

**TITLE 45
 LEGISLATIVE RULE
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 OFFICE OF AIR QUALITY
 SERIES 39
 CONTROL OF ANNUAL NITROGEN OXIDE EMISSIONS TO MITIGATE
 INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER
 AND NITROGEN OXIDES**

§45-39-40. CAIR NO_x Annual Trading Budget.

40.1. The West Virginia CAIR NO_x annual trading budget for allocations of CAIR NO_x Annual allowances for the control periods of 2009 through 2014 and ~~2015 and thereafter~~ are respectively as follows:

CAIR NO _x Annual Trading Budget	2009-2014	2015 and thereafter
	74,220 tons	61,850 tons

Annual Allowance Allocations.

41.1. By October 31, 2006, the Secretary will submit to the Administrator the CAIR NO_x Annual allowance allocations, in a format prescribed by the Administrator and in accordance 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_x 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. If the Secretary fails to submit to the Administrator the CAIR NO_x Annual allowance allocations in accordance with this subsection, the Administrator will assume that the allocations of CAIR NO_x Annual allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.

41.3. By October 31, 2009 and October 31 of each year thereafter, the Secretary will submit to the Administrator the CAIR NO_x 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. If the Secretary fails to submit to the Administrator the CAIR NO_x Annual allowance allocations in accordance with this subsection, the Administrator will assume that the allocations of CAIR NO_x Annual

allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NOx Annual unit that would otherwise be allocated CAIR NOx Annual allowances under subsections 42.1 and 42.2, as well as under subsections 42.1, 42.3 and 42.4, for the applicable control period will be assumed to be allocated no CAIR NOx Annual allowances under subsections 42.1, 42.3 and 42.4 for the applicable control period.

§45-39-42. CAIR NOx Annual Allowance Allocations.

42.1. Determination of heat input. -- The baseline heat input (in mmBtu) used with respect to CAIR NOx Annual allowance allocations under subsection 42.2 for each CAIR NOx 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 NOx 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 multiplied by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

42.2. Allocations for established units.

42.2.a. For each control period in 2009 and thereafter, the Secretary will allocate to all CAIR NO_x Annual units in the state that have a baseline heat input (as determined under subsection 42.1) a total amount of CAIR NO_x 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_x emissions in the state trading budget under section 40 (except as provided in subsection 42.4).

42.2.b. The Secretary will allocate CAIR NO_x Annual allowances to each CAIR NO_x Annual unit under subdivision 42.2.a in an amount determined by multiplying the total amount of CAIR NO_x Annual allowances allocated under subdivision 42.2.a by the ratio of the baseline heat input of such CAIR NO_x Annual unit to the total amount of baseline heat input of all such CAIR NO_x 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_x Annual allowances to CAIR NO_x Annual units in the state that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under subsection 42.1), 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_x 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_x emissions in the CAIR NO_x annual trading budget under section

40;

42.3.b. The CAIR designated representative of such a CAIR NO_x Annual unit may submit to the Secretary a request, in a format specified by the Secretary, to be allocated CAIR NO_x 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_x Annual unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Annual allowances under subsection 42.2. The CAIR NO_x Annual allowance allocation request must be submitted on or before July 1 of the first control period for which the CAIR NO_x Annual allowances are requested and after the date on which the CAIR NO_x Annual unit commences commercial operation;

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

42.3.d. The Secretary will review each CAIR NO_x Annual allowance allocation request under subdivision 42.3.b and will allocate CAIR NO_x 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 July 1 of the control period, the Secretary will determine the sum of the CAIR NO_x 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_x 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_x Annual allowances requested (as adjusted under paragraph 42.3.d.1) to each CAIR NO_x 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_x 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_x Annual unit covered by an allowance allocation request accepted under paragraph 42.3.d.1 the amount of the CAIR NO_x Annual allowances requested (as adjusted under paragraph 42.3.d.1), multiplied by the amount of CAIR NO_x Annual allowances in the new unit setaside 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 NOx Annual allowances (if any) allocated for the control period to the CAIR NOx Annual unit covered by the request.

42.4. Unallocated new unit set-aside NOx allowances. -- If, after completion of the procedures under subdivision 42.3.d for a control period, any unallocated CAIR NOx Annual allowances remain in the new unit set-aside for the control period, the Secretary will allocate to each CAIR NOx Annual unit that was allocated CAIR NOx Annual allowances under subsection 42.2 an amount of CAIR NOx Annual allowances equal to the total amount of such remaining unallocated CAIR NOx 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 NOx emissions in the CAIR NOx annual trading budget under section 40, and rounded to the nearest whole allowance as appropriate.