIR NO<sub>x</sub> Annual allowances for each control period pursuant to such request as follows:

42.3.d.1. The Secretary will accept an allowance allocation request only if the request meets, or is adjusted by the Secretary as necessary to meet, the requirements of subdivisions 42.3.b and 42.3.c;

42.3.d.2. On or after May 1 of the control period, the Secretary will determine the sum of the CAIR NO<sub>x</sub> Annual allowances requested (as adjusted under paragraph 42.3.d.1) in all allowance allocation requests accepted under paragraph 42.3.d.1 for the control period;

42.3.d.3. If the amount of CAIR NO<sub>x</sub> Annual allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph 42.3.d.2, then the Secretary will allocate the amount of CAIR NO<sub>x</sub> Annual allowances requested (as adjusted under paragraph 42.3.d.1) to each CAIR NO<sub>x</sub> Annual unit covered by an allowance allocation request accepted under paragraph 42.3.d.1;

42.3.d.4. If the amount of CAIR NO<sub>x</sub> Annual allowances in the new unit set-aside for the control period is less than the sum under paragraph 42.3.d.2, then the Secretary will allocate to each CAIR NO<sub>x</sub> Annual unit covered by an allowance allocation request accepted under paragraph 42.3.d.1 the amount of the CAIR NO<sub>x</sub> Annual allowances requested (as adjusted under paragraph 42.3.d.1), multiplied by the amount of CAIR NO<sub>x</sub> Annual allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph 42.3.d.2, and rounded

to the nearest whole allowance as appropriate; and

42.3.d.5. The Secretary will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> Annual allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> Annual unit covered by the request.

42.4. Unallocated new unit set-aside NO<sub>x</sub> allowances. -- If, after completion of the procedures under subdivision 42.3.d for a control period, any unallocated CAIR NO<sub>x</sub> Annual allowances remain in the new unit set-aside for the control period, the Secretary will allocate to each CAIR NO<sub>x</sub> Annual unit that was allocated CAIR NO<sub>x</sub> Annual allowances under subsection 42.2 an amount of CAIR NO<sub>x</sub> Annual allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> Annual allowances, multiplied by the unit's allocation under subsection 42.2, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the CAIR NO<sub>x</sub> annual trading budget under section 40, and rounded to the nearest whole allowance as appropriate.

#### **§45-39-43. Compliance Supplement Pool.**

43.1. In addition to the CAIR NO<sub>x</sub> Annual allowances allocated under section 42, the Secretary may allocate for the control period in 2009 up to 16,929 CAIR NO<sub>x</sub> Annual allowances to CAIR NO<sub>x</sub> Annual units in West Virginia.

43.2. For any CAIR NO<sub>x</sub> Annual unit in West Virginia whose average annual NO<sub>x</sub> emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, if the unit is included in an Acid Rain Program NO<sub>x</sub> averaging plan under 40 CFR §76.11 for such year, whose NO<sub>x</sub> averaging plan has an actual weighted average NO<sub>x</sub> emission rate for such year equal or less than the actual weighted average NO<sub>x</sub> emission rate, for the year before such year achieves NO<sub>x</sub> emission reductions in 2007 or 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO<sub>x</sub> Annual allowances from the compliance supplement pool under subsection

43.1 for such early reduction credits, in accordance with the following:

43.2.a. The owners and operators of such CAIR NO<sub>x</sub> Annual unit will monitor and report the NO<sub>x</sub> emissions rate and the heat input of the unit in accordance with sections 70 through 75 in each control period for which early reduction credit is requested.

43.2.b. The CAIR designated representative of such CAIR NO<sub>x</sub> Annual unit will submit to the Secretary by May 1, 2009 a request, in a format specified by the Secretary, for allocation of an amount of CAIR NO<sub>x</sub> Annual allowances from the compliance supplement pool not exceeding the sum of the unit's heat input for the control period in 2007 multiplied by the difference (if greater than zero) between 0.25 lb/mmBtu and the units' NO<sub>x</sub> emission rate for the control period in 2007 plus the unit's heat input for the control period in 2008 multiplied by the difference (if greater than zero) between 0.25 lb/mmBtu and the units' NO<sub>x</sub> emission rate for the control period in 2008, determined in accordance with sections 70 through 75 and with the sum divided by 2000 lb/ton and rounded to the nearest whole number of tons as appropriate.

43.3. For any CAIR NO<sub>x</sub> Annual unit in West Virginia whose compliance with the CAIR NO<sub>x</sub> Annual emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO<sub>x</sub> Annual allowances from the compliance supplement pool under subsection 43.1, in accordance with the following:

43.3.a. The CAIR designated representative of such CAIR NO<sub>x</sub> Annual unit will submit to the Secretary by May 1, 2009 a request, in a format specified by the Secretary, for allocation of an amount of CAIR NO<sub>x</sub> Annual allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO<sub>x</sub> Annual allowances necessary to remove such undue risk to the reliability of electricity supply;

43.3.b. In the request under subdivision 43.3.a, the CAIR designated representative of such CAIR NO<sub>x</sub> Annual unit will demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO<sub>x</sub> Annual allowances requested, the unit's compliance with the CAIR NO<sub>x</sub> Annual emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

43.3.b.1. Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO<sub>x</sub> Annual emissions limitation, to prevent such undue risk; or

43.3.b.2. Obtain under subsections 43.2 and 43.4, or otherwise obtain, a sufficient amount of CAIR NO<sub>x</sub> Annual allowances to prevent such undue risk.

43.4. The Secretary will review each request under subsections 43.2 or 43.3 submitted by May 1, 2009 and will allocate CAIR NO<sub>x</sub> Annual allowances for the control period in 2009 to CAIR NO<sub>x</sub> Annual units in West Virginia and covered by such request as follows:

43.4.a. Upon receipt of each such request, the Secretary will make any necessary adjustments to the request to ensure that the amount of the CAIR NO<sub>x</sub> Annual allowances requested meets the requirements of subsections 43.2 or 43.3;

43.4.b. If the compliance supplement pool under subsection 43.1 has an amount of CAIR NO<sub>x</sub> Annual allowances not less than the total amount of CAIR NO<sub>x</sub> Annual allowances in all such requests (as adjusted under subdivision 43.4.a), the Secretary will allocate to each CAIR NO<sub>x</sub> Annual unit covered by such requests the amount of CAIR NO<sub>x</sub> Annual allowances requested (as adjusted under subdivision 43.4.a);

43.4.c. If the compliance supplement

pool under subsection 43.1 has a smaller amount of CAIR NO<sub>x</sub> Annual allowances than the total amount of CAIR NO<sub>x</sub> Annual allowances in all such requests (as adjusted under subdivision 43.4.a), the Secretary will allocate CAIR NO<sub>x</sub> Annual allowances to each CAIR NO<sub>x</sub> Annual unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

$$\text{Unit's allocation} = \text{Unit's adjusted allocation} \times (16,929 \div \text{total adjusted allocations for all units})$$

Where:

“Unit’s allocation” is the amount of CAIR NO<sub>x</sub> Annual allowances allocated to the unit from the compliance supplement pool;

“Unit’s adjusted allocation” is the amount of CAIR NO<sub>x</sub> Annual allowances requested for the unit under subsections 43.2 or 43.3 as adjusted under subdivision 43.4.a;

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under subsections 43.2 or 43.3, as adjusted under subdivision 43.4.a;

43.4.d. By November 30, 2009, the Secretary will determine, and submit to the Administrator, the allocations under subdivisions 43.4.b or 43.4.c; and

43.4.e. By January 1, 2010, the Administrator will record the allocations under subdivision 43.4.d.

**§45-39-50. Reserved.**

**§45-39-51. Establishment of Accounts.**

51.1. Compliance accounts. -- Upon receipt of a complete certificate of representation under section 13, the Administrator will establish a compliance account for the CAIR NO<sub>x</sub> Annual source for which the certificate of representation was submitted, unless the source already has a compliance account.

51.2. General accounts. -- Any person may apply to open a general account for the purpose of holding and transferring CAIR NO<sub>x</sub> Annual allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected will include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

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

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

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

51.2.a.3. A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO<sub>x</sub> Annual allowances held in the general account;

51.2.a.4. The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: “I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the

CAIR NO<sub>x</sub> Annual Trading Program on behalf of such persons and that each such person shall 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 and alternate CAIR authorized account representative. -- Upon receipt by the Administrator of a complete application for a general account under subsection 51.2:

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

51.3.b. The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account will represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances held in the general account in all matters pertaining to the CAIR NO<sub>x</sub> Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person will be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account; and

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

51.4. Each submission concerning the general account under subsection 51.2 must be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances held in the general account. Each such submission must include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO<sub>x</sub> Annual 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 the general account under subsection 51.2 only if the submission has been made, signed, and certified in accordance with subsection 51.4.

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

51.6.a. The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete

application for a general account under subsection 51.2. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO<sub>x</sub> Annual allowances in the general account.

51.6.b. The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subsection 51.2. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account will be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO<sub>x</sub> Annual allowances in the general account.

51.6.c. In the event a person having an ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances in the general account is not included in the list of such persons in the application for a general account, such 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 person were included in such list.

51.6.d. Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO<sub>x</sub> Annual allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative will submit a revision to the application for a general account

amending the list of persons having an ownership interest with respect to the CAIR NO<sub>x</sub> Annual allowances in the general account to include the change.

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

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

51.7.b. Except as provided in subdivision 51.6.a or 51.6.b, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account will affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO<sub>x</sub> Annual 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 alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO<sub>x</sub> Annual allowance transfers.

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

51.8.a. A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator

provided for or required under sections 51 through 62.

51.8.b. An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under sections 51 through 62.

51.8.c. In order to delegate authority to make an electronic submission to the Administrator in accordance with subdivisions 51.8.a and 51.8.b, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

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

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

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

51.8.c.4. The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 45CSR§39-51.8.d shall be deemed to be an electronic submission by me.”; and

51.8.c.5. The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 45CSR§39-51.8.d, I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 45CSR§39-51.8 is terminated.”

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

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

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

#### **§45-39-52. Responsibilities of CAIR Authorized Account Representative.**

52.1. Following the establishment of a CAIR NO<sub>x</sub> Annual Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO<sub>x</sub> Annual allowances in the account, will be made only by the CAIR authorized account

representative for the account.

**§45-39-53. Recordation of CAIR NO<sub>x</sub> Annual Allowance Allocations.**

53.1. By September 30, 2007, the Administrator will record in the CAIR NO<sub>x</sub> Annual source's compliance account the CAIR NO<sub>x</sub> Annual allowances allocated for the CAIR NO<sub>x</sub> Annual units at the source, as submitted by the Secretary in accordance with subsection 41.1, for the control periods in 2009, 2010, 2011, 2012, 2013 and 2014.

53.2. By December 1, 2009, the Administrator will record in the CAIR NO<sub>x</sub> Annual source's compliance account the CAIR NO<sub>x</sub> Annual allowances allocated for the CAIR NO<sub>x</sub> Annual units at the source, as submitted by the Secretary in accordance with subsection 41.2, for the control period in 2015.

53.3. By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO<sub>x</sub> Annual source's compliance account the CAIR NO<sub>x</sub> Annual allowances allocated for the CAIR NO<sub>x</sub> Annual units at the source, as submitted by the Secretary in accordance with subsection 41.2, for the control period in the sixth year after the year of the applicable deadline for recordation under this subsection.

53.4. By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO<sub>x</sub> Annual source's compliance account the CAIR NO<sub>x</sub> Annual allowances allocated for the CAIR NO<sub>x</sub> Annual units at the source, as submitted by the Secretary in accordance with subsection 41.3, for the control period in the year of the applicable deadline for recordation under this subsection.

53.5. Serial numbers for allocated CAIR NO<sub>x</sub> Annual allowances. -- When recording the allocation of CAIR NO<sub>x</sub> Annual allowances for a CAIR NO<sub>x</sub> Annual unit in a compliance account, the Administrator will assign each CAIR NO<sub>x</sub> Annual allowance a unique identification number that will include digits identifying the year of the

control period for which the CAIR NO<sub>x</sub> Annual allowance is allocated.

**§45-39-54. Compliance with CAIR NO<sub>x</sub> Emissions Limitation.**

54.1. Allowance transfer deadline. -- The CAIR NO<sub>x</sub> Annual allowances are available to be deducted for compliance with a source's CAIR NO<sub>x</sub> Annual emissions limitation for a control period in a given calendar year only if the CAIR NO<sub>x</sub> Annual allowances:

54.1.a. Were allocated for the control period in the year or a prior year; and

54.1.b. Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO<sub>x</sub> Annual allowance transfer correctly submitted for recordation under sections 60 and 61 by the allowance transfer deadline for the control period.

54.2. Deductions for compliance. -- Following the recordation, in accordance with section 61, of CAIR NO<sub>x</sub> Annual 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 NO<sub>x</sub> Annual allowances available under subsection 54.1 in order to determine whether the source meets the CAIR NO<sub>x</sub> Annual emissions limitation for the control period as follows:

54.2.a. Until the amount of CAIR NO<sub>x</sub> Annual allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with sections 70 through 75, from all CAIR NO<sub>x</sub> Annual units at the source for the control period; or

54.2.b. If there are insufficient CAIR NO<sub>x</sub> Annual allowances to complete the deductions in subdivision 54.2.a, until no more CAIR NO<sub>x</sub> Annual allowances available under subsection 54.1 remain in the compliance account.

54.3. Identification of CAIR NO<sub>x</sub> Annual

allowances by serial number.

54.3.a. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO<sub>x</sub> Annual 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 NO<sub>x</sub> Annual source and the appropriate serial numbers.

54.3.b. First-in, first-out. -- The Administrator will deduct CAIR NO<sub>x</sub> Annual allowances under subsections 54.2 or 54.4 from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO<sub>x</sub> Annual allowances by serial number under subdivision 54.3.a, on a first-in, first-out accounting basis in the following order:

54.3.b.1. Any CAIR NO<sub>x</sub> Annual allowances that were allocated to the units at the source, in the order of recordation; and then

54.3.b.2. Any CAIR NO<sub>x</sub> Annual allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to sections 60 through 62, in the order of recordation.

54.4. Deductions for excess emissions.

54.4.a. After making the deductions for compliance under subsection 54.2, for a control period in a calendar year in which the CAIR NO<sub>x</sub> Annual source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO<sub>x</sub> Annual allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

54.4.b. Any allowance deduction required under subdivision 54.4.a will not affect the

liability of the owners and operators of the CAIR NO<sub>x</sub> Annual source or the CAIR NO<sub>x</sub> Annual 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 and 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 NO<sub>x</sub> Annual Trading Program and make appropriate adjustments of the information in the submissions.

54.6.b. The Administrator may deduct CAIR NO<sub>x</sub> Annual allowances from or transfer CAIR NO<sub>x</sub> Annual allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision 54.6.a, and record such deductions and transfers.

#### **§45-39-55. Banking.**

55.1. CAIR NO<sub>x</sub> Annual allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subsection 55.2.

55.2. Any CAIR NO<sub>x</sub> Annual allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO<sub>x</sub> Annual allowance is deducted or transferred under sections 54, 56, or sections 60 through 62.

#### **§45-39-56. Account Error.**

56.1. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO<sub>x</sub> Annual Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

**§45-39-57. 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 sections 60 and 61 for any CAIR NO<sub>x</sub> Annual allowances in the account to one or more other CAIR NO<sub>x</sub> Annual Allowance Tracking System accounts.

57.2. If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO<sub>x</sub> Annual allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO<sub>x</sub> Annual allowances into the account under sections 60 and 61 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

**§45-39-60. Submission of CAIR NO<sub>x</sub> Annual Allowance Transfers.**

60.1. A CAIR authorized account representative seeking recordation of a CAIR NO<sub>x</sub> Annual allowance transfer will submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO<sub>x</sub> Annual allowance transfer must include the following elements, in a format specified by the Administrator:

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

60.1.b. The serial number of each CAIR NO<sub>x</sub> Annual 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 account and the date signed.

**§45-39-61. U.S. EPA Recordation.**

61.1. Within 5 business days (except as provided in subsection 61.2) of receiving a CAIR NO<sub>x</sub> Annual allowance transfer, the Administrator will record a CAIR NO<sub>x</sub> Annual allowance transfer by moving each CAIR NO<sub>x</sub> Annual allowance from the transferor account to the transferee account as specified by the request, provided that:

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

61.1.b. The transferor account includes each CAIR NO<sub>x</sub> Annual allowance identified by serial number in the transfer.

61.2. CAIR NO<sub>x</sub> Annual allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO<sub>x</sub> Annual 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 NO<sub>x</sub> Annual allowance transfer submitted for recordation fails to meet the requirements of subsection 61.1, the Administrator will not record such transfer.

**§45-39-62. Notification.**

62.1. Notification of recordation. -- Within 5 business days of recordation of a CAIR NO<sub>x</sub> Annual allowance transfer under section 61, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

62.2. Notification of non-recordation. -- Within 10 business days of receipt of a CAIR NO<sub>x</sub> Annual 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-recording.

62.3. Nothing in this section will preclude the submission of a CAIR NO<sub>x</sub> Annual allowance transfer for recording following notification of non-recording.

**§45-39-70. General Monitoring and Reporting Requirements.** -- The owners and operators, and to the extent applicable, the CAIR designated representative of a CAIR NO<sub>x</sub> Annual unit, must comply with the monitoring, recordkeeping and reporting requirements as provided in sections 70 through 75 and Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in section 2 and in 40 CFR §72.2 will apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in 40 CFR Part 75 will be deemed to refer to the terms “CAIR NO<sub>x</sub> Annual unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in section 2. The owner or operator of a unit that is not a CAIR NO<sub>x</sub> Annual unit but that is monitored under 40 CFR §75.72(b)(2)(ii) must comply with the same monitoring, recordkeeping and reporting requirements as a CAIR NO<sub>x</sub> Annual unit.

70.1. Requirements for installation, certification and data accounting. -- The owner or operator of each CAIR NO<sub>x</sub> Annual unit will:

70.1.a. Install all monitoring systems required under sections 70 through 75 for monitoring NO<sub>x</sub> mass emissions and individual unit heat input (including all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, stack gas moisture content, stack gas flow rate, CO<sub>2</sub> or O<sub>2</sub> concentration, and fuel flow rate, as applicable, in accordance with 40 CFR §§75.71 and 75.72);

70.1.b. Successfully complete all certification tests required under section 71 and

meet all other requirements of sections 70 through 75 and 40 CFR Part 75 applicable to the monitoring systems under subdivision 70.1.a; and

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

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

70.2.a. For the owner or operator of a CAIR NO<sub>x</sub> Annual unit that commences commercial operation before July 1, 2007, by January 1, 2008;

70.2.b. For the owner or operator of a CAIR NO<sub>x</sub> Annual unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

70.2.b.1. January 1, 2008; 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 NO<sub>x</sub> Annual unit for which construction of a new stack or flue or installation of add-on NO<sub>x</sub> 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 NO<sub>x</sub> emissions controls.

70.3. Reporting data. -- The owner or operator of a CAIR NO<sub>x</sub> Annual unit that does not meet the applicable compliance date set forth in subsection 70.2 for any monitoring system under subdivision

70.1.a will, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO<sub>x</sub> concentration, NO<sub>x</sub> emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO<sub>x</sub> mass emissions and heat input in accordance with 40 CFR §§75.31(b)(2) or (c)(3), section 2.4 of Appendix D to 40 CFR Part 75, or section 2.5 of Appendix E to 40 CFR Part 75, as applicable.

#### 70.4. Prohibitions.

70.4.a. No owner or operator of a CAIR NO<sub>x</sub> Annual unit will use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of sections 70 through 75 without having obtained prior written approval in accordance with section 75.

70.4.b. No owner or operator of a CAIR NO<sub>x</sub> Annual unit will operate the unit so as to discharge, or allow to be discharged, NO<sub>x</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of sections 70 through 75 and 40 CFR Part 75.

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

70.4.d. No owner or operator of a CAIR NO<sub>x</sub> Annual 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 75, except under any one of the following circumstances:

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

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

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

70.5. Long-term cold storage. -- The owner or operator of a CAIR NO<sub>x</sub> Annual unit is subject to the applicable provisions of 40 CFR Part 75 concerning units in long-term cold storage.

#### **§45-39-71. Initial Certification and Recertification Procedures.**

71.1. The owner or operator of a CAIR NO<sub>x</sub> Annual unit will be exempt from the initial certification requirements of this section for a monitoring system under subdivision 70.1.a if the following conditions are met:

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

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

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

71.3. If the Administrator has previously approved a petition under 40 CFR §§75.17(a) or (b) for apportioning the NO<sub>x</sub> emission rate measured in a common stack or a petition under 40 CFR §75.66 for an alternative to a requirement in 40 CFR §§75.12 or 75.17, the CAIR designated representative will resubmit the petition to the Administrator under subsection 75.1 to determine whether the approval applies under the CAIR NO<sub>x</sub> Annual Trading Program.

71.4. Except as provided in subsection 71.1, the owner or operator of a CAIR NO<sub>x</sub> Annual unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under Appendices D and E to 40 CFR Part 75) under subdivision 70.1.a. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR §75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 must comply with the procedures in subsections 71.5 or 71.6, respectively.

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

71.4.b. Requirements for recertification. -- Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subdivision 70.1.a that may significantly affect the ability of the system to accurately measure or record NO<sub>x</sub> mass emissions or heat input rate or to meet the quality-assurance and

quality-control requirements of 40 CFR §75.21 or Appendix B to 40 CFR Part 75, the owner or operator will recertify the monitoring system in accordance with 40 CFR §75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator will recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR §75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO<sub>x</sub> monitoring system under Appendix E to 40 CFR Part 75, under subdivision 70.1.a are subject to the recertification requirements in 40 CFR §75.20(g)(6).

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

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

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

71.4.c.3. Provisional certification date.

-- The provisional certification date for a monitoring system will be determined in accordance with 40 CFR §75.20(a)(3). A provisionally certified monitoring system may be used under the CAIR NO<sub>x</sub> Annual Trading Program for a period not to exceed 120 days after receipt by the Secretary of the complete certification application for the monitoring system under paragraph 71.4.c.2. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Secretary does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Secretary.

71.4.c.4. Certification application approval process. -- The Secretary will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph 71.4.c.2. In the event the Secretary does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CAIR NO<sub>x</sub> Annual 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 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 75.21(e) and continuing until the applicable date and hour specified under 40 CFR §§75.20(a)(5)(i) or 75.20(g)(7):

71.4.c.5.A.1. For a disapproved NO<sub>x</sub> emission rate (i.e., NO<sub>x</sub>-diluent) system, the

maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR §72.2;

71.4.c.5.A.2. For a disapproved NO<sub>x</sub> pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO<sub>x</sub> and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of Appendix A to 40 CFR Part 75;

71.4.c.5.A.3. For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of Appendix A to 40 CFR Part 75;

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

71.4.c.5.A.5. For a disapproved excepted NO<sub>x</sub> monitoring system under Appendix E to 40 CFR Part 75, the fuel-specific maximum potential NO<sub>x</sub> emission rate, as defined in 40 CFR §72.2;

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

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

71.5. Initial certification and recertification procedures for units using the low mass emission excepted methodology under 40 CFR §75.19. -- The owner or operator of a unit qualified to use the low mass emissions (LME) excepted

methodology under 40 CFR §75.19 will meet the applicable certification and recertification requirements in 40 CFR §§75.19(a)(2) and 75.20(h). If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator will also meet the certification and recertification requirements in 40 CFR §75.20(g).

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

#### **§45-39-72. Out of Control Periods.**

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

72.2. Audit decertification. -- Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under section 71 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Secretary 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.

#### **§45-39-73. Notifications.**

73.1. The CAIR designated representative for a CAIR NO<sub>x</sub> Annual unit will submit written notice to the Secretary and the Administrator in accordance with 40 CFR §75.61.

#### **§45-39-74. Recordkeeping and Reporting.**

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

74.2. Monitoring plans. -- The owner or operator of a CAIR NO<sub>x</sub> Annual unit must comply with the requirements of 40 CFR §§75.73(c) and (e).

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 NO<sub>x</sub> mass emissions data and heat input data for the CAIR NO<sub>x</sub> Annual unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

74.4.a.1. For a unit that commences

commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;

74.4.a.2. For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection 70.2, unless that quarter is the third or fourth quarter of 2007, in which case reporting will commence in the quarter covering January 1, 2008 through March 31, 2008;

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 §75.73(f); and

74.4.c. For CAIR NO<sub>x</sub> Annual units that are also subject to an Acid Rain emissions limitation or the CAIR NO<sub>x</sub> Ozone Season Trading Program, CAIR SO<sub>2</sub> Trading Program, or Hg Budget Trading Program, quarterly reports will include the applicable data and information required by Subparts F through I of 40 CFR Part 75 as applicable, in addition to the NO<sub>x</sub> mass emission data, heat input data, and other information required by sections 70 through 75.

74.5. Compliance certification. -- The CAIR designated representative will submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification must state that:

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

74.5.b. For a unit with add-on NO<sub>x</sub> emission controls and for all hours where NO<sub>x</sub>

data are substituted in accordance with 40 CFR §75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the quality assurance and quality control program under Appendix B to 40 CFR Part 75 and the substitute data values do not systematically underestimate NO<sub>x</sub> emissions.

**§45-39-75. Petitions.**

75.1. Except as provided in subsection 75.3, the CAIR designated representative of a CAIR NO<sub>x</sub> Annual 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 75. Application of an alternative to any requirement of sections 70 through 75 is in accordance with sections 70 through 75 only to the extent that the petition is approved in writing by the Administrator, in consultation with the Secretary.

75.2. The CAIR designated representative of a CAIR NO<sub>x</sub> Annual 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 75. Application of an alternative to any requirement of sections 70 through 75 is in accordance with sections 70 through 75 only to the extent that the petition is approved in writing by both the Secretary and the Administrator.

75.3. The CAIR designated representative of a CAIR NO<sub>x</sub> Annual unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR §75.66 to the Secretary and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR §75.72. Application of an alternative to any such requirement is in accordance with sections 70 through 75 only to the extent that the petition is approved in writing by both the Secretary and the Administrator.

**§45-39-76. Reserved.**

**§45-39-80. Reserved.**

**§45-39-90. 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, the inconsistency will be resolved by the determination of the Secretary and the determination will be based upon the application of the more stringent provision, term, condition, method or rule.